

**NASSAU COUNTY PIGGYBACK AGREEMENT**

**THIS NASSAU COUNTY PIGGYBACK AGREEMENT** (hereinafter “Agreement”) is by and between the **NASSAU COUNTY BOARD OF COUNTY COMMISSIONERS**, hereinafter called “County” and **EC AMERICA, INC.**, a subsidiary of immixGroup, Inc. hereinafter called “Vendor”.

**WHEREAS**, the County requires the following goods and services: Procore Construction Software; and

**WHEREAS**, the Vendor has a General Services Administration Federal Supply Service Authorized Federal Supply Schedule Pricelist GS-35F-0511T (hereinafter “Lead Contracting Agency”), pursuant to a formal competitive procurement process for the same goods and services (hereinafter “Original Contract”), a copy of which is attached hereto and incorporated herein as Exhibit “A”, under which the Vendor can provide the Procore Construction Software required by the County; and

**WHEREAS**, Section 1-141(d)(3) of the Nassau County Code of Ordinances, Purchasing Policy, allows for piggybacking for the same goods or services; and

**WHEREAS**, the County desires to access the Original Contract with the Vendor for the acquisition of said goods and services in accordance with the terms of the Exhibit “A”.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**SECTION 1. Recitals.**

**1.1** The above recitals are true and correct and are incorporated herein, in their entirety, by this reference.

**SECTION 2. Exhibits.**

**2.1** The Exhibits listed below are the exhibits incorporated into and made part of this Agreement:

**Exhibit A** GENERAL SERVICES ADMINISTRATION FEDERAL SUPPLY SERVICE AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICELISTGS-35F-0511T

**Exhibit B** VENDOR’S QUOTE

**Exhibit C** INSURANCE REQUIREMENTS

**SECTION 3. Prices, Parties and Additional Terms and Conditions.**

3.1 The Vendor shall be compensated in an amount not to exceed One Hundred Ninety-Nine Thousand, Seven Hundred Seven Dollars and 91/100 (\$199,707.91) in accordance with Vendor's Quote attached hereto and incorporated herein as Exhibit "B." The Vendor's Quote shall reflect the pricing under the same terms and conditions as contained in Exhibit "A" or lower if needed but, cannot exceed the pricing listed in Exhibit "A".

3.2 All references to the Lead Contracting Agency in Exhibit "A" shall for the purpose of this Agreement be replaced with the words of "Nassau County" or "County".

3.3 Any additional terms or conditions not set forth in this Agreement or any attachments whether submitted purposely or inadvertently, shall have no force or effect. In the event of any conflict between the terms of this Agreement and the terms of the Original Contract or any attachments, the Procore Subscription and Services Agreement as contained in the GENERAL SERVICES ADMINISTRATION FEDERAL SUPPLY SERVICE AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICELIST GS-35F-0511T, the terms of clause GSAM 552.238-114 shall prevail.

**SECTION 4. Term of Agreement.**

4.1 Notwithstanding any other provision of the Original Contract to the contrary, the term of this Agreement shall begin upon the date fully executed and end on June 26, 2027.

**SECTION 5. Termination for Default.**

5.1 If the Vendor fails to perform any of its obligations under this Agreement, and if such default remains uncured for a period of more than fifteen (15) days after notice thereof was given in writing by the County to the Vendor, then the County may, without prejudice to any right or remedy the County may have, terminate this Agreement.

5.2 Upon termination of this Agreement, the Vendor shall immediately (1) stop work on the date specified; (2) terminate and settle all orders and subcontracts relating to the performance of the terminated work; (3) transfer all work in process, completed work, and other materials related to the terminated work to the County; and (4) render to the County all property belonging to the County, including but not limited to, equipment, books, and records.

**SECTION 6. Termination for Convenience.**

**6.1** The County reserves the right to terminate this Agreement in whole or part by giving the Vendor written notice at least thirty (30) days prior to the effective date of the termination. Upon receipt of written notice of termination from the County, the Vendor shall only provide those services and/or materials specifically approved or directed by the County. All other rights and duties of the parties under the Agreement shall continue during such notice period, and the County shall continue to be responsible to the Vendor for the payment of any obligations to the extent such responsibility has not been excused by breach or default of the Vendor. The Vendor shall promptly contact the County to make arrangements to render to the County all property belonging to the County, including but not limited to, equipment, books, and records.

**SECTION 7. Public Records.**

**7.1** The County is a public agency subject to Chapter 119, Florida Statutes. **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (904) 530-6090, RECORDS@NASSAUCOUNTYFL.COM, 96135 NASSAU PLACE, SUITE 6, YULEE, FLORIDA 32097.** Under this Agreement, to the extent that the Vendor is providing services to the County, and pursuant to Section 119.0701, Florida Statutes, the Vendor shall:

- a. Keep and maintain public records required by the public agency to perform the service.
- b. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the agreement term and following completion of the Agreement if the Vendor does not transfer the records to the public agency.
- d. Upon completion of the Agreement, transfer, at no cost, to the public agency all

public records in possession of the Vendor or keep and maintain public records required by the public agency to perform the service. If the Vendor transfers all public records to the public agency upon completion of the Agreement, the Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the Agreement, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the County.

- e. A request to inspect or copy public records relating to a Nassau County Agreement must be made directly to the Nassau County Custodian of Public Records. If Nassau County does not possess the requested records due to the Vendor maintaining the public records, then Nassau County shall immediately notify the Vendor of the request for records. The Vendor must provide the records to Nassau County or allow the records to be inspected or copied within a reasonable time. If the Vendor does not comply with Nassau County's request for records, Nassau County shall be entitled to enforce the Agreement provisions herein for failure to comply with the terms of the Agreement. Any Vendor which fails to provide public records to Nassau County within a reasonable time may also be subject to penalties as provided under Section 119.10, Florida Statutes, including punishment by fine or may be guilty of committing a misdemeanor of the first degree for any willful and knowing violation.
- f. If a civil action is filed against the Vendor to compel production of public records relating to the Agreement, the Court shall assess and award against the Vendor the reasonable costs of enforcement, including reasonable attorney fees if:
  - (a) The Court determines that the Vendor unlawfully refused to comply with the public records request within a reasonable time; and
  - (b) At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Vendor has not complied with the request, to the County and to the Vendor.



- g. A notice complies with this Section, if it is sent to the County's custodian of public records and to the Vendor at the Vendor's address listed on its Agreement with the County or to the Vendor's registered agent. Such notices shall be sent pursuant to Section 11.1 hereinbelow.
- h. If the Vendor complies with a public records request within eight (8) business days after the notice is sent, the Vendor is not liable for the reasonable costs of enforcement.
- i. In reference to any public records requested under this Agreement, the Vendor shall identify and mark specifically any information which the Vendor considers confidential and/or proprietary, inclusive of trade secrets as defined in Section 812.081, Florida Statutes, and which the Vendor believes to be exempt from disclosure, citing specifically the applicable exempting law and including a brief written explanation as to why the cited Statute is applicable to the information claimed as confidential and/or proprietary information. All materials shall be segregated and clearly identified as "EXEMPT FROM PUBLIC DISCLOSURE."
- j. In conjunction with the confidential and/or proprietary information designation, the Vendor acknowledges and agrees that after notice from County, the Vendor shall respond to a notice from the County immediately, but no later than 10 calendar days from the date of notification or the Vendor shall be deemed to have waived and consented to the release of the confidential and/or proprietary designated materials.
- k. The Vendor further agrees that by designation of the confidential/proprietary material, the Vendor shall defend the County (and its employees, agents and elected and appointed officials) against all claims and actions (whether or not a lawsuit is commenced) related to the Vendor's designation of the material as exempt from public disclosure and to hold harmless the County (and its employees, agents and elected and appointed officials) from any award to a plaintiff for damages, costs and attorneys' fees, incurred by the County by reason of any claim or action related to the Vendor's designation of material as exempt from public disclosure.

**SECTION 8. E-Verify.**

**8.1** The Vendor shall comply with Section 448.095, Florida Statutes, and use the United States Department of Homeland Security's E-Verify system ("E-Verify") to verify the employment eligibility of all persons hired by the Vendor during the term of this Agreement to work in Florida. Additionally, if the Vendor uses subcontractors to perform any portion of the work (under this Agreement), the Vendor shall include a requirement in the subcontractor's contract that the subcontractor use E-Verify to verify the employment eligibility of all persons hired by subcontractor to perform any such portion of the work. Answers to questions regarding E-Verify as well as instructions on enrollment may be found at the E-Verify website: [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify).

**8.2** The Vendor shall maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County or other authorized entity consistent with the terms of the Vendor's enrollment in the program. This includes maintaining a copy of proof of the Vendor's and subcontractors' enrollment in the E-Verify program. If the Vendor enters into a contract with a subcontractor, the subcontractor shall provide the Vendor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Vendor shall maintain a copy of such affidavit for the duration of the Agreement.

**8.3** Compliance with the terms of the E-Verify program provision is made an express condition of this Agreement and the County may treat a failure to comply as a material breach of the Agreement. If the County terminates the Agreement pursuant to Section 448.095(2)(c), Florida Statutes, the Vendor may not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated and the Vendor is liable for any additional costs incurred by the County as a result of the termination of this Agreement.

**SECTION 9. Prompt Payment Act.**

**9.1** All payments shall be made in accordance with the Local Government Prompt Payment Act, Chapter 218, Florida Statutes.

**SECTION 10. Indemnity.**

**10.1** The Vendor shall indemnify and hold harmless the County and its agents and employees from all claims, liabilities, damages, losses, expenses and costs, including attorney's fees, arising out of or associated with or caused by the negligence, recklessness, or intentionally

wrongful conduct of the Vendor or any persons employed or utilized by the Vendor, in the performance of this Contract. The Vendor shall, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the County in connection with the Vendor’s performance under this Contract.

**SECTION 11. Notices.**

11.1 All notices to the County under this Agreement shall be deemed served if sent in a manner requiring signed receipt of delivery, such as Federal Express, or if mailed, Registered or Certified Mail, return receipt requested as follows:

Point of Contact: Capital Projects Management, Director

Address: 96161 Nassau Place

Yulee, FL 32097

Telephone Number: 904.530.6370

E-mail Address: capitalprojects@nassaucountyfl.com

**SECTION 12. Fiscal Funding.**

12.1 This Agreement is subject to the availability of the County funding for each item and obligation and may be terminated without liability, penalty or further obligation other than payment of fees then due and owing.

**SECTION 13. Insurance.**

13.1 The Vendor shall provide and maintain at all times during the term of this Agreement, without cost or expense to the County, such commercial (occurrence form) or comprehensive general liability, workers compensation, professional liability, and other insurance policies as detailed in Exhibit “C”. The policy limits required are to be considered minimum amounts.

13.2 The Vendor shall provide to the County a Certificate of Insurance for all policies of insurance and renewals thereof in a form acceptable to the County. Said certificates shall provide that the Nassau County Board of County Commissioners is an additional insured, and that the County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action with the exception of ten (10) days for non-payment. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida.

**SECTION 14. Independent Vendor Status.**

14.1 The Vendor shall perform the services under this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute the Vendor or any of its agents or employees to be an agent, employee or representative of the County.

14.2 The Vendor and the County agree that during the term of this Agreement: (a) the Vendor has the right to perform services for others; (b) the Vendor has the right to perform the services required by this Agreement; and (c) the Vendor has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.

**SECTION 15. Taxes, Liens, Licenses and Permits.**

15.1 The Vendor recognizes that the County, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Agreement. As such, the Vendor shall refrain from including taxes in any billing. The Vendor is placed on notice that this exemption generally does not apply to nongovernmental entities, contractors, or subcontractors. Any questions regarding this tax exemption shall be addressed to the County Manager.

15.2 The Vendor shall secure and maintain all licenses and permits required to perform the services under this Agreement and to pay any and all applicable sales or use tax, or any other tax or assessment which shall be imposed or assessed by any and all governmental authorities, required under this Agreement, and to meet all federal, state, county and municipal laws, ordinances, policies and rules.

15.3 The Vendor acknowledges that property being improved that is titled to the County, shall not be subject to a lien of any kind for any reason. The Vendor shall include notice of such exemptions in any subcontracts and purchase orders issued under this Agreement.

**SECTION 16. Assignment.**

16.1 The Vendor shall not assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the County.

**SECTION 17. Compliance with Laws.**

17.1 The Vendor agrees to comply with all applicable federal, state and local laws, rules and regulations during the term of this Agreement.

**SECTION 18. Governing Law and Venue.**

**18.1** This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida with Venue for any action brought in Nassau County, Florida.

**SECTION 19. Severability.**

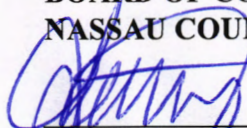
**19.1** If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid, unconstitutional, or unenforceable by any Court of Competent Jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**[The remainder of this page left intentionally blank.]**

Contract Tracking No. CM3728

IN WITNESS WHEREOF, the parties have executed this Agreement which shall be deemed an original on the day and year last written below.

**BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA**

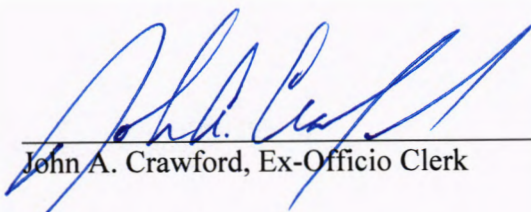
  
\_\_\_\_\_  
By: John F. Martin  
Its: Chair (or designee)

8/12/24  
Date

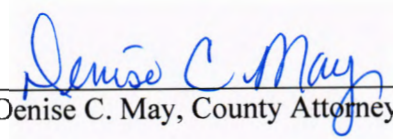
**EC AMERICA, INC.**

Meghan Cohen 7/22/2024  
By: Meghan Cohen Date  
Its: Sales Operation Manager  
Address: 8444 Westpark Drive, Suite 200  
McLean VA 22102

**ATTEST TO CHAIR'S SIGNATURE**

  
\_\_\_\_\_  
John A. Crawford, Ex-Officio Clerk  
Date: 8/12/24

**Approved as to form by County Attorney**

  
\_\_\_\_\_  
Denise C. May, County Attorney  
Date: 8/12/24

**EXHIBIT "A"**  
**ORIGINAL CONTRACT**  
**WITH LEAD**  
**CONTRACTING AGENCY**

<sup>mnnj</sup>  
**EC America, Inc.**

a subsidiary of  **immixGroup**

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*General Services Administration*  
*Federal Supply Service*  
*Authorized Federal Supply Schedule Pricelist*  
***GS-35F-0511T***

*Period Covered by Contract: June 27, 2007 through June 26, 2027.*  
*Pricelist current through Modification #PS-5260, dated August 31, 2023.*



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On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA *Advantage!*®, a menu-drive database system. The INTERNET address GSA *Advantage!*® is: GSAAAdvantage.gov.

**AUTHORIZED FEDERAL ACQUISITION SERVICE  
INFORMATION TECHNOLOGY SCHEDULE  
PRICELIST GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY EQUIPMENT,  
SOFTWARE, AND SERVICE**

**SIN 532420L LEASING OF PRODUCT**

FSC/PSC Class W070 .....Lease-Rent of ADP Eq & Supplies  
FSC/PSC Class W058

**SIN 33411 PURCHASE OF NEW EQUIPMENT**

- FSC Class 7010 ..... System Configuration
- End User Computers/Desktop Computers
  - Laptop/Portable/Notebook Computers
  - Servers
  - Optical and Imaging Systems
- FSC Class 7025 ..... Input/Output and Storage Devices
- Printers
  - Display
  - Network Equipment
  - Other Communications Equipment
  - Storage Devices including Magnetic Storage, Magnetic Tape Storage and Optical Storage
  - Other Input/Output and Storage Devices, Not Elsewhere Classified
- FSC Class 7035 .....ADP Support Equipment
- ADP Support Equipment
- FSC Class 7042 ... Mini and Micro Computer Control Devices
- Microcomputer Control Devices
- FSC Class 5805 ..... Telephone and Telegraph Equipment
- Telephone Equipment
  - Audio and Video Teleconferencing Equipment
- FSC Class 5810 ..... Communications Security Equipment and Components
- Communications Security Equipment
- FPDS Code N070 ..... Other
- Installation
  - Deinstallation
  - Reinstallation

*NOTE: Installation must be incidental to, in conjunction with and in direct support of the products sold under SIN 33411 of this contract and cannot be purchased separately. If the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act apply. In applying the Davis-Bacon Act, ordering activities are required to incorporate wage rate determinations into orders, as applicable.*

**SIN 811212 - EQUIPMENT MAINTENANCE**

FSC/PSC J070 ..... Maintenance  
FSC/PSC J058 ..... Maintenance and Repair of Communication Equipment

**SIN 511210 - TERM SOFTWARE LICENSES**

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service – which is categorized under a difference SIN (54151).

FSC Class 7030 ..... Information Technology Software

*NOTE: Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interfaces may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at <http://www.core.gov>.*

**SIN 511210 - PERPETUAL SOFTWARE LICENSES**

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

FSC Class 7030 ..... Information Technology Software

*NOTE: Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at <http://www.core.gov>.*

**SIN 54151 - MAINTENANCE OF SOFTWARE AS A SERVICE**

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially.

Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.

**SIN 518210C – CLOUD COMPUTING SERVICES**

Includes commercially available cloud computing services such as Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) and emerging cloud services. The new Cloud SIN is open to all deployment models (private, public, community or hybrid).

FSC/PSC Class D305 IT AND TELECOM-TELEPROCESSING, TIMESHARE, AND CLOUD COMPUTING

- Cloud Computing Services



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**SIN 611420 - TRAINING COURSES (FPDS Code U012)**

**SIN 54151S - IT PROFESSIONAL SERVICES**

FPDS Code D399..... Other Information Technology Services,  
Not Elsewhere Classified

**Note 1:** All non-professional labor categories must be incidental to and used solely to support hardware, software and/or professional services, and cannot be purchased separately.

**Note 2:** Offerors and Agencies are advised that the Group 70 – Information Technology Schedule is not to be used as a means to procure services which properly fall under the Brooks Act. These services include, but are not limited to, architectural, engineering, mapping, cartographic production, remote sensing, geographic information systems, and related services. FAR 36.6 distinguishes between mapping services of an A/E nature and mapping services which are not connected nor incidental to the traditionally accepted A/E Services.

**Note 3:** This solicitation is not intended to solicit for the reselling of IT Professional Services, except for the provision of implementation, maintenance, integration, or training services in direct support of a product. Under such circumstances the services must be performance by the publisher or manufacturer or one of their authorized agents.

**SIN 54151ECOM - ELECTRONIC COMMERCE (EC) SERVICES**

FPDS Code D304..... Value Added Network Services (VANs)

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**CONTRACTOR**

Contract Number:  
**GS-35F-0511T**

Period Covered by Contract:  
**June 27, 2007 through June 26, 2027**

Pricelist current through Modification #PS-5260, dated August 31, 2023.

**EC America, Inc.**  
8444 Westpark Drive, Suite 200  
McLean, VA 22102  
Phone: 703.752-0610

**Email:**

[ECA\\_Contracts@immixgroup.com](mailto:ECA_Contracts@immixgroup.com)

**Website:**

<https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/>

**Business Size:**

Other than Small Business

**CUSTOMER INFORMATION****1a. Table of awarded Special Item Numbers (SINs):**

SIN	Description
532420L	Leasing of Product
33411	Purchase of New Equipment
811212	Maintenance of Equipment, Repair Service, and Repair Parts/Spare Parts
511210	Term Software Licenses
511210	Perpetual Software Licenses
54151	Maintenance of Software, as a Service
611420	Training Courses
54151S	IT Professional Services
54151ECOM	Electronic Commerce (EC) Services
OLM	Order Level Materials (OLM)

**1b. Lowest Priced Model Number and Price for Each SIN:**

SIN	Part Number	GSA Catalog Price
33411	EMO330-06.P	\$0.01
811212	12365-S2Y-813-6967-29	\$0.01
511210	044-232322-01.P	\$0.01
511210	1399 999999	\$0.01
54151	Q24-DN000000110844	\$0.01
611420	CE-CORTC0001	\$0.86
54151S	System Analyst II	\$196.47
54151ECOM	SAAA298	\$0.01

**1c. See SIN specific Terms and Conditions as well as the terms in Attachment A.****2. Maximum Order:**

The Maximum Order value for the following Special Item Numbers (SINs) is \$500,000:

- Special Item Number 532420L - Leasing of Product
- Special Item Number 33411 - Purchase of Equipment
- Special Item Number 811212 - Equipment Maintenance
- Special Item Number 511210 - Term Software Licenses
- Special Item Number 511210 - Perpetual Software Licenses
- Special Item Number 54151 - Maintenance of Software as a Service
- Special Item Number 518210C – Cloud Computing Services
- Special Item Number 541519CDM – Continuous Diagnostics and Mitigation (CDM) Tools
- Special Item Number 54151S - IT Professional Services
- Special Item Number 54151ECOM - Electronic Commerce (EC) Services

The Maximum Order value for the following Special Item Numbers (SINs) is \$25,000:

- Special Item Number 611420 - Training Courses

**3. Minimum Order: \$100.00****4. Geographic coverage (delivery area):**  
Domestic and overseas delivery**5. Point(s) of production:**

For a current list of all Authorized Service and Distribution points by Manufacturer, go to:

<http://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/>

**6. Discount from List Prices:**

Prices shown herein are Net (discounts deducted)

**7. Quantity Discount:**

None unless otherwise specified in the pricelist.

**8. Prompt Payment Terms:**

0% - Net 30 days from receipt of invoice or date of acceptance, whichever is later.

**9a. Government purchase cards are accepted at or below the micro-purchase threshold.****9b. Government purchase cards are accepted above the micro-purchase threshold.****10. Foreign items:**

Country of Origin is identified in the Schedule Contract Pricelist.

**11a. Time of Delivery:**

The Contractor shall deliver to destination within thirty (30) calendar days after receipt of order (ARO), unless set forth otherwise on the Schedule Contract Pricelist to this schedule pricelist appended hereto and incorporated herein.

**11b. Expedited Delivery:**

Quicker delivery times than those set forth in the Schedule Contract Pricelist are available from the Contractor based on the availability of product inventory. Improved delivery times in the number of days after receipt of an order (ARO) if available, are as negotiated between the ordering activity and the Contractor or its Authorized Government Resellers.

**11c. Overnight and 2-Day Delivery:**

Unless otherwise specified by Manufacturer in the Schedule Contract Pricelist, when ordering activities require overnight or 2-day delivery, ordering activities are encouraged to contact the Contractor for the purpose of obtaining accelerated delivery. Overnight and 2-day delivery times are subject to the availability of product inventory.

**11d. Urgent Requirements:**

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the Ordering Activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

**12. F.O.B. Point(s):** Destination**13a. Ordering address(es):**

EC America, Inc.  
8444 Westpark Drive, Suite 200  
McLean, VA 22102

Or

See Authorized Dealers Listing by Manufacturer for Ordering Address and Contact Information at

<http://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/>

**13b. Ordering procedures:** For supplies and services, the order procedures, information on Blanket Purchase Agreements (BPA's) are found in Federal Acquisition Regulation (FAR) 8.405-3.

**14. Payment address(es):**  
EC America, Inc.  
8444 Westpark Drive, Suite 200  
McLean, VA 22102

Or

See Authorized Dealers Listing by Manufacturer for Payment Address and Contact Information at <http://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/>

**15. Warranty provision:**  
Warranty is addressed in the SIN specific terms that follow as well as the terms in Attachment A.

**16. Export packing charges, if applicable:**  
Not Applicable

**17. Terms and conditions of Government purchase card acceptance:** None

**18. Terms and conditions of rental, maintenance, and repair:** See SIN specific Terms and Conditions as well as the terms in Attachment A.

**19. Terms and conditions of installation:** See SIN specific Terms and Conditions as well as the terms in Attachment A.

**20. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if available):** Not Applicable

**21. List of service and distribution points (if applicable):** For a current list of all Authorized Service and Distribution points by Manufacturer, go to: <http://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/>

**22. List of Participating dealers (if applicable):**  
See Authorized Dealers Listing by Manufacturer at <http://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/>

**23. Preventive maintenance (if applicable):** See SIN specific Terms and Conditions as well as the terms in Attachment A.

**24a. Special attributes such as environmental attributes (e.g. recycled content, energy efficiency, and/or reduced pollutants):** Not Applicable

**24b. Section 508 Compliance for EIT:** If applicable, Section 508 compliance information on the supplies and services offered in this contract will be supplied by Contractor or Manufacturer (see definition below) upon request via email at the following address: [ECA\\_Contracts@immixgroup.com](mailto:ECA_Contracts@immixgroup.com)

**25. DUNS Number:** 017573259

**26. Notification regarding registration in CCR database:**  
Registration valid.

**27. Integration:**

The Non-Disclosure provisions set forth in Section 9b.(7), the IP Infringement provisions set forth in Section 9b.(9) and the Limitation of Liability provisions set forth in Section 3c. of the Terms and Conditions Applicable to Term Software Licenses (Special Item Number 511210), Perpetual Software Licenses (Special Item Number 511210) and Maintenance as a Service (Special Item Number 54151) of General Purpose Commercial Information Technology Software are hereby incorporated into and made a part of the terms applicable to all SINs.

## 28. Glossary of Definitions:

- a. **“Contractor”** means EC America, Inc.
- b. **“Contractor and its affiliates”** and **“Contractor or its affiliates”** refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.
- c. **“Manufacturer”** shall mean a manufacturer, supplier or producer of Equipment (as defined below) or a publisher or developer of Software or related Training Materials (as defined below) provided to Contractor through a letter of supply to be licensed or sold to Ordering Activities under this contract.
- d. **“Ordering Activity”** shall mean, 1) any entity authorized to use GSA sources of supply and services as set forth in GSA Directive OGP 4800.21 or such later issued version, and 2) any entity acting on behalf of an Ordering Activity pursuant to a properly issued letter of authorization per Section 24 above – “Prime Contractor Ordering from Federal Supply Schedules” under Information for Ordering Activities applicable to All Special Item Numbers.

## 29. Responsibilities of Contractor:

The parties understand and agree that Contractor acts as a reseller of all Equipment, Software, Documentation, and services offered under this contract. With regard to Equipment, Software, and Documentation, Contractor represents that it has the requisite right and authority under its reseller agreements with the Manufacturers to offer the products and grant the rights specified in this contract, and Manufacturers shall have no privity of contract with an Ordering Activity hereunder. With regard to services, while some or all of the services ordered hereunder may be physically performed by Manufacturer, Service Provider, or other third-party personnel (as is specified under applicable SINs) acting under a subcontract or similar arrangement with Contractor, and while the scope and price of such services are defined by the applicable provider's policies (such as Maintenance Services Policies, Electronic Commerce Service Policies, or Wireless Services plans), Contractor remains solely responsible to the Ordering Activity for all such performance.

**TERMS AND CONDITIONS APPLICABLE TO  
LEASING OF GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY PRODUCTS  
(SPECIAL ITEM NUMBER 532420L)**

**1. GLOSSARY OF DEFINITIONS**

- a. **“Documentation”** shall mean Manufacturer’s then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for its (software or hardware) Products whether on-line or in hard copy.
- b. **“Products”** shall mean the computer hardware or software identified on the Schedule Contract Pricelist to this schedule pricelist.
- c. **“Termination Ceiling”** is the limit on the amount that a Contractor may be paid by the Ordering Activity on the Termination for Convenience of a lease.

**2. LEASE TYPES**

The Ordering Activity will consider proposals for the following lease types:

- a. Lease to Ownership,
- b. Lease with Option to Own, and
- c. Step Lease.

Orders for leased Products must specify the leasing type.

**3. OPTION 1**

a. STATEMENT

- i. It is understood by all parties to this contract that orders issued under this SIN shall constitute a lease arrangement. Unless the Ordering Activity intends to obligate other than annual appropriations to fund the lease, the base period of the lease is from the date of the Product acceptance through September 30 of the fiscal year in which the order is placed.
- ii. Agencies are advised to follow the guidance provided in Federal Acquisition Regulation (FAR) Subpart 7.4 Product Lease or Purchase and OMB Circular A-11. Agencies are responsible for the obligation of funding consistent with all applicable legal principles when entering into any lease arrangement.

b. FUNDING AND PERIODS OF LEASING ARRANGEMENTS

- i. Annual Funding. When annually appropriated funds are cited on an order for leasing, the following applies:
  - 1. The base period of an order for any lease executed by the Ordering Activity shall be for the duration of the fiscal year. All Ordering Activity renewal options under the lease shall be specified in the delivery order. All orders for leasing shall remain in effect through September 30 of the fiscal year or the planned expiration date of the lease, whichever is earlier, unless the Ordering Activity exercises its rights hereunder to acquire title to the Product prior to the planned expiration date or

unless the Ordering Activity exercises its right to terminate under FAR 52.212-4. Orders under the lease shall not be deemed to obligate succeeding fiscal year’s funds or to otherwise commit the Ordering Activity to a renewal.

- 2. All orders for leasing shall automatically terminate on September 30, unless the Ordering Activity notifies the Contractor in writing thirty (30) calendar days prior to the expiration of such orders of the Ordering Activity’s intent to renew. Such notice to renew shall not bind the Ordering Activity. The Ordering Activity has the option to renew each year at the original rate in effect at the time the order is placed. This rate applies for the duration of the order. If the Ordering Activity exercises its option to renew, the renewal order, shall be issued within 15 days after funds become available for obligation by the Ordering Activity, or as specified in the initial order. No termination fees shall apply if the Ordering Activity does not exercise an option.

- ii. Crossing Fiscal Years Within Contract Period. Where an Ordering Activity has specific authority to cross fiscal years with annual appropriations, the Ordering Activity may place an order under this option to lease Product for a period up to the expiration of its period of appropriation availability, or twelve months, whichever occurs later, notwithstanding the intervening fiscal years.

c. DISCONTINUANCE AND TERMINATION

Notwithstanding any other provision relating to this SIN, the Ordering Activity may terminate Products leased under this agreement, at any time during a fiscal year in accordance with the termination provisions contained in FAR 52.212-4. (l) Termination for the Ordering Activity’s convenience, or (m) Termination for cause. Additionally, no termination for cost or fees shall be charged for non-renewal of an option.

**4. OPTION 2**

To the extent an Offeror wishes to propose alternative lease terms and conditions that provide for lower discounts/prices based on the Ordering Activity’s stated intent to fulfill the projected term of a lease including option years, while at the same time including separate charges for early end of the lease, the following terms apply. These terms address the timing and extent of the Ordering Activity’s financial obligation including any potential charges for early end of the lease.

a. LEASING PRICE LIST NOTICE:

Contractors must include the following notice in their contract price list for SIN 532420L:

“The ordering activity is responsible for the obligation of funds consistent with applicable law. Agencies are advised to review the lease terms and conditions contained in this price list prior to ordering and obligating funding for a lease.”

b. STATEMENT OF ORDERING ACTIVITY INTENT:

- i. The Ordering Activity and the Contractor understand that a delivery order issued pursuant to this SIN is a lease arrangement and contemplates the use of the Product for the term of the lease specified in such delivery order (the "Lease Term"). In that regard, the Ordering Activity, as lessee, understands that the lease provisions contained herein and the rate established for the delivery order are premised on the Ordering Activity's intent to fulfill that agreement, including acquiring products for the period of time specified in the order. Each lease hereunder shall be initiated by a delivery order, which shall, either through a statement of work or other attachment, specify the Product being leased, and the required terms of the transaction.
- ii. Each Ordering Activity placing a delivery order under the terms of this option intends to exercise each renewal option and to extend the lease until completion of the Lease Term so long as the need of the Ordering Activity for the Product or functionally similar Product continues to exist and funds are appropriated. Contractor may request information from the Ordering Activity concerning the essential use of the Products.

c. LEASE TERM:

- i. The date on which the Ordering Activity accepts the Products is the Commencement Date of the lease.
- ii. The Contractor shall only deliver those items ordered that substantially conform to the requirements of this contract and the applicable Documentation. Therefore, Products delivered shall be deemed accepted upon delivery to Ordering Activity's designated receiving facility. The Ordering Activity reserves the right to inspect or test any Product that has been delivered. The Ordering Activity may require repair or replacement of nonconforming Products at no increase in contract price. The Ordering Activity must exercise its post-acceptance rights (1) within the applicable warranty period; and (2) before any substantial change occurs in the condition of the Product, unless the change is due to the defect in the Product.
- iii. Any lease is executed by the Ordering Activity on the basis that the known requirement for such Product exceeds the initial base period of the delivery order, which is typically 12 months, or for the remainder of the fiscal year. Pursuant to FAR 32.703-3(b), delivery orders with options to renew that are funded by annual (fiscal year) appropriations may provide for initial base periods and option periods that cross fiscal years as long as the initial base period or each option period does not exceed a 12-month period. Defense agencies must also consider DOD FAR supplement (DFAR) 232.703-3(b) in determining whether to use cross fiscal year funding. This cross fiscal year authority does not apply to multi-year leases.
- iv. The total Lease Term will be specified in each delivery order, including any relevant renewal options of the Ordering Activity. All delivery

orders, whether for the initial base period or renewal period, shall remain in effect through September 30 of the fiscal year (unless extended by statute), through any earlier expiration date specified in the delivery order, or until the Ordering Activity exercises its rights hereunder to acquire title to the Product prior to such expiration date. The Ordering Activity, at its discretion, may exercise each option to extend the term of the lease through the lease term. Renewal delivery orders shall not be issued for less than all of the Product(s) set forth in the original delivery order. Delivery orders under this SIN shall not be deemed to obligate succeeding fiscal year funds. The Ordering Activity shall provide the Contractor with written notice of exercise of each renewal option as soon as practicable. Notice requirements may be negotiated on an order-by-order basis.

- v. Where an Ordering Activity's specific appropriation or procurement authority provides for contracting beyond the fiscal year period, the Ordering Activity may place a delivery order for a period up to the expiration of the Lease Term, or to the expiration of the period of availability of the multi-year appropriation, or whatever is appropriate under the applicable circumstance.

d. LEASE TERMINATION:

- i. The Ordering Activity must elect the Lease Term of the relevant delivery order. The Contractor (and assignee, if any) will rely on the Ordering Activity's representation of its intent to fulfill the full Lease Term to determine the monthly lease payments calculated herein.
  1. The Ordering Activity may terminate or not renew leases under this option at no cost, pursuant to a Termination for Non-Appropriation as defined herein (see paragraph iii below). In any other event, the Ordering Activity's contracting officer may either terminate the relevant delivery order for cause or Termination for Convenience in accordance with FAR 52.212-4 paragraphs (l) and (m).
  2. The Termination for Convenience at the end of a fiscal year allows for separate charges for the early end of the lease (see paragraph iv below). In the event of termination for the convenience of the Ordering Activity, the Ordering Activity may be liable only up to the amount beyond the order's Termination Ceiling. Any termination charges calculated under the Termination for Convenience clause must be determined or identified in the delivery order or in the lease agreement.
- ii. Termination for Convenience of the Ordering Activity: Leases entered into under this option may not be terminated except by the Ordering Activity's contracting office responsible for the delivery order in accordance with FAR 52.212-4, Contract Terms and Conditions-Commercial Items, paragraph (l), *Termination for Convenience*



of the Ordering Activity. The costs charged to the Ordering Activity as the result of any Termination for Convenience of the Ordering Activity must be reasonable and may not exceed the sum of the fiscal year's payment obligations less payments made up to the date of termination plus the Termination Ceiling.

- iii. Termination for Non-Appropriation: The Ordering Activity reasonably believes that the bona fide need will exist for the entire Lease Term and corresponding funds in an amount sufficient to make all payment for the Lease Term will be available to the Ordering Activity. Therefore, it is unlikely that leases entered into under this option will terminate prior to the full Lease Term. Nevertheless, the Ordering Activity's contracting officer may terminate or not renew leases at the end of any initial base period or option period under this paragraph if (a) it no longer has a bona fide need for the Product or functionally similar Product; or (b) there is a continuing need, but adequate funds have not been made available to the Ordering Activity in an amount sufficient to continue to make the lease payments. If this occurs, the Ordering Activity will promptly notify the Contractor, and the Product lease will be terminated at the end of the last fiscal year for which funds were appropriated. Substantiation to support a termination for non-appropriation shall be provided to the Contractor upon request.
- iv. Termination Charges: At the initiation of the lease, Termination Ceilings will be agreed upon between Contractor and Ordering Activity for each year of the Lease Term. No claim will be accepted for future costs: supplies, maintenance, usage charges or interest expense beyond the date of termination. In accordance with the bona fide needs rule, all termination charges must reasonably represent the value the Ordering Activity received for the work performed based upon the shorter lease term. No Termination for Convenience costs will be associated with the expiration of the lease term.
- v. At the order level, the Ordering Activity may, consistent with legal principles, negotiate lower monthly payments or rates based upon appropriate changes to the termination conditions in this section.

## ***LEASE PROVISIONS COMMON TO ALL TYPES OF LEASE AGREEMENTS***

### **1. ORDERING PROCEDURES:**

- a. When an Ordering Activity expresses an interest in leasing a Product(s), the Ordering Activity will provide the following information to the prospective Contractor:
  - (i) Which Product(s) is (are) required.
  - (ii) The required delivery date.
  - (iii) The proposed lease plan and term of the lease.
  - (iv) Where the Product will be located.
  - (v) Description of the intended use of the Product.
  - (vi) Source and type of appropriations to be used.
- b. The Contractor will respond with:
  - (i) Whether the Contractor can provide the required Product.

- (ii) The estimated residual value of the Product (Lease with Option to Own and Step Lease only).
- (iii) The monthly payment based on the rate.
- (iv) The estimated cost, if any, of applicable State or local taxes. State and local personal property taxes are to be estimated as separate line items in accordance with FAR 52.229-1, which may be identified and added to the monthly lease payment.
- (v) A confirmation of the availability of the Product on the required delivery date.
- (vi) Extent of warranty coverage, if any, of the leased Products.
- (vii) The length of time the quote is valid.

- c. The Ordering Activity may issue a delivery order to the Contractor based on the information set forth in the Contractor's quote. In the event that the Ordering Activity does not issue a delivery order within the validity period stated in the Contractor's quote letter, the quote shall expire.

### **2. ASSIGNMENT OF CLAIMS:**

GSAR 552.232-23, Assignment of Claims, is incorporated herein by reference as part of these lease provisions. The Ordering Activity's contracting officer will acknowledge the assignment of claim for a lease in accordance with FAR 32.804-5. The extent of the assignee's protection is in accordance with FAR 32.804. Any setoff provision must be in accordance with FAR 32.803.

### **3. PEACEFUL POSSESSION AND UNRESTRICTED USE:**

In recognition of the types of Products available for lease and the potential adverse impact to the Ordering Activity's mission, the Ordering Activity's quiet and peaceful possession and unrestricted use of the Product shall not be disturbed in the event the Product is sold by the Contractor, or in the event of bankruptcy of the Contractor, corporate dissolution of the Contractor, or other event. The Product shall remain in the possession of the Ordering Activity until the expiration of the lease. Any assignment, sale, bankruptcy, or other transfer of the leased Product by the Contractor will not relieve the Contractor of its obligations to the Ordering Activity, and will not change the Ordering Activity's duties or increase the burdens or risks imposed on the Ordering Activity.

### **4. COMMENCEMENT OF LEASE:**

The date on which the Ordering Activity accepts the products is the Commencement Date of the lease. Acceptance is as defined as set forth in Section 4c(ii) above, or as further specified in an order.

### **5. INSTALLATION AND MAINTENANCE:**

- a. Installation and Maintenance, when applicable, normally are not included in the charge for leasing. The Contractor may require the Ordering Activity to obtain installation and maintenance services from a qualified source. The Ordering Activity may obtain installation and/or maintenance on the open market, from the Contractor's schedule contract, or from other sources. The Ordering Activity may also perform installation and/or maintenance in house, if qualified resources exist. In any event, it is the responsibility of the Ordering Activity to ensure that maintenance is in effect for the Lease term for all Products leased.
- b. When installation and/or maintenance are ordered under this schedule to be performed by the Contractor, the payments, terms and conditions as stated in this contract apply. The

rates and terms and conditions in effect at the time the order is issued shall apply during any subsequent renewal period of the lease. The maintenance rates and terms and conditions may be added to the lease payments with mutual agreement of the parties.

## **6. MONTHLY PAYMENTS:**

- a. Prior to the placement of an order under this Special Item Number, the Ordering Activity and the Contractor must agree on a "base value" for the Products to be leased. For Lease to Ownership (Capital Lease) the base value will be the contract purchase price (less any discounts). For Lease with Option to Own (Operating Lease), the base value will be the contract purchase price (less any discounts), less a mutually agreed upon residual value (pre-stated purchase option price at the conclusion of the lease) for the Products. The residual value will be used in the calculation of the original lease payment, lease extension payments, and the purchase option price.
- b. To determine the initial lease term payment, the Contractor agrees to apply the negotiated lease factor to the agreed upon base value: 500 basis points.

For Example: Lease factor one (1) percent over the rate for the three-year (or other term) Treasury Bill (T-bill) at the most current U. S. Treasury auction.

The lease payment may be calculated by using a programmed business calculator or by using "rate" functions provided in commercial computer spreadsheets (e.g., Lotus 1-2-3, Excel).

- c. For any lease extension, the extension lease payment will be based on the original residual value, in lieu of the purchase price. The Ordering Activity and the Contractor shall agree on a new residual value based on the estimated fair market price at the end of the extension. The formula to determine the lease payment will be that in 6.b. above.
- d. The purchase option price will be the fair market value of the Product or payment will be based upon the unamortized principle, as shown on the payment schedule as of the last payment prior to date of transfer of ownership, whichever is less.

NOTE: At the order level, Ordering Activity may elect to obtain a lower rate for the lease by setting the purchase option price as either, the fair market value of the Product or unamortized principle. The methodology for determining lump sum payments may be identified in the pricelist.

- e. The point in time when monthly rates are established is subject to negotiation and evaluation at the order level. In the event the Ordering Activity desires, at any time, to acquire title to Product leased hereunder, the Ordering Activity may make a one-time lump sum payment.

## **7. LEASE END/DISCONTINUANCE OPTIONS:**

- a. Upon the expiration of the Lease Term, Termination for Convenience, or Termination for Non-Appropriation, the Ordering Activity will return the Product to the Contractor unless the Ordering Activity by 30 days written notice elects either:
- (i) to purchase the Product for the residual value of the Product, or
  - (ii) to extend the term of the Lease, as mutually agreed. To compute the lease payment, the residual value from the preceding lease shall be the initial value of the leased

Product. A new residual value shall be negotiated for the extended lease and new lease payments shall be computed.

- b. Relocation - The Ordering Activity may relocate Products to another location within the Ordering Activity's facilities with prior written notice. No other transfer, including sublease, is permitted. Ordering Activity shall not assign, transfer or otherwise dispose of any Products, or any interest therein, or crate or suffer any levy, lien or encumbrance then except those created for the benefit of Contractor or it's assigns.

- c. Returns:
- (i) Within fourteen (14) days after the date of expiration, non-renewal or termination of a lease, the Ordering Activity shall, at its own risk and expense, have the Products packed for shipment in accordance with Manufacturer's specifications and return the Products to Contractor at the location specified by Contractor in the continental US, in the same condition as when delivered, ordinary wear and tear excepted. Any expenses necessary to return the Products to good working order shall be at Ordering Activity's expense.

(ii) The Contractor shall conduct a timely inspection of the returned products and within 45 days of the return, assert a claim if the condition of the Product exceeds normal wear and tear.

(iii) Product will be returned in accordance with the terms of the contract and in accordance with Contractor instruction.

(iv) With respect to software Products, the Ordering Activity shall state in writing to the Contractor that it has:

- (1) deleted or disabled all files and copies of the software from the equipment on which it was installed;
- (2) returned all software Documentation, training manuals, and physical media on which the software was delivered; and
- (3) has no ability to use the returned software.

## **8. UPGRADES AND ADDITIONS:**

- a. The Ordering Activity may affix or install any accessory, addition, upgrade, product or device on the Product ("additions") provided that such additions:
- (1) can be removed without causing material damage to the Product;
  - (2) do not reduce the value of the Product; and
  - (3) are obtained from or approved by the Contractor, and are not subject to the interest of any third-party other than the Contractor.
- b. Any other additions may not be installed without the Contractor's prior written consent. At the end of the lease term, the Ordering Activity shall remove any additions which:
- (1) were not leased from the Contractor, and
  - (2) are readily removable without causing material damage or impairment of the intended function, use, or value of the Product, and restore the Product to its original configuration.
- c. Any additions that are not so removable will become the Contractor's property (lien free).
- d. Leases of additions and upgrades must be co-terminus with that of the Product.

**9. RISK OF LOSS OR DAMAGE:**

The Ordering Activity is relieved from all risk of loss or damage to the Product during periods of transportation, installation, and during the entire time the Product is in possession of the Ordering Activity, except when loss or damage is due to the fault or negligence of the Ordering Activity. The Ordering Activity shall assume risk of loss or damage to the Product during relocation, (i.e., moving the product from one Ordering Activity location to another Ordering Activity location), unless the Contractor shall undertake such relocation.

**10. TITLE:**

During the lease term, Product shall always remain the property of the Contractor. The Ordering Activity shall have no property right or interest in the Product except as provided in this leasing agreement and shall hold the Product subject and subordinate to the rights of the Contractor. Software and software licenses shall be deemed personal property. The Ordering Activity shall have no right or interest in the software and related Documentation except as provided in the license and the lease. Upon the Commencement Date of the Lease Term, the Ordering Activity shall have an encumbered license to use the software for the Lease Term. The Ordering Activity's encumbered license rights in the software will be subject to the same rights as provided to a purchaser of a license under the terms of this contract except that the Ordering Activity will not have an unencumbered, paid-up license until it has made all lease payments for the full Lease Term in the case of an Lease To Ownership or has otherwise paid the applicable purchase option price.

**11. TAXES:**

The lease payments, purchase option prices, and interest rates identified herein exclude all state and local taxes levied on or measured by the contract or sales price of the Product furnished hereunder. The Ordering Activity will be invoiced for any such taxes as Contractor receives such tax notices or assessments from the applicable local taxing authority. Pursuant to the provisions of FAR 52.229-1 (Deviation – May 2003), State and Local Taxes, the Ordering Activity agrees to pay tax or provide evidence necessary to support an exemption from the tax.

**12. OPTION TO PURCHASE EQUIPMENT (FEB 1995) (FAR 52.207-5)**

- a. The Ordering Activity may purchase the Product provided on a lease or rental basis under this contract. The Contracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.
- b. Except for final payment and transfer of title to the Ordering Activity, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.
- c. The purchase conversion cost of the Product shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the

period of lease or rental, calculated by the formula contained elsewhere in this contract.

- d. The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the Product under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be "continuous rental."



**TERMS AND CONDITIONS APPLICABLE TO  
PURCHASE OF GENERAL PURPOSE  
COMMERCIAL INFORMATION TECHNOLOGY  
NEW EQUIPMENT (SPECIAL ITEM NUMBER  
33411)**

### **1. GLOSSARY OF DEFINITIONS**

- a. **"Documentation"** shall mean Manufacturer's then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment whether on-line or in hard copy.
- b. **"Equipment"** shall mean the computer hardware identified on the Schedule Contract Pricelist to this schedule pricelist.

### **2. MATERIAL AND WORKMANSHIP**

All Equipment furnished hereunder must substantially perform the function for which it is intended as set forth in the accompanying Documentation.

### **3. ORDER**

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.

For credit card orders and BPAs, telephone orders are permissible.

### **4. TRANSPORTATION OF EQUIPMENT**

FOB DESTINATION. Prices cover Equipment delivery to destination, for any location within the geographic scope of this contract.

### **5. INSTALLATION AND TECHNICAL SERVICES**

- a. **INSTALLATION.** When the Equipment provided under this contract is not normally self-installable, the Contractor its Manufacturer or other authorized service provider's technical personnel shall be available to the Ordering Activity, at the Ordering Activity's location, to install the Equipment and to train Ordering Activity personnel in the use and maintenance of the Equipment. The charges, for such services are listed by Manufacturer, in the schedule pricelist.
- b. **OPERATING AND MAINTENANCE MANUALS.** The Contractor or its Manufacturer shall furnish the Ordering Activity with one (1) copy of all Documentation, which is normally provided with the Equipment being purchased. For Documentation only available on-line, Contractor or its Manufacturer shall provide Ordering Activity access to such Documentation.

### **6. INSPECTION/ACCEPTANCE**

The Contractor shall only deliver those items ordered that substantially conform to the requirements of this contract and the applicable Manufacturer's Documentation. Therefore, items delivered shall be deemed accepted upon delivery to Ordering Activity's designated receiving facility. The Ordering Activity reserves the right to inspect or test any equipment that has been delivered. The Ordering Activity may require repair or replacement of nonconforming equipment at no increase in contract price. The Ordering Activity must exercise its post-acceptance rights (1) within the applicable warranty period as set

forth below; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

### **7. WARRANTY**

- a. Unless specified otherwise in this contract, the warranties extended to the Ordering Activity for Equipment and Documentation, and the exclusions and disclaimers applicable to such warranties, shall be as set forth on Attachment A to this schedule pricelist (Contractor Supplemental Pricelist Information and Incorporated Terms). Notwithstanding anything to the contrary that may be marked on or provided with the Equipment or Documentation, the parties understand and agree that such warranties, exclusions and disclaimers follow the applicable Manufacturer's standard commercial warranties, exclusions and disclaimers but are provided to the Ordering Activity by the Contractor, who will be responsible to the Ordering Activity for all compliance, service and remedies thereunder.
- b. **Limitation of Liability**
- i) **Exclusion of Consequential Damages. EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN SUBSECTION (b)(iii) BELOW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
  - ii) **Limitation of Direct Damages.** Except for a) a claim of IP Infringement, hereunder, or b) as provided in subsection (b)(iii) below, the aggregate and cumulative liability of Contractor for damages hereunder shall in no event exceed the amount of fees paid by Ordering Activity under the order giving rise to such liability, and if such damages relate to particular Equipment such liability shall be limited to fees paid for the relevant Equipment.
  - iii) **Non-Applicability to Statutory or Regulatory Rights.** Nothing herein shall operate to impair or prejudice the U.S. Government's right (a) to recover for fraud or crimes arising out of or relating to this contract under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.215-72 Price Adjustment – Failure to Provide Accurate Information (August 1997) or GSAR 552.238-75 Price Reductions (May 2004) Alternate I (May 2003).
- c. **Inspection and repair of defective Equipment under this warranty may be performed, at the option of the Contractor, at a service facility/plant authorized by the Contractor. The Ordering Activity may not return defective Equipment to the Contractor, the Manufacturer or its authorized service provider for repair or replacement without prior consultation and instruction.**

**8. PURCHASE PRICE FOR ORDERED EQUIPMENT**

The purchase price that the Ordering Activity will be charged will be the Ordering Activity purchase price in effect at the time of order placement (which shall not exceed the price agreed to at the time of award of the GSA Schedule contract, as may be revised from time to time through a contract modification agreed to and issued by the GSA Schedule contracting officer), or the Ordering Activity purchase price in effect on the installation date (or delivery date when installation is not applicable), whichever is less. Provided, however, that the Ordering Activity shall only be entitled to a lower price if the installation date is no longer than thirty (30) days after the date of order placement.

**9. RESPONSIBILITIES OF THE CONTRACTOR**

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

**10. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT**

When an Ordering Activity determines that Information Technology Equipment will be replaced, the Ordering Activity shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).

**TERMS AND CONDITIONS APPLICABLE TO  
MAINTENANCE, REPAIR SERVICE AND REPAIR  
PARTS/SPARE PARTS FOR GOVERNMENT-  
OWNED GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY EQUIPMENT,  
RADIO/TELEPHONE EQUIPMENT, (AFTER  
EXPIRATION OF GUARANTEE/WARRANTY  
PROVISIONS AND/OR WHEN REQUIRED  
SERVICE IS NOT COVERED BY  
GUARANTEE/WARRANTY PROVISIONS) AND  
FOR LEASED EQUIPMENT (SPECIAL ITEM  
NUMBER 811212)**

### **1. GLOSSARY OF DEFINITIONS**

- a. **“Documentation”** shall mean Manufacturer's then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment whether on-line or in hard copy.
- b. **“Maintenance Services”** shall mean the services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer's then current Maintenance Services Policy.
- c. **“Maintenance Services Policy”** shall mean the commercial terms describing a Manufacturer's standard maintenance and support offerings, policies and procedures for its Equipment, a copy of which is set forth in Attachment A to this schedule pricelist.
- d. **“Equipment”** shall mean the computer hardware identified on the Schedule Contract Pricelist to this schedule pricelist.

### **2. SERVICE AREAS**

- a. The types/levels of maintenance, geographic scope of availability, and applicable rates vary by Manufacturer and are generally set forth in an applicable Manufacturer's Maintenance Services Policy. If any additional charge is to apply because of distance from the Contractor's service locations, the mileage rate or other distance factor shall be negotiated at the Task Order level.
- b. When repair services cannot be performed at the Ordering Activity installation site, the repair services will be performed at the Contractor's, Manufacturer's or authorized service provider's plant(s).

### **3. MAINTENANCE ORDER**

- a. Agencies may use written orders, EDI orders, credit card orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within fifteen (15) calendar days from the date of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 811212). Automatic acceptance of order renewals for maintenance service shall apply for machines which may have been discontinued from use for temporary periods of time not longer than 120 calendar days. If the order is not confirmed by the Contractor as prescribed by this paragraph, the order shall be considered to be confirmed by the Contractor.
- b. The Contractor shall honor orders for Maintenance Services for the duration of the contract period or a lesser period of time, for the Equipment shown in the schedule pricelist. Maintenance Services shall commence on a mutually agreed upon date, which will be written into the maintenance order.

Maintenance orders shall not be made effective before the expiration of any applicable maintenance and parts guarantee/warranty period associated with the purchase of Equipment. Orders for Maintenance Service shall not extend beyond the end of the contract period.

- c. Maintenance Services may be discontinued by the Ordering Activity on thirty (30) calendar days written notice, or shorter notice when agreed to by the Contractor; such notice to become effective thirty (30) calendar days from the date on the notification. However, the Ordering Activity may extend the original discontinuance date upon written notice to the Contractor, provided that such notice is furnished at least ten (10) calendar days prior to the original discontinuance date.
- d. Annual Funding. When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder of the contract period.
- e. Cross-year Funding Within Contract Period. Where an Ordering Activity's specific appropriation authority provides for funds in excess of a 12 month, fiscal year period, the Ordering Activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- f. Ordering Activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of Maintenance Services, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.

### **4. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS**

Repair service and repair parts/spare parts orders are not available under the scope of this schedule contract.

### **5. LOSS OR DAMAGE**

- a. When the Contractor, through the Manufacturer, or its authorized service provider removes equipment to its establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the Equipment is removed from the Ordering Activity installation, until the equipment is returned to such installation.
- b. When Equipment is returned by Ordering Activity to the Contractor through the Manufacturer's or its authorized service provider's facility for repairs, the Ordering Activity shall be responsible for any loss or damage to the Equipment being returned by the Ordering Activity for repair. Contractor shall only be responsible for any loss or damage while the Equipment is at the Contractor's or its Manufacturer's or authorized service provider's facility and until it is returned to the Ordering Activity's location.

### **6. SCOPE**

- a. In exchange for the applicable fees, the Contractor, through the Manufacturer or its authorized service provider shall provide Maintenance Services for all Equipment listed herein, as requested by the Ordering Activity during the contract term. Repair service and repair parts/spare parts shall apply exclusively to the Equipment types/models within the scope of this Information Technology Schedule.

- b. Equipment placed under Maintenance Service shall be in good operating condition.
  - (1) In order to determine that the Equipment is in good operating condition, the Equipment shall be subject to inspection by the Contractor through the Manufacturer or its authorized service provider without charge to the Ordering Activity.
  - (2) Costs of any repairs performed for the purpose of placing the Equipment in good operating condition shall be borne by the Contractor, provided the Equipment was under the Contractor's guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.
  - (3) If the Equipment was not under the Contractor's responsibility, the costs necessary to place the Equipment in proper operating condition shall be borne by the Ordering Activity, in accordance with the provisions of Special Item Number 811212 (or outside the scope of this contract).
  - (4) Contractor shall have no obligation to provide Maintenance Services for Equipment that has been modified by Ordering Activity, is in disrepair or subject to any other exclusions as set out in Manufacturer's Maintenance Services Policy.

**7. RESPONSIBILITIES OF THE ORDERING ACTIVITY**

- a. Ordering Activity personnel shall not perform maintenance or attempt repairs to Equipment while such Equipment is under the purview of a maintenance order, unless agreed to by the Contractor. The Ordering Activity will follow Contractor's designated procedures when returning Equipment to Contractor's, Manufacturer's or its authorized service provider's facility for repairs.
- b. Subject to security regulations, the Ordering Activity shall permit access to the Equipment, which is to be maintained or repaired by Contractor, Manufacturer or its authorized service provider.
- c. If the Ordering Activity desires a factory authorized/certified service personnel then this should be clearly stated in the task or delivery order.

**8. RESPONSIBILITIES OF THE CONTRACTOR**

- a. For Equipment not covered by a maintenance contract or warranty, the Contractor, through the Manufacturer's or its authorized service provider's repair service personnel shall complete repairs as soon as reasonably possible after notification by the Ordering Activity that service is required.
- b. If the Ordering Activity task or delivery order specifies factory authorized/certified service personnel then the Contractor is obligated to provide such factory authorized/certified service personnel for the Equipment to be repaired or serviced, unless otherwise agreed to in advance between the Ordering Activity and the Contractor.

**9. MAINTENANCE RATE PROVISIONS**

- a. For Equipment under monthly Maintenance Services, the Contractor shall bear all costs of maintenance, including labor, parts, and such other expenses as are necessary to keep the Equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the Ordering Activity.

- b. **REGULAR HOURS.** The basic monthly rate for each make and model of Equipment shall entitle the Ordering Activity to the Maintenance Services as set forth in the applicable Manufacturer's Maintenance Services Policy.
- c. **AFTER HOURS.** Should the Ordering Activity require that maintenance be performed outside of Regular Hours, charges for such maintenance, if any, will be specified in the pricelist or in the applicable Manufacturer's Maintenance Services Policy. Periods of less than one hour will be prorated to the nearest quarter hour.
- d. **TRAVEL AND TRANSPORTATION.** If any charge is to apply, over and above the regular maintenance rates, because of the distance between the Ordering Activity location and the Contractor's service area, the charge will be negotiated at the Task Order level.
- e. **QUANTITY DISCOUNTS.** Quantity discounts from listed Maintenance Services rates for multiple Equipment owned and/or leased by a Ordering Activity are not provided under this schedule contract unless otherwise specified by a Manufacturer in the pricelist.

**10. REPAIR SERVICE RATE PROVISIONS**

Repair service rate fees and provisions for Equipment not under monthly Maintenance Services are not available under the scope of this schedule contract.

**11. REPAIR PARTS/SPARE PARTS RATE PROVISIONS**

Repair parts/spare parts rate provisions after the expiration of the guarantee/warranty provisions are not available under the scope of this schedule contract.

**12. GUARANTEE/WARRANTY—REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS**

Guarantee/warranty-repair parts/spare parts after the expiration of the guarantee/warranty provisions are not available under the scope of this schedule contract.

**13. INVOICES AND PAYMENTS**

Invoices for Maintenance Services shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

Payment for Maintenance Services of less than one month's duration shall be prorated at 1/30th of the monthly rate for each calendar day.

**TERMS AND CONDITIONS APPLICABLE TO  
SOFTWARE LICENSES (SPECIAL ITEM  
NUMBER 511210), AND MAINTENANCE AS A  
SERVICE (SPECIAL ITEM NUMBER 54151) OF  
GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY SOFTWARE**

**1. GLOSSARY OF DEFINITIONS**

a. **“Documentation”** shall mean Manufacturer’s then current help guides, and manuals issued by Manufacturer and made generally available by Manufacturer for the Software whether on-line or in hard copy. Documentation shall include any updated Documentation that Manufacturer provides with any updates.

b. **“Maintenance Services”** shall mean the Software maintenance and support services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer’s then current Maintenance Services Policy.

c. **“Maintenance Services Policy”** shall mean the commercial terms describing a Manufacturer’s standard Software maintenance and support offerings, policies and procedures, a copy of which is located on Attachment A to this schedule pricelist.

d. **“Software”** shall mean (i) the version of the computer program identified on the Schedule Contract Pricelist and (ii) updates to such programs.

**2. INSPECTION/ACCEPTANCE**

The Contractor shall only deliver those items ordered that substantially conform to the requirements of this contract and the Software’s Documentation. Therefore, items delivered shall be deemed accepted upon delivery. The Ordering Activity reserves the right to inspect or test any Software that has been delivered. The Ordering Activity may require repair or replacement of nonconforming Software at no increase in contract price. The Ordering Activity must exercise its post-acceptance rights (1) within the warranty period as set forth below; and (2) before any substantial change occurs in the condition of the Software, unless the change is due to the defect in the Software.

**3. GUARANTEE/WARRANTY**

a. Unless specified otherwise in this contract, the warranties extended to the Ordering Activity for Software and Documentation, and the exclusions and disclaimers applicable to such warranties, shall be as set forth on Attachment A to this schedule pricelist (Contractor Supplemental Pricelist Information and Incorporated Terms). Notwithstanding anything to the contrary that may be marked on or provided with the Software or Documentation, the parties understand and agree that such warranties, exclusions and disclaimers follow the applicable Manufacturer’s standard commercial warranties, exclusions and disclaimers but are provided to the Ordering Activity by the Contractor, who will be responsible to the Ordering Activity for all compliance, service and remedies thereunder.

b. Limitation of Liability.

- i) Exclusion of Consequential Damages. **EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN (b)(iii) BELOW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF**

**PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES** provided however, that in the event Ordering Activity makes unauthorized copies of the Software, Contractor shall be entitled to recover the full amount of any license fees that would relate to such copies.

- ii) Limitation of Direct Damages. Except for a) a claim of IP Infringement hereunder, or b) as provided in (b)(iii) below, the aggregate and cumulative liability of Contractor and licensors for damages hereunder shall in no event exceed the amount of fees paid by Ordering Activity under the order giving rise to such liability, and if such damages relate to particular Software or Maintenance Services, such liability shall be limited to fees paid for the relevant Software or Maintenance Services giving rise to the liability.
- iii) Non-Applicability to Statutory or Regulatory Rights. Nothing herein shall operate to impair or prejudice the U.S. Government’s right (a) to recover for fraud or crimes arising out of or relating to this contract under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.215-72 Price Adjustment – Failure to Provide Accurate Information (August 1997) or GSAR 552.238-75 Price Reductions (May 2004) Alternate I (May 2003).

**4. TECHNICAL SERVICES**

A hot line technical support number for the purpose of providing user assistance and guidance to the Ordering Activity in the implementation of the Software may be provided as part of Maintenance Services.

**5. SOFTWARE MAINTENANCE**

a. Software maintenance as it is defined:

1. Software Maintenance as a Product (SIN 511210 or SIN 511210)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user’s self diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

Software Maintenance as a product is billed at the time of purchase.

2. Software Maintenance as a Service (SIN 54151)



Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.

Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

- b. If purchased by Ordering Activity, Contractor, through the applicable Manufacturer, shall provide Maintenance Services for the Software pursuant to the applicable Manufacturer's then current Maintenance Services Policy. Fees or rates for such Maintenance Services are set forth in the Schedule Contract Pricelist.
- c. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324) for Maintenance as a Service. PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

#### **6. PERIODS OF TERM LICENSES (SIN 511210) AND MAINTENANCE (SIN 54151)**

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.
- b. Term licenses and/or maintenance may be discontinued by the Ordering Activity on thirty (30) calendar day's written notice to the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.
- d. Cross-Year Funding Within Contract Period. Where an Ordering Activity's specific appropriation authority provides for funds in excess of a 12-month (fiscal year) period, the Ordering Activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- e. Ordering Activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

#### **7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE**

Conversion from term licenses to perpetual licenses for any or all Software is not available under the scope of this contract.

Outside the scope of this contract, the Ordering Activity may contact the Manufacturer directly to discuss the permissibility,

costs and operation of such conversion(s). Contractor agrees to reasonably assist Ordering Activity in this regard.

#### **8. TERM LICENSE CESSATION**

If a term Software license granted hereunder terminates for any reason, Ordering Activity shall (i) cease using the applicable Software, Documentation, and related Confidential Information, and (ii) certify to Contractor within thirty (30) days after termination that Ordering Activity has destroyed, or has returned to Contractor or its Manufacturer the Software, Documentation, related Confidential Information of Contractor and all copies thereof, whether or not modified or merged into other materials.

#### **9. UTILIZATION LIMITATIONS - (SIN 511210, SIN 511210, AND SIN 54151)**

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
- b. When acquired by the Ordering Activity, commercial computer Software and related Documentation shall be subject to the following:
  - (1) Title to and ownership of the Software and Documentation shall remain with the Contractor or its Manufacturer or licensors, unless otherwise specified. Contractor and its Manufacturers reserve all rights in and to the Software and Documentation not expressly granted to Ordering Activity herein.
  - (2) United States Government Legends. The Software, Documentation and any other technical data provided hereunder is commercial in nature and developed solely at private expense. The Software is delivered as "Commercial Computer Software" as defined in DFARS 252.227-7014 (June 1995) or as a "Commercial Item" as defined in FAR 2.101(a) and as such is provided with only such rights as are provided in Manufacturer's standard commercial license for the Software. Technical data is provided with limited rights only as provided in DFAR 252.227-7015 (Nov. 1995) or FAR 52.227-14 (June 1987), whichever is applicable.

Contractor grants Ordering Activity only those utilization rights (and reserves the same utilization limitations) as specified in the applicable Manufacturer's commercial license terms, a description of which is set forth on Attachment A to this schedule pricelist and incorporated herein.

Notwithstanding the forgoing, Contractor acknowledges and agrees that Ordering Activity shall have the minimum restricted rights as set forth in b(4) below.

- (3) Except as is provided in paragraph 8.b(2) above, the Ordering Activity shall not provide or otherwise make available the Software or Documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the Ordering Activity who have the Ordering Activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed Software and Documentation only in accordance with these restrictions. This provision does not limit the right of the Ordering activity to use Software, Documentation, or information therein, which the Ordering Activity may already have or obtains without restrictions.

- (4) The Ordering Activity shall have the right to use the computer Software and Documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the Ordering Activity has the right to transfer the Software to another site if the Ordering Activity site for which it is acquired is deemed to be unsafe for Ordering Activity personnel; to use the computer Software and Documentation with a backup computer when the primary computer is inoperative; and to copy computer Software for safekeeping (archive) or backup purposes; to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
- (5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.
- (6) The Software and Documentation hereunder is offered by the Contractor under licenses customarily provided to the public. The Contractor does not furnish technical information related to commercial computer Software (or commercial computer software Documentation) that is not customarily provided to the public. Further, the Contractor does not relinquish rights to use, modify, reproduce, release, perform, display, or disclose commercial computer Software (or commercial computer Software Documentation) except as mutually agreed to by the parties. See 48 CFR 12.212.
- (7) **Nondisclosure.** Ordering Activity may have access to information that is confidential to Contractor or its Manufacturers ("Confidential Information"). Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Contractor's Confidential Information shall include, but not be limited to, the Software, Documentation, all materials provided to Ordering Activity in the course of performing Maintenance Services hereunder, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, and the terms and pricing hereunder, regardless of whether such information is identified as confidential. Confidential Information includes all information received from third parties that Contractor is obligated to treat as confidential.

Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information. In addition, if Ordering Activity recommends to Contractor additional features,

functionality, or performance or if Contractor retains generalized information hereunder that Contractor or its Manufacturer subsequently incorporates into its product or service offerings, then with respect to such recommendations and information, Ordering Activity hereby (a) grants Contractor a worldwide, non-exclusive, royalty-free, perpetual right and license to use and incorporate such recommendations and such information into such offerings, and (b) acknowledges that all right and title to such offerings incorporating such recommendations and information shall be the sole and exclusive property of Contractor or its Manufacturer and all such recommendations and information shall be free from any confidentiality restrictions that might otherwise be imposed upon Contractor pursuant to this section.

Further, this section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority.

Ordering Activity shall not disclose the results of any performance tests of the Software to any third party without Contractor's prior written approval. Ordering Activity agrees to hold Confidential Information in confidence and to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of these Terms and Conditions.

- (8) **Verification.** At Contractor's written request, but not more frequently than annually, Ordering Activity shall furnish Contractor with a document signed by Ordering Activity's authorized representative verifying that the Software is being used pursuant to the provisions of this contract. To the extent permitted by and subject to an Ordering Activity's security requirements (including, but not limited to, use of cleared personnel, badging and other requirements). Contractor reserves the right to audit Ordering Activity's use of the Software no more than once annually at Contractor's expense. Contractor shall schedule any audit at least thirty (30) days in advance. Any such audit shall be conducted during regular business hour at Ordering Activity's facilities and shall not unreasonably interfere with Ordering Activity's business.
- (9) **Intellectual Property Infringement.** If a third party makes a claim against Ordering Activity that the Software directly infringes any patent, copyright, or trademark or misappropriates any trade secret ("IP Claim"); Contractor will (i) assist in defending Ordering Activity against the IP Claim at Contractor's cost and expense, and (ii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Ordering Activity by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Contractor arising out of such IP Claim; *provided that:* (i) Ordering Activity promptly notifies Contractor in writing no later than sixty (60) days after Ordering Activity's receipt of notification of a potential claim and (ii) Ordering Activity provides Contractor, at Contractor's request and expense, with the assistance, information and authority necessary to perform Contractor's obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (a) the use of a superseded or altered release of the Software if the infringement would have been avoided by the use

of a current unaltered release of the Software, (b) the modification of the Software, (c) the use of the Software other than in accordance with the Documentation or this contract, or (d) any materials or information provided to Contractor by Ordering Activity, for which Ordering Activity shall be solely responsible.

If the Software is held to infringe or are believed by Contractor to infringe, Contractor shall have the option, at its expense, to (a) replace or modify the Software to be non-infringing, or (b) obtain for Ordering Activity a license to continue using the Software. If it is not commercially reasonable to perform either of the foregoing options, then Contractor may terminate the Program license for the infringing Software and refund the license fees paid for the Software upon return of the Software by Ordering Activity. This section states Contractor's entire liability and Ordering Activity's exclusive remedy for any claim of infringement.

- (10) **Delivery.** All Software and Documentation provided by Contractor hereunder shall be deemed to be delivered by Contractor: 1) Upon physical delivery, or 2) Once the Software is made available to Ordering Activity via electronic download by provision of a license key, link to a website, FTP site or similar site from which the Ordering Activity can electronically download or otherwise access the Software and Documentation.

#### **10. SOFTWARE CONVERSIONS - (SIN 511210 AND SIN 511210)**

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Conversion from one version of the Software to another such as the result of a change in operating system, or from one computer system to another is not available under the scope of the contract.

Outside the scope of this contract, the Ordering Activity may contact the Manufacturer directly to discuss the permissibility, costs and operation of such conversion(s). Contractor agrees to reasonably assist Ordering Activity in this regard.

#### **11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY**

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For information concerning supported hardware or compatibility requirements the Ordering Activity is advised to contact the Contractor or the applicable Manufacturer.

#### **12. RIGHT-TO-COPY PRICING**

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Right-to-copy license pricing is not available under the scope of this contract unless specifically specified in the pricelist. The Ordering Activity must contact the Manufacturer directly to discuss the applicability and associated costs of right-to-copy pricing.



**TERMS AND CONDITIONS APPLICABLE TO  
PURCHASE OF CLOUD COMPUTING SERVICES  
(SPECIAL ITEM NUMBER 518210C)**

**1. SCOPE**

The prices, terms and conditions stated under Special Item Number (SIN) 518210C Cloud Computing Services apply exclusively to Cloud Computing Services within the scope of this Information Technology Schedule.

This SIN provides ordering activities with access to technical services that run-in cloud environments and meet the NIST Definition of Cloud Computing Essential Characteristics. Services relating to or impinging on cloud that do not meet all NIST essential characteristics should be listed in other SINs.

The scope of this SIN is limited to cloud capabilities provided entirely as a service. Hardware, software and other artifacts supporting the physical construction of a private or other cloud are out of scope for this SIN. Currently, an Ordering Activity can procure the hardware and software needed to build on premise cloud functionality, through combining different services on other IT Schedule 70 SINs (e.g. 54151S).

Sub-categories in scope for this SIN are the three NIST Service Models: Software as a Service (SaaS), Platform as a Service (PaaS), and Infrastructure as a Service (IaaS). Offerors may optionally select a single sub-category that best fits a proposed cloud service offering. Only one sub-category may be selected per each proposed cloud service offering. Offerors may elect to submit multiple cloud service offerings, each with its own single sub-category. The selection of one of three sub-categories does not prevent Offerors from competing for orders under the other two sub-categories.

See service model guidance for advice on sub-category selection.

Sub-category selection within this SIN is optional for any individual cloud service offering, and new cloud computing technologies that do not align with the aforementioned three sub-categories may be included without a sub-category selection so long as they comply with the essential characteristics of cloud computing as outlined by NIST.

See Table 1 for a representation of the scope and sub-categories.

**Table 1: Cloud Computing Services SIN**

SIN Description	Sub-Categories <sup>1</sup>
<ul style="list-style-type: none"> <li>Commercially available cloud computing services</li> <li>Meets the National Institute for Standards and Technology (NIST) definition of Cloud Computing essential characteristics</li> <li>Open to all deployment models (private, public, community or hybrid), vendors specify deployment models</li> </ul>	<p><b>1. Software as a Service (SaaS):</b> Consumer uses provider's applications on cloud infrastructure. Does not manage/control platform or infrastructure. Limited application level configuration may be available.</p> <p><b>2. Platform as a Service (PaaS):</b> Consumer deploys applications onto cloud platform service using provider-supplied tools. Has control over deployed applications and some limited platform configuration but does not manage the platform or infrastructure.</p>

SIN Description	Sub-Categories <sup>1</sup>
	<p><b>3. Infrastructure as a Service (IaaS):</b> Consumer provisions computing resources. Has control over OS, storage, platform, deployed applications and some limited infrastructure configuration, but does not manage the infrastructure.</p>
<p><sup>1</sup> Offerors may optionally select the single sub-category that best fits each cloud service offering, per Service Model Guidance, or select no sub-category if the offering does not fit an existing NIST service model.</p>	

**2. DESCRIPTION OF CLOUD COMPUTING SERVICES AND PRICING**

**a. Service Description Requirements for Listing Contractors**

The description requirements below are in addition to the overall Schedule 70 evaluation criteria described in SCP-FSS-001-N Instructions Applicable to New Offerors (Alternate I – MAR 2016) or SCP-FSS-001-S Instructions Applicable to Successful FSS Program Contractors, as applicable, SCP-FSS-004 and other relevant publications.

Refer to overall Schedule 70 requirements for timelines related to description and other schedule updates, including but not limited to clauses 552.238-81 – section E and clause I-FSS-600.

Table 2 summarizes the additional Contractor-provided description requirements for services proposed under the Cloud Computing Services SIN. All mandatory description requirements must be complete, and adequate according to evaluation criteria.

In addition, there is one "Optional" reporting description which exists to provide convenient service selection by relevant criteria. Where provided, optional description requirements must be complete and adequate according to evaluation criteria:

(1) The NIST Service Model provides sub-categories for the Cloud SIN and is strongly encouraged, but not required. The Service Model based sub-categories provide this SIN with a structure to assist ordering activities in locating and comparing services of interest. Contractors may optionally select the single service model most closely corresponding to the specific service offering.

(2) If a sub-category is selected it will be evaluated with respect to the NIST Service Model definitions and guidelines in "Guidance for Contractors".

**Table 2: Cloud Service Description Requirements**

#	Descriptions Requirement	Reporting Type	Instructions
1	Provide a brief written description of how the proposed cloud computing services satisfies each individual essential NIST Characteristic	Mandatory	The cloud service must be capable of satisfying each of the five NIST essential Characteristics as outlined in NIST Special Publication 800-145. See 'GUIDANCE FOR CONTRACTORS: NIST

#	Descriptions Requirement	Reporting Type	Instructions
			Essential Characteristics' below in this document for detailed overall direction, as well as guidance on inheriting essential characteristics.
2	Select NIST deployment models for the cloud computing service proposed.	Mandatory	Contractors must select at least one NIST deployment model as outlined in NIST Special Publication 800- 145 describing how the proposed cloud computing service is deployed. Select multiple deployment models if the service is offered in more than one deployment model. See 'GUIDANCE FOR CONTRACTORS: NIST Deployment Model' below in this document for detailed direction on how to best categorize a service for the NIST deployment models.
3	Optionally select the most appropriate NIST service model that will be the designated sub-category or may select no sub-category.	Optional	Contractor may select a single NIST Service model to sub-categorize the service as outlined in NIST Special Publication 800-145. Sub-category selection is optional but recommended. See 'GUIDANCE FOR CONTRACTORS: NIST Service Model' below in this document for detailed direction on how to best categorize a service for the NIST IaaS, PaaS, and SaaS service models.

**b. Pricing of Cloud Computing Services**

All current pricing requirements for Schedule 70, including provision SCP-FSS-001-N (Section III Price Proposal), SCP-FSS-001-S, SCP-FSS-004 (Section III Price Proposal), and clause I-FSS-600 Contract Price Lists, apply. At the current time there is no provision for reducing or eliminating standard price list posting requirements to accommodate rapid cloud price fluctuations.

In addition to standard pricing requirements, all pricing models must have the core capability to meet the NIST Essential Cloud Characteristics, particularly with respect to on-demand self-service, while allowing alternate variations at the task order level at agency discretion, pursuant to the guidance on NIST Essential Characteristics.

**3. RESPONSIBILITIES OF THE CONTRACTOR**

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

**a. Acceptance Testing**

Any required Acceptance Test Plans and Procedures shall be negotiated by the Ordering Activity at task order level. The Contractor shall perform acceptance testing of the systems for Ordering Activity approval in accordance with the approved test procedures.

**b. Training**

If training is provided commercially the Contractor shall provide normal commercial installation, operation, maintenance, and engineering interface training on the system. Contractor is responsible for indicating if there are separate training charges.

**c. Information Assurance/Security Requirements**

The contractor shall meet information assurance/security requirements in accordance with the Ordering Activity requirements at the Task Order level.

**d. Related Professional Services**

The Contractor is responsible for working with the Ordering Activity to identify related professional services and any other services available on other SINs that may be associated with deploying a complete cloud solution. Any additional substantial and ongoing professional services related to the offering such as integration, migration, and other cloud professional services are out of scope for this SIN.

**e. Performance of Cloud Computing Services**

The Contractor shall respond to Ordering Activity requirements at the Task Order level with proposed capabilities to Ordering Activity performance specifications or indicate that only standard specifications are offered. In all cases the Contractor shall clearly indicate standard service levels, performance and scale capabilities.

The Contractor shall provide appropriate cloud computing services on the date and to the extent and scope agreed to by the Contractor and the Ordering Activity.

**f. Reporting**

The Contractor shall respond to Ordering Activity requirements and specify general reporting capabilities available for the Ordering Activity to verify performance, cost and availability. In accordance with commercial practices, the Contractor may furnish the Ordering Activity/user with a monthly summary Ordering Activity report.

**4. RESPONSIBILITIES OF THE ORDERING ACTIVITY**

The Ordering Activity is responsible for indicating the cloud computing services requirements unique to the Ordering Activity. Additional requirements should not contradict existing SIN or IT Schedule 70 Terms and Conditions. Ordering Activities should include (as applicable) Terms & Conditions to address Pricing, Security, Data Ownership, Geographic Restrictions, Privacy, SLAs, etc.

Cloud services typically operate under a shared responsibility model, with some responsibilities assigned to the Cloud Service Provider (CSP), some assigned to the Ordering Activity, and others shared between the two. The distribution of responsibilities will vary between providers and across service models. Ordering activities should engage with CSPs to fully understand and evaluate the shared responsibility model proposed. Federal Risk and Authorization Management Program (FedRAMP) documentation will be helpful regarding the security aspects of

shared responsibilities, but operational aspects may require additional discussion with the provider.

a. **Ordering Activity Information Assurance/Security Requirements Guidance**

(1) The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA) as applicable.

(2) The Ordering Activity shall assign a required impact level for confidentiality, integrity and availability (CIA) prior to issuing the initial statement of work.<sup>1</sup>

The Contractor must be capable of meeting at least the minimum-security requirements assigned against a low-impact information system in each CIA assessment area (per FIPS 200) and must detail the FISMA capabilities of the system in each of CIA assessment area.

(3) Agency level FISMA certification, accreditation, and evaluation activities are the responsibility of the Ordering Activity. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Cloud Computing Services.

(4) The Ordering Activity has final responsibility for assessing the FedRAMP status of the service, complying with and making a risk-based decision to grant an Authorization to Operate (ATO) for the cloud computing service, and continuous monitoring. A memorandum issued by the Office of Management and Budget (OMB) on Dec 8, 2011 outlines the responsibilities of Executive departments and agencies in the context of FedRAMP compliance.<sup>2</sup>

(5) Ordering activities are responsible for determining any additional information assurance and security related requirements based on the nature of the application and relevant mandates.

b. **Deployment Model**

If a particular deployment model (Private, Public, Community, or Hybrid) is desired, Ordering Activities are responsible for identifying the desired model(s). Alternately, Ordering Activities could identify requirements and assess Contractor responses to determine the most appropriate deployment model(s).

c. **Delivery Schedule**

The Ordering Activity shall specify the delivery schedule as part of the initial requirement. The Delivery Schedule options are found in Information for Ordering Activities Applicable to All Special Item Numbers.

d. **Interoperability**

Ordering Activities are responsible for identifying interoperability requirements. Ordering Activities should clearly delineate requirements for API implementation and standards conformance.

e. **Performance of Cloud Computing Services**

The Ordering Activity should clearly indicate any custom minimum service levels, performance and scale requirements as part of the initial requirement.

f. **Reporting**

The Ordering Activity should clearly indicate any cost, performance or availability reporting as part of the initial requirement.

g. **Privacy**

The Ordering Activity should specify the privacy characteristics of their service and engage with the Contractor to determine if the cloud service is capable of meeting Ordering Activity requirements. For example, a requirement could be requiring assurance that the service is capable of safeguarding Personally Identifiable Information (PII), in accordance with NIST SP 800-1224<sup>3</sup> and OMB memos M-06-16<sup>4</sup> and M-07-16<sup>5</sup>. An Ordering Activity will determine what data elements constitute PII according to OMB Policy, NIST Guidance and Ordering Activity policy.

h. **Accessibility**

The Ordering Activity should specify the accessibility characteristics of their service and engage with the Contractor to determine the cloud service is capable of meeting Ordering Activity requirements. For example, a requirement could require assurance that the service is capable of providing accessibility based on Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

i. **Geographic Requirements**

Ordering activities are responsible for specifying any geographic requirements and engaging with the Contractor to determine that the cloud services offered have the capabilities to meet geographic requirements for all anticipated task orders. Common geographic concerns could include whether service data, processes and related artifacts can be confined on request to the United States and its territories, or the continental United States (CONUS).

j. **Data Ownership and Retrieval and Intellectual Property**

Intellectual property rights are not typically transferred in a cloud model. In general, CSPs retain ownership of the Intellectual Property (IP) underlying their services and the customer retains ownership of its intellectual property. The CSP gives the customer a license to use the cloud services for the duration of the contract without transferring rights. The government retains ownership of the IP and data they bring to the customized use of the service as spelled out in the FAR and related materials.

General considerations of data ownership and retrieval are covered under the terms of Schedule 70 and the FAR and other laws, ordinances, and regulations (Federal, State, City, or otherwise). Because of considerations arising from cloud shared responsibility models, ordering activities should engage with the Contractor to develop more cloud-specific understandings of the boundaries between data owned by the government and that owned by the cloud service provider, and the specific terms of data retrieval.

In all cases, the Ordering Activity should enter into an agreement with a clear and enforceable understanding of the boundaries between government and cloud service provider data, and the form, format and mode of delivery for each kind of data belonging to the government.

The Ordering Activity should expect that the Contractor shall transfer data to the government at the government's request at

<sup>1</sup> Per Federal Information Processing Standards Publication 199 & 200 (FIPS 199, "Standards for Security Categorization of Federal Information and Information Systems") (FIPS 200, "Minimum Security Requirements for Federal Information and Information Systems")

<sup>2</sup> MEMORANDUM FOR CHIEF INFORMATION OFFICERS: Security Authorization of Information Systems in Cloud Computing Environments. December 8, 2011

<sup>3</sup> NIST SP 800-122, "Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)"

<sup>4</sup> OMB memo M-06-16: Protection of Sensitive Agency Information Hyperlink: <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/m06-16.pdf>

<sup>5</sup> OMB Memo M-07-16: Safeguarding Against and Responding to the Breach of Personally Identifiable Information. Hyperlink: <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>

any time, and in all cases when the service or order is terminated for any reason, by means, in formats and within a scope clearly understood at the initiation of the service. Example cases that might require clarification include status and mode of delivery for:

- Configuration information created by the government and affecting the government’s use of the cloud provider’s service.
- Virtual machine configurations created by the government but operating on the cloud provider’s service.
- Profile, configuration and other metadata used to configure SaaS application services or PaaS platform services.

The key is to determine in advance the ownership of classes of data and the means by which Government owned data can be returned to the Government.

**k. Service Location Distribution**

The Ordering Activity should determine requirements for continuity of operations and performance and engage with the Contractor to ensure that cloud services have adequate service location distribution to meet anticipated requirements. Typical concerns include ensuring that:

- (1) Physical locations underlying the cloud are numerous enough to provide continuity of operations and geographically separate enough to avoid an anticipated single point of failure within the scope of anticipated emergency events.
- (2) Service endpoints for the cloud are able to meet anticipated performance requirements in terms of geographic proximity to service requestors.

Note that cloud providers may address concerns in the form of minimum distance between service locations, general regions where service locations are available, etc.

**l. Related Professional Services**

Ordering activities should engage with Contractors to discuss the availability of limited assistance with initial setup, training and access to the services that may be available through this SIN. Any additional substantial and ongoing professional services related to the offering such as integration, migration, and other cloud professional services are out of scope for this SIN. Ordering activities should consult the appropriate GSA professional services schedule.

**5. GUIDANCE FOR CONTRACTORS**

This section offers guidance for interpreting the Contractor Description Requirements in Table 2, including the NIST essential cloud characteristics, service models and deployment models. This section is not a list of requirements.

Contractor-specific definitions of cloud computing characteristics and models or significant variances from the NIST essential characteristics or models are discouraged and will not be considered in the scope of this SIN or accepted in response to Factors for Evaluation. The only applicable cloud characteristics, service model/subcategories and deployment models for this SIN will be drawn from the NIST 800-145 special publication. Services qualifying for listing as cloud computing services under this SIN must substantially satisfy the essential characteristics of cloud computing as documented in the NIST Definition of Cloud Computing SP 800-145.<sup>6</sup>

Contractors must select deployment models corresponding to each way the service can be deployed. Multiple deployment model designations for a single cloud service are permitted but at least one deployment model must be selected.

In addition, contractors submitting services for listing under this SIN are encouraged to select a sub- category for each service proposed under this SIN with respect to a single principal NIST cloud service model that most aptly characterizes the service. Service model categorization is optional. Both service and deployment model designations must accord with NIST definitions. Guidance is offered in this document on making the most appropriate selection.

**a. NIST Essential Characteristics**

**General Guidance**

NIST’s essential cloud characteristics provide a consistent metric for whether a service is eligible for inclusion in this SIN. It is understood that due to legislative, funding and other constraints that government entities cannot always leverage a cloud service to the extent that all NIST essential characteristics are commercially available. For the purposes of the Cloud SIN, meeting the NIST essential characteristics is determined by whether each essential capability of the commercial service is available for the service, whether or not the Ordering Activity actually requests or implements the capability. The guidance in Table 3 offers examples of how services might or might not be included based on the essential characteristics, and how the Contractor should interpret the characteristics in light of current government contracting processes.

**Table 3: Guidance on Meeting NIST Essential Characteristics**

Characteristic	Capability	Guidance
On-demand self- service	<ul style="list-style-type: none"> <li>• Ordering activities can directly provision services without requiring Contractor intervention.</li> <li>• This characteristic is typically implemented via a service console or programming interface for provisioning</li> </ul>	<p>Government procurement guidance varies on how to implement on-demand provisioning at this time.</p> <p>Ordering activities may approach on-demand in a variety of ways, including “not-to-exceed” limits, or imposing monthly or annual payments on what are essentially on demand services.</p> <p>Services under this SIN must be capable of true on- demand self-service, and ordering activities and Contractors must negotiate how they implement on demand capabilities in practice at the task order level:</p> <ul style="list-style-type: none"> <li>• Ordering activities must specify their procurement approach and requirements for on- demand service</li> <li>• Contractors must</li> </ul>

<sup>6</sup> <http://csrc.nist.gov/publications/nistpubs/800-145/SP800-145.pdf>



Characteristic	Capability	Guidance
		propose how they intend to meet the approach <ul style="list-style-type: none"> <li>Contractors must certify that on-demand self-service is technically available for their service should procurement guidance become available.</li> </ul>
Broad Network Access	<ul style="list-style-type: none"> <li>Ordering activities are able to access services over standard agency networks</li> <li>Service can be accessed and consumed using standard devices such as browsers, tablets and mobile phones</li> </ul>	<ul style="list-style-type: none"> <li>Broad network access must be available without significant qualification and in relation to the deployment model and security domain of the service</li> <li>Contractors must specify any ancillary activities, services or equipment required to access cloud services or integrate cloud with other cloud or non-cloud networks and services. For example, a private cloud might require an Ordering Activity to purchase or provide a dedicated router, etc. which is acceptable but should be indicated by the Contractor.</li> </ul>
Resource Pooling	<p>Pooling distinguishes cloud services from offsite hosting.</p> <ul style="list-style-type: none"> <li>Ordering activities draw resources from a common pool maintained by the Contractor</li> <li>Resources may have general characteristics such as regional location</li> </ul>	<ul style="list-style-type: none"> <li>The cloud service must draw from a pool of resources and provide an automated means for the Ordering Activity to dynamically allocate them.</li> <li>Manual allocation, e.g. manual operations at a physical server farm where Contractor staff configure servers in response to Ordering Activity requests, does not meet this requirement</li> <li>Similar concerns apply to software and platform models; automated provisioning from a pool is required</li> <li>Ordering activities may request dedicated physical hardware, software or platform resources to access a private cloud deployment service. However, the provisioned cloud resources must be drawn from a common pool and automatically allocated on request.</li> </ul>
Rapid Elasticity	<ul style="list-style-type: none"> <li>Rapid provisioning and de-provisioning commensurate</li> </ul>	<ul style="list-style-type: none"> <li>Rapid elasticity is a specific demand-driven case of self-service</li> <li>Procurement guidance for on-demand self-service</li> </ul>

Characteristic	Capability	Guidance
	with demand	applies to rapid elasticity as well, i.e. rapid elasticity must be technically available but ordering activities and Contractors may mutually negotiate other contractual arrangements for procurement and payment. <ul style="list-style-type: none"> <li>'Rapid' should be understood as measured in minutes and hours, not days or weeks.</li> <li>Elastic capabilities by manual request, e.g. via a console operation or programming interface call, are required.</li> <li>Automated elasticity which is driven dynamically by system load, etc. is optional. Contractors must specify whether automated demand-driven elasticity is available and the general mechanisms that drive the capability.</li> </ul>
Measured Service	<ul style="list-style-type: none"> <li>Measured service should be understood as a reporting requirement that enables an Ordering Activity to control their use in cooperation with self service</li> </ul>	<ul style="list-style-type: none"> <li>Procurement guidance for on-demand self-service applies to measured service as well, i.e. rapid elasticity must be technically available but ordering activities and Contractors may mutually designate other contractual arrangements.</li> <li>Regardless of specific contractual arrangements, reporting must indicate actual usage, be continuously available to the Ordering Activity, and provide meaningful metrics appropriate to the service measured</li> <li>Contractors must specify that measured service is available and the general sort of metrics and mechanisms available</li> </ul>

**Inheriting Essential Characteristics**

Cloud services may depend on other cloud services, and cloud service models such as PaaS and SaaS are able to inherit essential characteristics from other cloud services that support them. For example, a PaaS platform service can inherit the broad network access made available by the IaaS service it runs on, and in such a situation would be fully compliant with the broad network access essential characteristic. Services inheriting essential characteristics must make the inherited characteristic fully available at their level of delivery to claim the relevant characteristic by inheritance.

Inheriting characteristics does not require the inheriting provider to directly bundle or integrate the inherited service, but it does require a reasonable measure of support and identification. For example, the Ordering Activity may acquire an IaaS service from "Provider A" and a PaaS service from "Provider B". The PaaS service may inherit broad network access from "Provider A" but must identify and support the inherited service as an acceptable IaaS provider.

**Assessing Broad Network Access**

Typically, broad network access for public deployment models implies high bandwidth access from the public internet for authorized users. In a private cloud deployment internet access might be considered broad access, as might be access through a dedicated shared high bandwidth network connection from the Ordering Activity, in accord with the private nature of the deployment model.

**Resource Pooling and Private Cloud**

All cloud resource pools are finite, and only give the appearance of infinite resources when sufficiently large, as is sometimes the case with a public cloud. The resource pool supporting a private cloud is typically smaller with more visible limits. A finite pool of resources purchased as a private cloud service qualifies as resource pooling so long as the resources within the pool can be dynamically allocated to the ultimate users of the resource, even though the pool itself appears finite to the Ordering Activity that procures access to the pool as a source of dynamic service allocation.

**b. NIST Service Model**

The Contractor may optionally document the service model of cloud computing (e.g. IaaS, PaaS, SaaS, or a combination thereof), that most closely describes their offering, using the definitions in The NIST Definition of Cloud Computing SP 800-145. The following guidance is offered for the proper selection of service models.

NIST's service models provide this SIN with a set of consistent sub-categories to assist ordering activities in locating and comparing services of interest. Service model is primarily concerned with the nature of the service offered and the staff and activities most likely to interact with the service. Contractors should select a single service model most closely corresponding to their proposed service based on the guidance below. It is understood that cloud services can technically incorporate multiple service models and the intent is to provide the single best categorization of the service.

Contractors should take care to select the NIST service model most closely corresponding to each service offered. Contractors should not invent, proliferate or select multiple cloud service model sub-categories to distinguish their offerings, because ad-hoc categorization prevents consumers from comparing similar offerings. Instead vendors should make full use of the existing NIST categories to the fullest extent possible.

For example, in this SIN an offering commercially marketed by a Contractor as "Storage as a Service" would be properly characterized as Infrastructure as a Service (IaaS), storage being a subset of infrastructure. Services commercially marketed as "LAMP as a Service" or "Database as a Service" would be properly characterized under this SIN as Platform as a Service (PaaS), as they deliver two kinds of platform services. Services commercially marketed as "Travel Facilitation as a Service" or

"Email as a Service" would be properly characterized as species of Software as a Service (SaaS) for this SIN.

However, Contractors can and should include appropriate descriptions (include commercial marketing terms) of the service in the full descriptions of the service's capabilities.

When choosing between equally plausible service model sub-categories, Contractors should consider several factors:

- (1) **Visibility to the Ordering Activity.** Service model sub-categories in this SIN exist to help Ordering Activities match their requirements with service characteristics. Contractors should select the most intuitive and appropriate service model from the point of view of an Ordering Activity.
- (2) **Primary Focus of the Service.** Services may offer a mix of capabilities that span service models in the strict technical sense. For example, a service may offer both IaaS capabilities for processing and storage, along with some PaaS capabilities for application deployment, or SaaS capabilities for specific applications. In a service mix situation, the Contractor should select the service model that is their primary focus. Alternatively, contractors may choose to submit multiple service offerings for the SIN, each optionally and separately subcategorized.
- (3) **Ordering Activity Role.** Contractors should consider the operational role of the Ordering Activity's primary actual consumer or operator of the service. For example, services most often consumed by system managers are likely to fit best as IaaS; services most often consumed by application deployers or developers as PaaS, and services most often consumed by business users as SaaS.
- (4) **Lowest Level of Configurability.** Contractors can consider IaaS, PaaS and SaaS as an ascending hierarchy of complexity, and select the model with the lowest level of available Ordering Activity interaction. As an example, virtual machines are an IaaS service often bundled with a range of operating systems, which are PaaS services. The Ordering Activity usually has access to configure the lower level IaaS service, and the overall service should be considered IaaS. In cases where the Ordering Activity cannot configure the speed, memory, network configuration, or any other aspect of the IaaS component, consider categorizing as a PaaS service.

Cloud management and cloud broker services should be categorized based on their own characteristics and not those of the other cloud services that are their targets. Management and broker services typically fit the SaaS service model, regardless of whether the services they manage are SaaS, PaaS or IaaS. Use Table 3 to determine which service model is appropriate for the cloud management or cloud broker services, or, alternately choose not to select a service model for the service. The guidance in Table 3 offers examples of how services might be properly mapped to NIST service models and how a Contractor should interpret the service model sub-categories.

**Table 3: Guidance on Mapping to NIST Service Models**

Service Model	Guidance
IaaS Infrastructure as a Service	Select an IaaS model for service-based equivalents of hardware appliances such as virtual machines, storage devices, routers and other physical devices. <ul style="list-style-type: none"> <li>• IaaS services are typically consumed by system or device managers who would configure physical hardware in a non-cloud setting</li> </ul>

Service Model	Guidance
	<ul style="list-style-type: none"> <li>The principal customer interaction with an IaaS service is provisioning then configuration, equivalent to procuring and then configuring a physical device.</li> </ul> <p>Examples of IaaS services include virtual machines, object storage, disk block storage, network routers and firewalls, software defined networks.</p> <p>Gray areas include services that emulate or act as dedicated appliances and are directly used by applications, such as search appliances, security appliances, etc. To the extent that these services or their emulated devices provide direct capability to an application they might be better classified as Platform services (PaaS). To the extent that they resemble raw hardware and are consumed by other platform services they are better classified as IaaS.</p>
PaaS Platform as a Service	<p>Select a PaaS model for service-based equivalents of complete or partial software platforms. For the purposes of this classification, consider a platform as a set of software services capable of deploying all or part of an application.</p> <ul style="list-style-type: none"> <li>A complete platform can deploy an entire application. Complete platforms can be proprietary or open source</li> <li>Partial platforms can deploy a component of an application which combined with other components make up the entire deployment</li> <li>PaaS services are typically consumed by application deployment staff whose responsibility is to take a completed agency application and cause it to run on the designated complete or partial platform service</li> <li>The principal customer interaction with a PaaS service is deployment, equivalent to deploying an application or portion of an application on a software platform service.</li> <li>A limited range of configuration options for the platform service may be available.</li> </ul> <p>Examples of complete PaaS services include:</p> <ul style="list-style-type: none"> <li>A Linux/Apache/MySQL/PHP (LAMP) platform ready to deploy a customer PHP application,</li> <li>A Windows .Net platform ready to deploy a .Net application,</li> <li>A custom complete platform ready to develop and deploy a customer application in a proprietary language</li> <li>A multiple capability platform ready to deploy an arbitrary customer application on a range of underlying software services.</li> </ul> <p>The essential characteristic of a complete PaaS is defined by the customer's ability to deploy a complete custom application directly on the platform.</p> <p>PaaS includes partial services as well as complete platform services. Illustrative examples of individual platform enablers or components include:</p> <ul style="list-style-type: none"> <li>A database service ready to deploy a customer's tables, views and procedures,</li> </ul>

Service Model	Guidance
	<ul style="list-style-type: none"> <li>A queuing service ready to deploy a customer's message definitions</li> <li>A security service ready to deploy a customer's constraints and target applications for continuous monitoring</li> </ul> <p>The essential characteristic of an individual PaaS component is the customer's ability to deploy their unique structures and/or data onto the component for a partial platform function.</p> <p>Note that both the partial and complete PaaS examples all have two things in common:</p> <ul style="list-style-type: none"> <li>They are software services, which offer significant core functionality out of the box</li> <li>They must be configured with customer data and structures to deliver results</li> </ul> <p>As noted in IaaS, operating systems represent a grey area in that OS is definitely a platform service but is typically bundled with IaaS infrastructure. If your service provides an OS but allows for interaction with infrastructure, please sub-categorize it as IaaS. If your service "hides" underlying infrastructure, consider it as PaaS.</p>
SaaS Software as a Service	<p>Select a SaaS model for service-based equivalents of software applications.</p> <ul style="list-style-type: none"> <li>SaaS services are typically consumed by business or subject-matter staff who would interact directly with the application in a non-cloud setting</li> <li>The principal customer interaction with a SaaS service is actual operation and consumption of the application services the SaaS service provides.</li> </ul> <p>Some minor configuration may be available, but the scope of the configuration is limited to the scope and then the permissions of the configuring user. For example, an agency manager might be able to configure some aspects of the application for their agency but not all agencies. An agency user might be able to configure some aspects for themselves but not everyone in their agency. Typically, only the Contractor would be permitted to configure aspects of the software for all users.</p> <p>Examples of SaaS services include email systems, business systems of all sorts such as travel systems, inventory systems, etc., wiki's, websites or content management systems, management applications that allow a customer to manage other cloud or non-cloud services, and in general any system where customers interact directly for a business purpose.</p> <p>Gray areas include services that customers use to configure other cloud services, such as cloud management software, cloud brokers, etc. In general, these sorts of systems should be considered SaaS, per guidance in this document.</p>

c. Deployment Model

Deployment models (e.g. private, public, community, or hybrid) are not restricted at the SIN level and any specifications for a deployment model are the responsibility of the Ordering Activity. Multiple deployment model selection is permitted, but at least one model must be selected. The guidance in Table 4 offers examples of how services might be properly mapped to NIST deployment models and how the Contractor should interpret the deployment model characteristics. Contractors should take care to select the range of NIST deployment models most closely corresponding to each service offered.

Note that the scope of this SIN does not include hardware or software components used to construct a cloud, only cloud capabilities delivered as a service, as noted in the Scope section.

**Table 4: Guidance for Selecting a Deployment Model**

Deployment Model	Guidance
<b>Private Cloud</b>	The service is provided exclusively for the benefit of a definable organization and its components; access from outside the organization is prohibited. The actual services may be provided by third parties, and may be physically located as required, but access is strictly defined by membership in the owning organization.
<b>Public Cloud</b>	The service is provided for general public use and can be accessed by any entity or organization willing to contract for it.
<b>Community Cloud</b>	The service is provided for the exclusive use of a community with a definable shared boundary such as a mission or interest. As with private cloud, the service may be in any suitable location and administered by a community member or a third party.
<b>Hybrid Cloud</b>	The service is composed of one or more of the other models. Typically, hybrid models include some aspect of transition between the models that make them up, for example a private and public cloud might be designed as a hybrid cloud where events like increased load permit certain specified services in the private cloud to run in a public cloud for extra capacity, e.g. bursting.



**TERMS AND CONDITIONS APPLICABLE TO  
PURCHASE OF TRAINING COURSES FOR  
GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY EQUIPMENT  
AND SOFTWARE (SPECIAL ITEM NUMBER  
611420)**

**1. GLOSSARY OF DEFINITIONS**

- a. **“Training Materials”** shall mean the, manuals, handbooks, texts, handouts, etc. normally provided with course offerings.
- b. **“Training Catalog”** shall mean the document setting out a description of the training services and courses offered along with the related policies and procedures in regard to such training.

**2. SCOPE**

- a. The Contractor through the Manufacturer shall provide training courses normally available to commercial customers, which will permit Ordering Activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.
- b. The Contractor shall provide training at the Contractor's or Manufacturer's facility and/or at the Ordering Activity's location, as agreed to by the Contractor and the Ordering Activity.

**3. ORDER**

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

**4. TIME OF DELIVERY**

The Contractor or its Manufacturer shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the Ordering Activity.

**5. CANCELLATION AND RESCHEDULING**

- a. Terms and conditions governing a Manufacturer's cancellation and rescheduling policies are as set forth in the applicable Manufacturer's Training Catalog.
- b. The Ordering Activity reserves the right to substitute one student for another up to the first day of class.
- c. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the Ordering Activity, Contractor must notify the Ordering Activity at least seventy-two (72) hours before the scheduled training date.

**6. FOLLOW-UP SUPPORT**

Follow-up support to training courses is not available under the scope of this schedule contract unless expressly set forth in an applicable Manufacturer's Training Catalog and, in that case, follow-support shall be provided as stated therein.

**7. PRICE FOR TRAINING**

The price that the Ordering Activity will be charged will be the Ordering Activity training price in effect at the time of order placement, or the Ordering Activity price in effect at the time the training course is conducted, whichever is less.

**8. INVOICES AND PAYMENT**

Invoices for training shall be submitted by the Contractor after Ordering Activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

**9. FORMAT AND CONTENT OF TRAINING**

- a. The Contractor or its Manufacturer shall provide the Training Materials normally provided with course offerings. Unless stated otherwise in an applicable Manufacturer's Training Catalog, such documentation will become the property of the student upon completion of the training class, provided, however, Contractor and or its Manufacturer shall retain all right, title and interest to the intellectual property rights contained therein (e.g., copyrights) and provided further, however, that such Training Materials shall be considered the Confidential Information of Manufacturer and subject to the non-disclosure provisions set forth above in the terms applicable to SINs 511210, 511210 and 54151 .
- b. For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.
- c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course.
- d. The Training Catalog shall provide most of the following information for each training course offered:
- (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
  - (2) The length of the course;
  - (3) Mandatory and desirable prerequisites for student enrollment;
  - (4) The minimum and maximum number of students per class;
  - (5) The locations where the course is offered;
  - (6) Class schedules; and
  - (7) Price (per student, per class (if applicable)).
- e. For those courses conducted at the Ordering Activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- f. For Online Training Courses, a copy of all training material must be available for electronic download by the students.

**10. “NO CHARGE” TRAINING**

“No charge” training is not available under the scope of this schedule contract.

**TERMS AND CONDITIONS APPLICABLE TO  
INFORMATION TECHNOLOGY (IT)  
PROFESSIONAL SERVICES (SPECIAL ITEM  
NUMBER 54151S)**

**1. GLOSSARY OF DEFINITIONS**

- a. **“Service Provider”** shall mean a Manufacturer or provider of the IT Professional Services offered to Contractor through a letter of supply to be sold to Ordering Activities under this contract.
- b. **“Statement of Work”** shall mean the mutually agreed upon document between Contractor and Ordering Activity setting forth the description of services to be performed including milestones, any specifications and evaluation criteria.

**2. SCOPE**

- a. The prices, terms and conditions stated under Special Item Number 54151S Information Technology Professional Services apply exclusively to IT Professional Services within the scope of this Information Technology Schedule.
- b. The Contractor shall provide services at the Contractor's facility and/or at the Ordering Activity location, as agreed to by the Contractor and the Ordering Activity.

**3. PERFORMANCE INCENTIVES I-FSS-60 Performance Incentives (April 2000)**

- a. Performance incentives may be agreed upon between the Contractor and the Ordering Activity on individual fixed price orders or Blanket Purchase Agreements under this contract.
- b. The Ordering Activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, Ordering Activities shall consider establishing incentives where performance is critical to the Ordering Activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

**4. ORDER**

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

**5. PERFORMANCE OF SERVICES**

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the Ordering Activity.

- b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the Ordering Activity.
- c. The Ordering Activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be provided in a good and workmanlike manner.
- d. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

**6. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)**

- a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-
- (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- c. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- d. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

**7. INSPECTION OF SERVICES**

In accordance with FAR 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAR 2009) (DEVIATION I - FEB 2007) for Firm-Fixed Price orders and FAR 52.212-4 CONTRACT TERMS AND CONDITIONS □COMMERCIAL ITEMS (MAR 2009) (ALTERNATE I □□OCT 2008) (DEVIATION I

– FEB 2007) applies to Time-and-Materials and Labor-Hour Contracts orders placed under this contract.

## **8. RESPONSIBILITIES OF THE CONTRACTOR**

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of the character provided under a particular Statement of Work or task order. If the end product of a task order or Statement of Work is customized software (as opposed to software installation, integration, or implementation services) then FAR 52.227-14 (Dec 2007) Rights in Data – General, may apply.

## **9. RESPONSIBILITIES OF THE ORDERING ACTIVITY**

Subject to applicable security regulations, the Ordering Activity shall permit Contractor access to all facilities necessary to perform the requisite IT Professional Services.

## **10. INDEPENDENT CONTRACTOR**

All IT Professional Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the Ordering Activity.

## **11. ORGANIZATIONAL CONFLICTS OF INTEREST**

### **a. Definitions.**

An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed Ordering Activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.

- b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the Ordering Activity, Ordering Activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

## **12. INVOICES**

The Contractor, upon completion of the work ordered, shall submit invoices for IT Professional services. Progress payments may be authorized by the Ordering Activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones as set forth in a Statement of Work or task order or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

## **13. PAYMENTS**

For firm-fixed price orders the Ordering Activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for services delivered. Progress payments shall be made only when authorized by the Statement of Work or task order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour

Proposal Requirements—Commercial Item Acquisition As prescribed in 16.601(e)(3), insert the following provision:

- a. The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
- b. The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
  - (1) The offeror;
  - (2) Subcontractors; and/or
  - (3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

## **14. RESUMES**

Resumes shall be provided to the GSA Contracting Officer or the user Ordering Activity upon request.

## **15. INCIDENTAL SUPPORT COSTS**

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the Ordering Activity in accordance with the guidelines set forth in the FAR.

## **16. APPROVAL OF SUBCONTRACTS**

The Ordering Activity may require that the Contractor receive, from the Ordering Activity’s Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

## **17. DESCRIPTION OF IT PROFESSIONAL SERVICES AND PRICING**

- a. A description of each type of IT Service offered under Special Item Numbers 54151S IT Professional Services is set forth in Attachment A and/or the Schedule Contract Pricelist. Services and rates should be presented in the same manner as the Contractor sells to its commercial customers and other Ordering Activity customers.
- b. Pricing for all IT Professional Services shall be in accordance with the Contractor’s customary commercial practices; e.g., hourly rates, monthly rates, term rates, and/or fixed prices, minimum general experience and minimum education

## **Functional Responsibilities & Education Requirements**

### **Project Administration**

*General Experience. Minimum of two years experience with administrative functions associated with Project Management.*

*Functional Responsibility. The Project Administration role assists with the preparation of contract deliverables and monitoring of project costs and schedules. Tracks program tasks/requirements specified in contract in accordance with the specified schedule.*

*Minimum Education: Bachelor’s Degree (Information Technology or Business) or equivalent professional experience.*

## Project Manager

**General Experience.** The Project Manager possesses at least six years of experience with related IT projects. Must possess experience planning and managing IT projects and have had extensive experience in the execution of IT projects. They have demonstrated the ability to manage projects to achieve the desired results.

**Functional Responsibility.** The Project Manager provides day-to-day direction and control of IT projects. The Project Manager is responsible for developing the project/task work plan and monitor progress against the work plan. They provide technical and functional guidance to the project teams, monitor the progress of tasks and deliverables, track and report the project status to client, and ensure that all critical project issues are addressed.

**Minimum Education:** Bachelor's Degree (Information Technology or Business), Project Management Professional Certification or equivalent professional experience.

## Implementation and Integration Consultant I

**General Experience.** The Implementation and Integration Consultant I possess at least eight years of experience in information systems implementation, change management efforts or business process redesign, including at least 6 months experience in premium technologies.

**Functional Responsibility.** The Implementation and Integration Consultant I apply their broad management skills and specialized functional and technical expertise to guide project teams in delivering client solutions. The Implementation and Integration Consultant provides subject matter expertise in industry, process or technology areas. An Implementation and Integration Consultant is qualified to perform such tasks as:

- Plan and manage the work of information systems project teams
- Design and implement new organization structures
- Conceptual design and development of training curricula
- Assist an organization translate its vision and strategy into core human resource and business processes
- Lead clients through streamlining, reengineering and transforming business processes
- Develop functional and technical information system designs.
- Supervise analysts in the development of software designs, computer programming, system testing or training curricula
- Lead business process redesign teams in the development of new business process architectures.
- Participate in quality reviews to ensure work complies with specified standards
- Perform workflow analyses
- Design and manage databases
- Define information systems requirements
- Assist in project budget preparation.
- Cloud monitoring

**Minimum Education:** Bachelor's Degree (Information Technology or Business) or equivalent professional experience.

## Implementation and Integration Consultant

**General Experience.** The Implementation and Integration Consultant possess at least ten years of experience in information systems implementation, change management efforts or business process redesign, including at least 6 months experience in premium technologies.

**Functional Responsibility.** The Implementation and Integration Consultant apply their broad management skills and specialized functional and technical expertise to guide project teams in delivering client solutions. The Implementation and Integration Consultant provides subject matter expertise in industry, process or technology areas. An Implementation and Integration Consultant is qualified to perform such tasks as:

- Plan and manage the work of information systems project teams
- Design and implement new organization structures
- Conceptual design and development of training curricula

## Systems Analyst I

**General Experience.** Systems Analyst I possess at least three years of experience performing systems development, testing, conversion, and production support tasks on large-scale client-server and mainframe systems. Systems Analysts have strong analytical and technical skills and have been trained in the use of systems development methodology.

**Functional Responsibility.** The Systems Analyst I analyses functional and technical requirements, prepare systems designs and specifications, and perform systems development, testing, conversion, and production support tasks. They also develop required systems and operation documentation.

**Minimum Education:** Bachelor's Degree (Information Technology or Business) or equivalent professional experience.

## Systems Analyst II

**General Experience.** Systems Analyst II possess at least three years of experience performing systems development, testing, conversion, and production support tasks on large-scale client-server and mainframe systems. Systems Analysts have strong analytical and technical skills and have been trained in the use of systems development methodology.

**Functional Responsibility.** The Systems Analyst II analyses functional and technical requirements, prepare systems designs and specifications, and perform systems development, testing, conversion, and production support tasks. They also develop required systems and operation documentation.

**Minimum Education:** Bachelor's Degree (Information Technology or Business) or equivalent professional experience

Labor Category	Contract Year 2019 9/6/2019 - 9/5/2020	Contract Year 2020 9/6/2020 - 9/5/2021	Contract Year 2021 9/6/2021 - 9/5/2022 (pending extension)	Contract Year 2022 9/6/2022 – 9/5/2023 (pending extension)	
Implementation & Integration Consultant	\$309.22	\$316.33	\$323.61	\$331.05	
Project Manager	\$286.00	\$292.57	\$299.30	\$306.19	
System Analyst II	\$200.99	\$205.62	\$210.34	\$215.18	
Labor Category	Contract Year 2020 2/12/2020 - 2/11/2021	Contract Year 2021 2/12/2021 - 2/11/2022	Contract Year 2022 2/12/2022 - 2/11/2023 (pending extension)	Contract Year 2023 2/12/2023 - 2/11/2024 (pending extension)	Contract Year 2024 2/12/2024 - 2/11/2025 (pending extension)
Implementation & Integration Consultant I	\$260.00	\$265.72	\$271.56	\$277.54	\$283.64
System Analyst I	\$175.00	\$178.85	\$182.79	\$186.81	\$190.92
Project Administration	\$109.92	\$112.34	\$114.81	\$117.34	\$119.92



## TERMS AND CONDITIONS APPLICABLE TO ELECTRONIC COMMERCE (EC) (SPECIAL ITEM NUMBER 54151ECOM)

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### 1. GLOSSARY OF DEFINITIONS

- a. **“Service Provider”** shall mean a provider of the Electronic Commerce Services offered to Contractor through a letter of supply to be sold to Ordering Activities under this contract.
- b. **“Statement of Work”** shall mean the mutually agreed upon document between Contractor and Ordering Activity setting forth the description of services to be performed including milestones, any specifications and evaluation criteria.

### 2. SCOPE

- a. The prices, terms and conditions stated under Special Item Number 54151ECOM Electronic Commerce (EC) Services apply exclusively to EC Services within the scope of this Information Technology Schedule.
- b. The Contractor, through Service Provider, shall provide services at a location, as agreed to by the Contractor and the Ordering Activity.

### 3. PERFORMANCE INCENTIVES I-FSS-60 Performance Incentives (April 2000)

- a. Performance incentives may be agreed upon between the Contractor and the Ordering Activity on individual fixed price orders or Blanket Purchase Agreements under this contract.
- b. The Ordering Activity must establish a maximum performance incentive price for the services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, Ordering Activities shall consider establishing incentives where performance is critical to the Ordering Activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

### 4. ORDER

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

### 5. PERFORMANCE OF SERVICES

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the Ordering Activity.

- b. The Ordering Activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
- c. Any Contractor travel required in the performance of EC Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

### 6. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)

- a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-
  - i) Cancel the stop-work order; or
  - ii) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-
  - c. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - d. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- e. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

### 7. INSPECTION OF SERVICES

The Inspection of Services–Fixed Price (AUG 1996) (Deviation – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection–Time-and-Materials and Labor-Hour (MAY 2001) (Deviation – May 2003) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this contract.

### 8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product (i.e., deliverable) of a Statement of Work is custom developed software, then FAR 52.227-14



(Deviation – May 2003) Rights in Data – General, may apply.

### **9. RESPONSIBILITIES OF THE ORDERING ACTIVITY**

Subject to security regulations, the Ordering Activity shall permit Contractor access to all facilities necessary to perform the requisite EC Services.

### **10. INDEPENDENT CONTRACTOR**

All EC Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the Ordering Activity.

### **11. ORGANIZATIONAL CONFLICTS OF INTEREST**

#### a. Definitions.

An "Organizational conflict of interest" exists when the nature of the work to be performed under a proposed Ordering Activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor's or its affiliates' objectivity in performing contract work.

- b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the Ordering Activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

### **12. INVOICES**

The Contractor, upon completion of the work ordered, shall submit invoices for EC services. Progress payments may be authorized by the Ordering Activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

### **13. PAYMENTS**

- a. For firm-fixed price orders the Ordering Activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:
- b. The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
- c. The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative

expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

- i) The offeror;
- ii) Subcontractors; and/or
- iii) Divisions, subsidiaries, or affiliates of the offeror under a common control.

### **14. INCIDENTAL SUPPORT COSTS**

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the Ordering Activity in accordance with the guidelines set forth in the FAR.

### **15. APPROVAL OF SUBCONTRACTS**

The Ordering Activity may require that the Contractor receive, from the Ordering Activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

### **16. DESCRIPTION OF ELECTRONIC COMMERCE (EC) SERVICES AND PRICING**

- a. A description of each type of EC Service offered under Special Item Numbers 54151ECOM E-Commerce is set forth in Attachment A. Services and rates should be presented in the same manner as the Contractor sells to its commercial customers and other Ordering Activity customers.
- b. Pricing for all EC Services shall be in accordance with the Contractor's customary commercial practices; e.g., hourly rates, monthly rates, term rates, unit prices and/or fixed prices.

**USA COMMITMENT TO PROMOTE  
SMALL BUSINESS PARTICIPATION  
PROCUREMENT PROGRAMS**

**PREAMBLE**

(Name of Company) provides commercial products and services to ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

**COMMITMENT**

To actively seek and partner with small businesses.

To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.

To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.

To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.

To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.

To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.

To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in ordering activity contracts.

**SUGGESTED FORMATS FOR BLANKET  
PURCHASE AGREEMENTS**

**BEST VALUE  
BLANKET PURCHASE AGREEMENT  
FEDERAL SUPPLY SCHEDULE**

(Insert Customer Name)

In the spirit of the Federal Acquisition Streamlining Act (ordering activity) and (Contractor) enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract(s) \_\_\_\_\_.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the ordering activity that works better and costs less.

Signatures

\_\_\_\_\_  
Ordering Activity Date

\_\_\_\_\_  
Contractor Date

BPA NUMBER \_\_\_\_\_

**(CUSTOMER NAME)  
BLANKET PURCHASE AGREEMENT**

Pursuant to GSA Federal Supply Schedule Contract Number(s) \_\_\_\_\_, Blanket Purchase Agreements, the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH (ordering activity):

(1) The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract, except as noted below:  
MODEL NUMBER/PART NUMBER

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*SPECIAL BPA DISCOUNT/PRICE

\_\_\_\_\_  
\_\_\_\_\_

(2) Delivery:

DESTINATION

\_\_\_\_\_  
\_\_\_\_\_

DELIVERY SCHEDULES / DATES

\_\_\_\_\_  
\_\_\_\_\_

(3) The ordering activity estimates, but does not guarantee, that the volume of purchases through this agreement will be \_\_\_\_\_.

(4) This BPA does not obligate any funds.

(5) This BPA expires on \_\_\_\_\_ or at the end of the contract period, whichever is earlier.

(6) The following office(s) is hereby authorized to place orders under this BPA:

OFFICE

\_\_\_\_\_  
\_\_\_\_\_

POINT OF CONTACT

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Federal Supply Schedule Contractors may individually submit a Schedules "Team Solution" to meet the customer's requirement.
- Customers make a best value selection.

(7) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

(8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:

- (a) Name of Contractor;
- (b) Contract Number;
- (c) BPA Number;
- (d) Model Number or National Stock Number (NSN);
- (e) Purchase Order Number;
- (f) Date of Purchase;
- (g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
- (h) Date of Shipment.

(9) The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.

(10) The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

**BASIC GUIDELINES FOR USING  
"CONTRACTOR TEAM ARRANGEMENTS"**

Federal Supply Schedule Contractors may use "Contractor Team Arrangements" (see FAR 9.6) to provide solutions when responding to a ordering activity requirements.

These Team Arrangements can be included under a Blanket Purchase Agreement (BPA). BPAs are permitted under all Federal Supply Schedule contracts.

Orders under a Team Arrangement are subject to terms and conditions or the Federal Supply Schedule Contract.

Participation in a Team Arrangement is limited to Federal Supply Schedule Contractors.

Customers should refer to FAR 9.6 for specific details on Team Arrangements.

Here is a general outline on how it works:

- The customer identifies their requirements.
- Federal Supply Schedule Contractors may individually meet the customers needs, or -

**ATTACHMENT A - CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION  
AND TERMS**

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**Attachment A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**INSTRUCTIONS:** Select the Manufacturer whose supplemental pricelist information and terms you want to view.

Manufacturer Name	
<a href="#">A10 Networks, Inc.</a>	<a href="#">Kony, Inc.</a>
<a href="#">Active Navigation, Inc.</a>	<a href="#">Lastline, Inc.</a>
<a href="#">Adobe Systems, Inc.</a>	<a href="#">LogRhythm</a>
<a href="#">ALE USA Inc. (Alcatel Lucent Enterprise)</a>	<a href="#">LogZilla</a>
<a href="#">Allied Telecom Group, LLC</a>	<a href="#">Lookingglass Cyber Solutions Inc.</a>
<a href="#">Appian Corporation</a>	<a href="#">MariaDB Corporation</a>
<a href="#">Attivo Networks, Inc.</a>	<a href="#">Micro Focus Government Solutions</a>
<a href="#">Authentic8</a>	<a href="#">Microsoft Azure</a>
<a href="#">Axellio</a>	<a href="#">MicroStrategy</a>
<a href="#">Azul Systems, Inc.</a>	<a href="#">Mmodal</a>
<a href="#">Barracuda Networks, Inc.</a>	<a href="#">Multivista Franchise Systems, LLC</a>
<a href="#">Blue Light, LLC.</a>	<a href="#">NEC Corporation of America</a>
<a href="#">Blue Prism Software Inc.</a>	<a href="#">NetAlly</a>
<a href="#">BlueCat Federal USA, Inc.</a>	<a href="#">NetApp, Inc.</a>
<a href="#">Bluescape (Thoughtstream DBA)</a>	<a href="#">Netreo Incorporated</a>
<a href="#">BravoSolution</a>	<a href="#">NetScout Systems, Inc.</a>
<a href="#">Brocade Communications Systems, Inc.</a>	<a href="#">NNData</a>
<a href="#">C2 Company a PrimeKey Company</a>	<a href="#">Northrop Grumman Systems Corporation</a>
<a href="#">Catbird Networks, Inc.</a>	<a href="#">Nutanix</a>
<a href="#">CBT Nuggets, LLC</a>	<a href="#">OpenGov, Inc.</a>
<a href="#">Check Point Software Technologies, Inc.</a>	<a href="#">OpenText, Inc.</a>
<a href="#">Checkmarx</a>	<a href="#">ORock Technologies, Inc.</a>
<a href="#">Chef Software</a>	<a href="#">Palo Alto Networks, Inc.</a>
<a href="#">Cigent Technology, Inc.</a>	<a href="#">Permuta Technologies, Inc.</a>
<a href="#">Cisco Systems, Inc.</a>	<a href="#">PC Matic, Inc.</a>
<a href="#">Citrix Systems, Inc.</a>	<a href="#">Peraton, Inc.</a>
<a href="#">Code42</a>	<a href="#">Pivot3, Inc.</a>
<a href="#">CommVault Systems, Inc.</a>	<a href="#">Procore Technologies, Inc.</a>
<a href="#">Coupa Software, Inc.</a>	<a href="#">ProLion Inc.</a>
<a href="#">Coursera, Inc.</a>	<a href="#">Proofpoint, Inc.</a>
<a href="#">CyberSponse</a>	<a href="#">Prosoft Systems</a>
<a href="#">Cyviz, LLC</a>	<a href="#">Puppet Labs</a>
<a href="#">Dataiku, Inc.</a>	<a href="#">QlikTech</a>
<a href="#">Delta Bravo</a>	<a href="#">Qualtrics, LLC</a>
<a href="#">DevonWay, Inc.</a>	<a href="#">Quantum Corporation</a>
<a href="#">Docker, Inc.</a>	<a href="#">Qusecure</a>
<a href="#">Duo Security</a>	<a href="#">RapidRatings International, Inc.</a>
<a href="#">Eccentex</a>	<a href="#">Red Hat, Inc.</a>
<a href="#">ElasticSearch Federal, Inc.</a>	<a href="#">Relativity</a>
<a href="#">Elemental Technologies</a>	<a href="#">Riverbed Technology, Inc.</a>
<a href="#">Expert Choice, Inc.</a>	<a href="#">RSA Security</a>
<a href="#">Extreme Networks, Inc.</a>	<a href="#">SDL Government</a>
<a href="#">Fend Inc.</a>	<a href="#">Seceon Inc.</a>
<a href="#">Forcepoint LLC</a>	<a href="#">Secure Channels Inc.</a>
<a href="#">Fortinet, Inc.</a>	<a href="#">Security First Corp.</a>
<a href="#">Foxit Software Inc.</a>	<a href="#">Seneca</a>
<a href="#">Fujitsu Network Communications, Inc.</a>	<a href="#">Siemens Industry, Inc.</a>
<a href="#">Getvisibility</a>	<a href="#">Siren Data Intelligence</a>
<a href="#">GitLab</a>	<a href="#">SmartBear Software, Inc.</a>
<a href="#">Globalscape</a>	<a href="#">Spirent Communications</a>
<a href="#">HackerOne, Inc</a>	<a href="#">SquirrelWERKZ, Inc.</a>
<a href="#">HaiVision</a>	<a href="#">StackRox, Inc.</a>
<a href="#">Hewlett Packard Enterprises</a>	<a href="#">Sunview Software, Inc.</a>
<a href="#">Hirevue</a>	<a href="#">Syferlock Technology Corporation</a>
<a href="#">Hitachi Vantara Federal Corporation</a>	<a href="#">SyncDog</a>
<a href="#">IDaptive, LLC</a>	<a href="#">Tanium</a>
<a href="#">IGEL</a>	<a href="#">Tenable</a>
<a href="#">Infinidat, Inc.</a>	<a href="#">TIBCO Software Federal, Inc.</a>
<a href="#">Infocyte</a>	<a href="#">Tenable</a>
<a href="#">iStorage Limited</a>	<a href="#">Tufin Software North America, Inc.</a>
<a href="#">Intercede Group</a>	<a href="#">UMT360</a>
<a href="#">Keysight Technologies</a>	<a href="#">Unitrends</a>
<a href="#">KBZ Communications, Inc.</a>	<a href="#">Uplogix, Inc.</a>



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<a href="#">Varonis Systems Inc.</a>	<a href="#">X1 Discovery, Inc.</a>
<a href="#">VBrick Systems, Inc.</a>	<a href="#">Xirus</a>
<a href="#">Vectra Networks, Inc.</a>	<a href="#">Yello</a>
<a href="#">Veeam Software Corporation</a>	<a href="#">Yubico</a>
<a href="#">Veriato</a>	<a href="#">ZeroFox, Inc.</a>
<a href="#">Virsec</a>	<a href="#">ZoomInfo</a>

**A10 NETWORKS, INC.**  
**2309 BERING DRIVE**  
**SAN JOSE, CA 95131**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **A10 Networks, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
  - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
  - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSA 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**A10 NETWORKS****A10 NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS**

*License.* Conditioned upon compliance with the terms and conditions of this Attachment A, Contractor, grants to Ordering Activity a nonexclusive and nontransferable license to use for Ordering Activity's business purposes the Software and the Documentation for which Ordering Activity has paid all required fees. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) specifically pertaining to the product or products and made available by Contractor in any manner (including on CD-Rom, or on-line).

Unless otherwise expressly provided in the Documentation, Ordering Activity shall use the Software solely as embedded in or for execution on A10 Networks equipment owned or leased by Ordering Activity and used for Ordering Activity's business purposes *General Limitations*. This is a license, not a transfer of title, to the Software and Documentation, and Contractor retains ownership of all copies of the Software and Documentation. Ordering Activity acknowledges that the Software and Documentation contain trade secrets of A10 Networks, its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Accordingly, except as otherwise expressly provided under this Attachment A, Ordering Activity shall have no right and Ordering Activity specifically agrees not to:

- (i) transfer, assign or sublicense its license rights to any other person or entity, or use the Software on unauthorized or secondhand A10 Networks equipment
- (ii) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same
- (iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction
- (iv) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Contractor. Ordering Activity shall implement reasonable security measures to protect such trade secrets.

*Software, Upgrades and Additional Products or Copies.* For purposes of this Attachment A, "Software" and "Products" shall include (and the terms and conditions of this Attachment A shall apply to) computer programs, including firmware and hardware, as provided to Ordering Activity by Contractor, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of the Software licensed or provided to Ordering Activity by Contractor.

**OTHER PROVISIONS OF THIS ATTACHMENT A:**

- (1) ORDERING ACTIVITY HAS NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS ORDERING ACTIVITY, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE GSA FEE FOR THE UPGRADE OR ADDITIONAL COPIES
- (2) USE OF UPGRADES IS LIMITED TO A10 NETWORKS EQUIPMENT FOR WHICH ORDERING ACTIVITY IS THE ORIGINAL END USER PURCHASER OR LEASEE OR WHO OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED
- (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

*Limited Hardware Warranty.* Contractor provides a one (1) year limited product hardware warranty to Ordering Activities of A10 products. Contractor warrants that the product hardware will be free from defects in materials and workmanship that result in a material deviation from the applicable published A10 technical specifications ("Hardware System Failure"). Upon a Hardware System Failure, Contractor will repair or replace such product hardware within 3 working days of its receipt of the failed hardware, if in advance of its receipt, such hardware (1) was evaluated by A10 Technical Support in person or via telephone, and (2) received a Technical Support RMA number from Contractor through A10 Networks. Further, the product hardware must be shipped, shipment prepaid, to Contractor through A10 Networks, and the RMA number must be clearly indicated on the shipping box and papers.

*Limited Software Warranty.* Contractor provides a ninety (90) day limited software warranty to Ordering Activities of A10 software accompanying A10 hardware or licensed separately. Contractor warrants that the media on which the software is delivered will be free of defects in material and workmanship for a period of ninety (90) days following delivery of the software to Ordering Activity. Contractor warrants that the software, when used in accordance with the terms of this Attachment A, will operate substantially as set forth in the applicable A10 Documentation for a period of ninety (90) days following delivery of the software to licensee.

*Warranty Limitations.* Contractor's warranties as set forth herein ("Warranty") are contingent on proper use of the A10 hardware and software ("Products") and do not apply if the Products have been modified without Contractor's written approval, or if the Products' serial number label is removed, or if the Product has been damaged. The terms of the Warranty are limited to the remedies as set forth in this Warranty.

THIS WARRANTY IS PROVIDED IN LIEU OF ALL OTHER RIGHTS, CONDITIONS AND WARRANTIES. CONTRACTOR MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE SOFTWARE, HARDWARE, PRODUCTS, DOCUMENTATION OR A10 SUPPORT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CONTRACTOR DOES NOT WARRANT THAT ANY PRODUCTS WILL BE ERROR-FREE, OR THAT ANY DEFECTS THAT MAY EXIST IN ITS PRODUCTS CAN BE CORRECTED.

**BASIC WARRANTY SERVICE PROGRAM**

Coverage for A10 Networks products are described below. Additional Support coverage can be purchased with Ordering Activity's A10 Products. Please refer to the Contractor's GSA Price List for Annual Support & Services fees.

Phone Support - 90 days from date of purchase

During the 90-day Software Warranty period, phone support is offered 5 days per week (8:30 a.m. to 5:30 p.m. Pacific Time, Monday through Friday, except holidays). Calls left after hours will be returned the next business day. Access to Technical Support after this 90-day warranty period is on a commercially reasonable basis (unless a Support Contract is purchased for all systems owned by the Ordering Activity).

Contact Contractor through A10 Networks Technical Support at +1 (408) 325-8676 or +1 (888) TACS-A10 for North America toll free access.

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**Software Updates - 90 days from date of purchase**

Software Updates for system software and Software Products released by Contractor through A10 Networks within 90 days of Ordering Activity's purchase of an A10 product are available by contacting A10 Networks Technical Support. System Software Updates include applicable minor releases (e.g. Release 1.1.0 to 1.2.0) to the A10 Networks family of products as well as major feature releases (e.g. Release 1.x to 2.0). Ordering Activity must have access to the Internet for Web Browser or FTP downloads as directed by Technical Support.

Software Updates released after the initial 90-day warranty period are available as an upgrade product for the then applicable GSA price.

**Advanced Hardware Replacement Service - 30 days from date of purchase**

In the event of a hardware system failure, during the first 30 days of ownership, Advanced Hardware Replacement allows the Ordering Activity to request that a replacement unit be shipped prior to the return of the failed unit. This service requires a Phone Support evaluation of the failed system by Technical Support personnel, and the issuance of a Technical Support RMA (Return Material Authorization) number. RMAs issued by 12:00 (noon) Pacific Time will be shipped via overnight carrier that same day whenever possible. RMAs issued after 12:00 p.m. will be shipped the following business day. Contractor through A10 Networks must receive the failed unit within 14 days after issuance of the RMA to avoid replacement charges. Saturday delivery service is available for an extra charge.

**Hardware Repair Service - After 30 days through 90 days from date of purchase**

In the event of a hardware system failure past the first 30-days but within the first 90 days of ownership, the unit will be either repaired or at Contractor through A10 Networks' option, replaced with a new or reconditioned unit of equal or better value. This service requires a Phone Support evaluation of the failed system by an A10 Networks Technical Support personnel, and the issuance of a Technical Support RMA number. The Ordering Activity must ship the failed unit, pre-paid, to Contractor through A10 Networks. The RMA number must be clearly indicated on the box and shipping papers. Failure to do so will result in delays. A repaired or replacement unit will be shipped at A10 Networks' expense within 3 business days after receipt of the failed unit.

**BASIC SUPPORT SERVICE PROGRAM**

Coverage for A10 Networks products under the Basic Support Service Program are described below. Please refer to the Contractor's current GSA Price List for Annual Support & Services fees.

**Phone Support – 1, 2 and 3 year terms from date of purchase**

For the duration of the term purchased, phone support is offered 5 days per week between the hours of 8:30 a.m. to 5:30 p.m., except holidays (Pacific Time, Monday through Friday). Calls left after hours will be returned the next business day. Access to Technical Support under the Basic Support Service Program period is on a commercially reasonable basis and Contractor through A10 Networks will make every reasonable effort to provide fast and efficient service. Ordering Activities MUST register their A10 products and support programs to obtain technical support from A10 Networks. Contact A10 Networks Technical Support at +1 (408) 325-8676 or +1 (888) TACS-A10 for North America toll free access.

**Software Updates - 1, 2 and 3 year terms from date of purchase**

Software Updates for system software and Software Products released by Contractor through A10 Networks are provided for the duration of the Basic Support Service Program purchased by contacting A10 Networks Technical Support. System Software Updates include applicable minor releases (e.g. Release 1.1.0 to 1.2.0) to the A10 Networks family of products as well as major feature releases (e.g. Release 1.x to 2.0). Ordering Activity must have access to the Internet for Web Browser or FTP downloads as directed by Technical Support.

Ordering Activities MUST register their A10 products and support programs to obtain software updates from Contractor through A10 Networks.

**Advanced Hardware Replacement Service – 30 days from date of purchase**

In the event of a hardware system failure, during the first 30 days from date of purchase, Advanced Hardware Replacement allows the Ordering Activity to request that a replacement unit be shipped prior to the return of the failed unit. This service requires a Phone Support evaluation of the failed system by Technical Support personnel, and the issuance of a Technical Support RMA (Return Material Authorization) number. RMAs issued by 12:00 (noon) Pacific Time will be shipped via overnight carrier that same day whenever possible. RMAs issued after 12:00 p.m. will be shipped the following business day. Contractor through A10 Networks must receive the failed unit within 14 days after issuance of the RMA. Saturday delivery service is available for an extra charge.

**Hardware Repair Service - 1, 2 and 3 year terms from date of purchase**

In the event of a hardware system failure during the period of the Basic Support Service Program purchased, the unit will be either repaired or at Contractor through A10 Networks' option or replaced with a new or reconditioned unit of equal or better value. This service requires a Phone Support evaluation of the failed system by an A10 Networks Technical Support personnel, and the issuance of a Technical Support RMA number. The Ordering Activity must ship the failed unit to A10 Networks. The RMA number must be clearly indicated on the box and shipping papers. Failure to do so will result in delays. A repaired or replacement unit will be shipped at A10 Networks' expense within 3 business days after receipt of the failed unit.

**GOLD SUPPORT SERVICE PROGRAM**

Coverage for A10 Networks products under the Gold Support Service Program are described below. Please refer to the Contractor's current GSA Price List for Annual Support & Services fees.

**Phone Support – 1, 2 and 3 year terms from date of purchase**

For the duration of the term purchased, phone support is offered 7 days per week 24 hours a day. Access to Technical Support under the Gold Support Service Program period is on a commercially reasonable basis and Contractor through A10 Networks will make every reasonable effort to provide fast and efficient service.



Ordering Activities MUST register their A10 products and support programs to obtain technical support from Contractor through A10 Networks. Contact A10 Networks Technical Support at +1 (408) 325-8676 or +1 (888) TACS-A10 for North America toll free access.

Software Updates - 1, 2 and 3 year terms from date of purchase

Software Updates for system software and Software Products released by Contractor through A10 Networks are provided for the duration of the Gold Support Service Program purchased by contacting A10 Networks Technical Support. System Software Updates include applicable minor releases (e.g. Release 1.1.0 to 1.2.0) to the A10 Networks family of products as well as major feature releases (e.g. Release 1.x to 2.0). Ordering Activity must have access to the Internet for Web Browser or FTP downloads as directed by Technical Support.

Ordering Activities MUST register their A10 products and support programs to obtain software updates from A10 Networks.

Advanced Hardware Replacement Service - 1, 2 and 3 year terms from date of purchase

In the event of a hardware system failure, during the period of the Gold Support Service Program purchased, Advanced Hardware Replacement allows the customer to request that a replacement unit be shipped prior to the return of the failed unit. This service requires a Phone Support evaluation of the failed system by Technical Support personnel, and the issuance of a Technical Support RMA (Return Material Authorization) number. RMAs issued by 12:00 (noon) Pacific Time will be shipped via overnight carrier that same day whenever possible. RMAs issued after 12:00 p.m. will be shipped the following business day. Contractor through A10 Networks must receive the failed unit within 14 days after issuance of the RMA.

Hardware Repair Service - 1, 2 and 3 year terms from date of purchase

In the event of a hardware system failure during the period of the Gold Support Service Program purchased, the unit will be either repaired or at A10 Networks' option or replaced with a new or reconditioned unit of equal or better value. This service requires a Phone Support evaluation of the failed system by A10 Networks Technical Support personnel, and the issuance of a Technical Support RMA number. The Ordering Activity must ship the failed unit to Contractor through A10 Networks. The RMA number must be clearly indicated on the box and shipping papers. Failure to do so will result in delays. A repaired or replacement unit will be shipped at A10 Networks' expense within 3 business days after receipt of the failed unit.

**ACTIVE NAVIGATION, INC.**  
11720 PLAZA AMERICA DRIVE, SUITE 150  
RESTON, VA 20190

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Active Navigation, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in

connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a

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Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



## LICENSE, SUPPORT AND SERVICES AGREEMENT

This agreement is between the GSA Multiple Award Schedule Contractor acting by and through its supplier, Active Navigation, Inc. a Delaware corporation (**Active Navigation**) and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (**Customer or "Ordering Activity"**), effective as of the date of the last signature below. The Active Navigation software, updates, documentation and license keys provided to Customer (**Software**) are licensed and are not sold.

**SCOPE.** This agreement describes the licensing of the Software, support and implementation services.

**LICENSE.** Subject to the other terms of this agreement, Active Navigation grants Customer, under an order, a non-exclusive, non-transferable license for the duration specified and up to the license capacity purchased to:

Use the Software only in Customer's internal business operations; and  
Make one copy of the Software for archival and backup purposes.

Third party contractors and Affiliates of Customer may use and access the Software under the terms of this agreement. Customer is responsible for their compliance with the terms of this agreement. **Affiliate** means any company controlled by or under common control with Customer, directly or indirectly, with an ownership interest of at least 50%.

**RESTRICTIONS.** Customer may not:

Transfer, assign, sublicense, rent the Software, create derivative works of the Software, or use it in any type of service provider environment;  
Reverse engineer, decompile, disassemble, or translate the Software; or  
Evaluate the Software for the purpose of competing with Active Navigation.

**PAYMENT.** Customer will pay all fees within 30 days of receipt of an invoice, unless otherwise provided on an order, plus applicable sales, use and other similar taxes.

### PROPRIETARY RIGHTS AND MUTUAL CONFIDENTIALITY.

**Proprietary Rights.** The Software, workflow processes, user interface, designs, know-how and other technologies provided by Active Navigation as part of the Software are the proprietary property of Active Navigation and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Active Navigation and its licensors. The Software is protected by copyright and other intellectual property laws. Customer may not remove any product identification, copyright, trademark or other notice from the Software. Active Navigation reserves all rights not expressly granted.

**Mutual Confidentiality.** Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this agreement.

**Confidential Information** means all information that is disclosed to the recipient (**Recipient**) by the discloser (**Discloser**), and includes, among other things:

any and all information relating to products or services provided by a Discloser, software code, flow charts, techniques, specifications, and software roadmap;  
as to Active Navigation the Software and the terms of this agreement, including without limitation, all pricing information.

**Confidential Information** excludes information that:

was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser;  
is or becomes a matter of public knowledge through no fault of Recipient;  
is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or  
is independently developed by or for Recipient without use or access to the Confidential Information.

Recipient may disclose Confidential Information if required by law, but it will attempt to provide notice to the Discloser in advance so it may seek a protective order. Each party acknowledges that any misuse of the other party's Confidential Information may cause irreparable harm for which there is no adequate remedy at law. Either party may seek immediate injunctive relief in such event.

**WARRANTY.**

**SOFTWARE PERFORMANCE WARRANTY.** Active Navigation warrants that the Software will perform in substantial accordance with its accompanying technical documentation for a period of 90 days from the date of the order. This warranty will not apply to any problems caused by software not licensed to Customer by Active Navigation, use other than in accordance with the technical documentation, or misuse of the Software. The warranty only covers problems reported to Active Navigation during the warranty period or 30 days after. Customer will cooperate with Active Navigation in resolving any warranty claim. Active Navigation will use commercially reasonable efforts to remedy covered warranty claims within a reasonable period of time or replace the Software, or if

Active Navigation cannot do so it will refund to Customer the license fee paid. THIS REMEDY IS CUSTOMER'S EXCLUSIVE REMEDY, AND ACTIVE NAVIGATION'S SOLE LIABILITY FOR THESE WARRANTY CLAIMS.

**IMPLEMENTATION SERVICES WARRANTY.** Active Navigation warrants that it will perform the implementation services in conformance with generally accepted practices within the software services industry and in accordance with the applicable statement of work (**SOW**), for a period of 90 days after completion of the implementation services under the SOW. If Customer believes there is a breach of the above warranty, then Customer must notify Active Navigation no later than 30 days after the end of the warranty period, and provide reasonable cooperation to Active Navigation. Active Navigation will use commercially reasonable efforts to remedy covered warranty claims within a reasonable period of time or replace the non-conforming services, or if Active Navigation cannot do so it will refund the fee paid for the non-conforming services. THIS REMEDY IS CUSTOMER'S EXCLUSIVE REMEDY, AND ACTIVE NAVIGATION'S SOLE LIABILITY FOR THESE WARRANTY CLAIMS.

**DISCLAIMER OF WARRANTIES. ACTIVE NAVIGATION DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER UNDERSTANDS THAT THE SOFTWARE MAY NOT BE ERROR FREE AND USE MAY BE INTERRUPTED.**

**TERMINATION.** This agreement expires at the end of the license period specified in the order. Either party may terminate this agreement upon a material breach of the other party after a 30 days' notice/cure period, if the breach is not cured during such time period. Upon termination of this agreement or a license, Customer must discontinue using the Software, de-install and destroy or return the Software and all copies, within 5 days. Upon Active Navigation's request, Customer will provide written certification of such compliance.

**ANNUAL SUPPORT.** Active Navigation's annual technical support and maintenance services (**Support**) may be purchased under an order. Support may be provided in subsequent years if Customer and Active Navigation agree on the support renewal for that year. Support is provided under the Support policies then in effect. Active Navigation may change its Support terms, but Support will not materially degrade during any Support term. Full details of our Support Terms can be found at <http://support.activenavigation.com/>

**LIMIT ON LIABILITY.** There may be situations in which (as a result of material breach or other liability) Customer is entitled to make a claim against Active Navigation. In each situation (regardless of the form of the legal action (e.g. contract or tort claims)), Active Navigation is not responsible for any damage and does not have any liability beyond the greater of the amount paid or payable by Customer to Active Navigation. Even if it knows of the possibility of such damage or liability, in no circumstance is Active Navigation responsible for any: loss of, or damage to, data or information; lost profits, revenue, or productivity; or other special, consequential, incidental or indirect damages. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**DEFENSE OF THIRD PARTY CLAIMS.** Active Navigation will defend or settle any third party claim against Customer to the extent that such claim alleges that the Software violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies Active Navigation of the claim in writing, cooperates with Active Navigation in the defense, and allows Active Navigation to solely control the defense or settlement of the claim. **Costs.** Active Navigation will pay infringement claim defense costs incurred as part of its obligations above, and Active Navigation negotiated settlement amounts, and court awarded damages. **Process.** If such a claim appears likely, then Active Navigation may modify the Software, procure the necessary rights, or replace it with the functional equivalent. If Active Navigation determines that none of these are reasonably available, then Active Navigation may terminate the Software and refund (as applicable) any prepaid and unused fees subscription license, Support and service fees and the license fee for perpetual licenses (amortized over a 5-year period from the date of the order). **Exclusions.** Active Navigation has no obligation for any claim arising from: Active Navigation's compliance with Customer's specifications; A combination of the Software with other technology where the infringement would not occur but for the combination; or Technology not provided by Active Navigation. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND ACTIVE NAVIGATION'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

**GOVERNING LAW AND EXCLUSIVE FORUM.** This agreement is governed by the Federal laws of the United States.

#### **OTHER TERMS.**

**Entire Agreement.** This agreement and the order together with the underlying GSA Schedule Contract, and Schedule Pricelist, constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding.

**Non-Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned, without the consent of the other party, as part of a merger, or sale of all or substantially all of the business or assets, of a party.

**Independent Contractors.** The parties are independent contractors with respect to each other.

**Enforceability.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect.

**Survival of Terms and Force Majeure.** All terms that by their nature survive termination of this agreement for each party to receive the benefits and protections of this agreement, will survive. Neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.

**Compliance Audit.** No more than once in any 12-month period and upon at least 30 days advance notice, Active Navigation (or its representative) may audit Customer's usage of the Software at any Customer facility, subject to Government security requirements.

Customer will cooperate with such audit. Customer agrees to pay within 30 days of written notification receipt date any fees applicable to Customer's use of the Software in excess of the license.

**Modification Only in Writing.** No modification or waiver of any term of this agreement is effective unless signed by both parties.

**Export Compliance.** Each party will comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations.

**US GOVERNMENT Restricted Rights.** The Software and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. government or any agency thereof is subject to restrictions as set forth Rights in Data clause at 48 C.F.R. 52.227- 14.

_____ (Customer)	Active Navigation, Inc.
<b>Signature:</b>	<b>Signature:</b>
<b>Printed Name:</b>	<b>Printed Name:</b>
<b>Title:</b>	<b>Title:</b>
<b>Date:</b>	<b>Date:</b>
<b>Address:</b>	<b>Address:</b> 11720 Plaza America Drive, Suite 150, Reston, Virginia 20190

**ADOBE SYSTEMS INCORPORATED**  
345 PARK AVENUE  
SAN JOSE, CA 95110-2704

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Adobe, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.



**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**  
**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**ADOBE SYSTEMS, INC.****ADOBE SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

Universal Amendment to  
All Software License Agreements For  
Adobe Systems Incorporated Software Products

This Universal Amendment to Software License Agreements for All Adobe Systems Incorporated Software License Agreements ("Amendment") is effective as of as of the date that it is fully executed ("Effective Date") and is between Adobe Systems Incorporated ("Adobe"), and the U.S. General Services Administration ("GSA"). In consideration of the mutual promises and covenants contained in this Amendment, the parties agree as follows:

**Applicability**

This Amendment, agreed to by both parties, applies to GSA and any agency or organization ("Ordering Activity") that places an order for an Adobe Software product under Contract No. GS-35F-0511T (the "GSA Contract"). This Amendment, together with the applicable Software License Agreement or End User License Agreement for the applicable Adobe Software (each such license generally referred to herein as the "License Agreement"), governs the Ordering Activity's installation and use of such Adobe Software. This Amendment only applies to License Agreements for those Adobe Software products that Adobe expressly authorizes the GSA Contract holder to resell or distribute under the GSA Contract pursuant to a letter of supply between Adobe and such GSA Contract holder. Unless expressly stated to the contrary herein, all capitalized terms in this Amendment shall have the meaning ascribed to them in the applicable License Agreement for the applicable Adobe Software.

Pursuant to Section 12.212 of the Federal Acquisition Regulations ("FAR"), Adobe and GSA agree that the modifications to the License Agreements are appropriate to ensure compliance with Federal laws and to meet the U.S. Government's needs. Accordingly, the License Agreements is hereby modified by this Amendment as it pertains to use of Adobe's software by any Ordering Activity pursuant to a task order placed under the GSA Contract.

This Amendment only applies to Ordering Activities of the U.S. Government (including agencies and departments from the Executive Branch, the Congress, or the Military) and independent Federal agencies that are authorized to purchase IT Schedule 70 goods and services under the GSA Contract. This Amendment shall not apply to prime contractors, state/local government entities, or other entities authorized to make purchases under the GSA contract. In addition, this Amendment shall apply to the Ordering Activity itself, shall only apply to the installation and use of the Adobe Software for official government business only on behalf of the Ordering Activity, and shall not apply to any individual who utilizes the Adobe Software Products for his or her personal use or for a use.

**Precedence and Further Amendment:** Any provisions restricting additions or modifications to the License Agreement are hereby deleted to the extent they would preclude this Amendment or any valid task orders placed under the GSA Contract. To the extent the License Agreement conflicts with this Amendment or any relevant task orders, the conflict should be resolved according to the following order of precedence: (1) Federal law, (2) the FAR, (3) this Amendment, (4) any other amendment that Adobe and the Ordering Activity may separately enter into to vary the terms of the License Agreement to accommodate unique license terms under a Task Order, and (5) the License Agreement. This Amendment may only be modified upon written consent of both parties.

**Contracting Authority:** Pursuant to FAR 1.601 (a) and 43.102, all provisions in the License Agreement which would allow any individual, except for an authorized contracting officer, to bind the U.S. Government to the terms of the License Agreement or any modifications thereto are hereby deleted. Such provisions include the ability of the software manufacturer to unilaterally modify the terms of the License Agreement and any requirement to accept terms by means of use, download, or click-through agreements. Notwithstanding the foregoing, GSA and Ordering Activity expressly agree that when an authorized Contracting Officer of the Ordering Activity places a task order for the Adobe Software pursuant to the GSA Contract, all terms of the License Agreement in effect at the time the product was added to the GSA Contract shall be legally binding on Ordering Activity and shall be given full force and legal effect. In the event that Ordering Activity receives Adobe Software through a task order that is not authorized by the Ordering Activity's authorized Contracting Officer or Ordering Activity fails to acknowledge that the License Agreement is binding on Ordering Activity, Ordering Activity shall not be deemed to have any license to the Adobe Software and Adobe reserves all rights, remedies, and enforcement actions and venues available to Adobe under Federal law, including but not limited to all intellectual property laws without regard to the Dispute Resolution Process.

**Costs and Fees:** Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), the U.S. Government does not agree to pay any future costs or fees under the License Agreement or this Amendment. Any provisions of the License Agreement obligating the U.S. Government to pay costs, fees, or damages, or to otherwise expend appropriations, are hereby deleted unless imposed after following the Dispute Resolution Procedures identified hereunder. Any provisions of the License Agreement providing for automatic renewal absent some action by the U.S. Government are hereby deleted.

4. **Installation and Use of the Software:** Installation and use of the software shall be in accordance with the License Agreement, unless an Ordering Activity determines that it requires different terms of use and Adobe agrees in writing to such terms in a valid task order placed pursuant to the GSA Contract.

5. **Indemnification:** Pursuant to 28 U.S.C. § 516, in the event of any claim against an Ordering Activity arising out of use of the Adobe Software, Adobe cannot assume responsibility for or control of the litigation or any settlement negotiations, provided however, that Ordering Activity (i) agrees that any litigation or settlement negotiation shall not bind Adobe, in any way, to the final outcome of any such litigation or settlement; (ii) shall not impair Adobe's own rights, defenses, or claims against the claimant, (iii) shall not have the right to settle any claim, make any admissions, or waive any defenses on behalf of Adobe; and (v) shall in good faith reasonably cooperate and consult with Adobe during the course of settlement negotiations and prosecution of the claim and shall in good faith reasonably afford Adobe free access to all communications and documentations with all parties, witnesses, and judicial or administrative body(ies) associated with such claim upon Adobe's request. Any contrary provisions in the License Agreement are hereby deleted. In compliance with the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), the U.S. Government does not

agree to pay any costs, fees, or damages arising from claims against Adobe relating to use of the software by any Ordering Activity. Any contrary provisions in the License Agreement are hereby deleted

Limitation of Liability: Any limitation of liability in the License Agreement is hereby deleted, and the following provision shall apply:

Neither Adobe nor an Ordering Activity shall be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, neither Adobe nor an Ordering Activity shall be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any Federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

Governing Law: The License Agreement and this Amendment shall be governed by the Federal laws of the United States. Any provisions in the License Agreement stating that the License Agreement shall only be governed by the law of any particular U.S. state, U.S. territory or district, or foreign nation are hereby deleted.

Dispute Resolution and Venue: Any provisions in the License Agreement requiring the U.S. Government to follow a specific procedure to raise claims or to resolve disputes are hereby deleted. Any provisions in the License Agreement selecting a particular judicial forum or form of alternative dispute resolution for resolving claims relating to the License Agreement are hereby deleted. Any disputes relating to the License Agreement and to this Amendment shall be resolved in accordance with the FAR and the Contract Disputes Act, 41 U.S.C. § § 7101-7109. GSA and Ordering Activity expressly acknowledge that Adobe shall have standing to bring such claim under the Contract Disputes Act.

Termination and Performance: Termination of the License Agreement and this Amendment shall be governed by the FAR and the Contracts Disputes Act, 41 U.S.C. §§ 7101-7109, and any provisions of the License Agreement relating to termination are hereby deleted, including any provisions permitting Adobe to unilaterally terminate the License Agreement, subject to the following exceptions:

Adobe is entitled to cancel or terminate the License Agreement if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process referenced in Section 9 above or if such remedy is otherwise available to Adobe under United States Federal law.

Adobe is entitled to cancel or terminate the License Agreement if one of the events identified in Section 11 below apply.

Remedies: Pursuant to 28 U.S.C. § 1498, any provisions of the License Agreement providing for equitable remedies against the U.S. Government, including an injunction, in the event of a dispute concerning patent or copyright infringement are hereby deleted (subject to the third sentence of this Section 11). Any provisions of the License Agreement which would preclude continued performance of the contract during resolution of any disputes are hereby deleted, including any provisions requiring the U.S. Government to agree that an injunction is appropriate in the event of a breach of the License Agreement (subject to the third sentence of this Section 11). Notwithstanding the foregoing, any License Agreement clause providing for equitable remedies against the U.S. Government, including an injunction, in the event of a dispute concerning patent or copyright infringement or any other breach of the License Agreement shall continue to apply if an equitable remedy is available under United States Federal Law, such as (without limitation) the Freedom of Information Act ("FOIA") under one of the exemptions to disclosure under FOIA. If the Ordering Activity breaches one of the following: (a) reverse engineers, decompiles, disassembles, or otherwise attempts to discover the source code of the software, (b) unbundles the constituent component parts of the software, or (c) provides use of the software in a computer service business, third party outsourcing facility or service, service bureau arrangement, or time sharing basis, Adobe may terminate the License Agreement; however prior to terminating this License Agreement, Adobe shall inform the Ordering Activity of one of the breaches named above as soon as possible, and provide Ordering Activity sixty (60) days from notice to cure such breach. If the breach is not cured in sixty (60) days, the Ordering Activity may terminate the Order for convenience of the Government in accordance with FAR 52.212-4(1); however, Ordering Activity has no rights to a refund, in whole or in part of any License Fee paid if this License Agreement is terminated for such breach. Nothing in this paragraph shall prevent Adobe from filing a claim or limit Adobe's damages under the Contract Disputes Act at 41 USC §§7101 -7109.

**Advertisements and Endorsements:** Any provisions allowing Adobe to use the name or logo of GSA or any Ordering Activity to advertise or to imply an endorsement of Adobe's products or services are hereby deleted. Unless specifically authorized by an Ordering Activity and subject to the restrictions on advertising in GSAR 552.203-71, such use of the name or logo of any U.S. Government entity is prohibited.

**Monitoring Use of License and Audits:** Any provision in the License Agreement permitting Adobe to audit, inspect, or monitor use of the software for compliance with the License Agreement shall be binding on Ordering Activity but is contingent upon reasonable notice to the Ordering Activity and adherence to reasonable security measures the Ordering Activity deems reasonably appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities if clearances are required.

**Public Access to Information:** Adobe agrees that the License Agreement and this Amendment contain no confidential or proprietary information and acknowledges the License Agreement and this Amendment will be available to the public, provided however, that GSA and Adobe agree that other items identified in the License Agreement (such as, without limitation, source code and other technical data) provided to the Ordering Activity is confidential and proprietary information and shall not be disclosed. Adobe recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

**ALCATEL LUCENT ENTERPRISE  
26801 WEST AGOURA ROAD  
CALABASAS, CA 91301**

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**ALCATEL LUCENT ENTERPRISE END USER LICENSE AGREEMENT**

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**GRANT OF LICENSE**

The Authorized Alcatel-Lucent Reseller, as Licensor, grants to you, the "Licensee," a non-transferable, non-exclusive and personal sublicense to use the software in object code form (expressly excluding source code and Free and Open Source Software ("FOSS")) either incorporated in the Alcatel-Lucent Products or marketed by Alcatel-Lucent as a stand-alone product (hereinafter the "Software") solely as incorporated in or supplied with the Alcatel-Lucent Products and solely in connection with the operation of such Alcatel-Lucent Product for your own internal business purpose. Such sublicense shall be subject to payment in full of any specified license fee provided, however, that in the absence of any specified fee, the sublicense shall be deemed to be royalty free. Licensee acknowledges that Software may be delivered with FOSS governed by its own license terms, such as but not limited to the General Public License, which cannot be modified, amended, or distributed by the license terms set forth in this Agreement. As used herein, "FOSS" means software, documentation or materials that is subject to any license approved by the Open Source Initiative as an open source license (<http://www.opensource.org/licenses>) or otherwise substantially satisfying the Open Source Definition as set forth on <http://www.opensource.org/docs/osd>, or listed by the Free Software Foundation as a "free software" license in its list of licenses at <http://www.gnu.org/licenses/license-list.html>. Some of the software provided to Licensee may incorporate third party software. Such third party software is licensed to Licensee under the terms of the third party license agreement accompanying the software and not under the terms of this End User License Agreement. Alcatel-Lucent's licensors are third party beneficiaries of this Agreement with respect to their Licensed Materials.

**USE AND COPY RESTRICTIONS**

Unless the following restriction is prohibited by law, you may not, or attempt to, reverse engineer, translate, disassemble, decompile or create derivative works based on the SOFTWARE or accompanying written materials or otherwise attempt to create the source code from the Software. Except as permitted hereafter, you may not use, copy, modify, create derivative works of, distribute, sell, assign, pledge, sublicense, lease, deliver or otherwise transfer or grant access to the Software nor permit any other Party to do any of the foregoing. You may not remove from the Software any of the trademarks, trade names, logos, patent or copyright notices or markings or add any other notices or markings to the Software. Subject to the restrictions above, you may make one (1) copy of the Software solely for backup purposes if and to the extent required. You must reproduce and include the copyright notice on the backup copy.

**OWNERSHIP OF SOFTWARE**

As the Licensee, you only own the magnetic or other physical media on which the Software is originally or subsequently recorded or fixed, but Alcatel-Lucent and its third party suppliers shall retain ownership of all patents, copyrights, trademarks, trade names, trade secrets and other proprietary rights relating to or residing in the Software.

**WARRANTY**

The Software and accompanying written materials (including instructions for use) are provided "as is" without warranty of any kind from Alcatel-Lucent. The warranties applicable to the Software and accompanying written materials shall be expressly limited to those provided by the Reseller. Alcatel-Lucent does not warrant or make any representations regarding the use, or the results of use, of the Software, or written materials in terms of correctness, accuracy, reliability, currentness, or otherwise. This warranty does not include Alcatel-Lucent assisting in diagnostic efforts; access to Alcatel-Lucent's technical support websites, databases, or tools; Product integration; on-site assistance; support of FOSS, or Documentation updates. These Services are available for purchase during and after the warranty period. All other warranties from Alcatel-Lucent, expressed or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, are excluded. Neither Alcatel-Lucent nor any third party having been involved in the creation, production or delivery of the Software shall be liable for any direct, indirect, consequential or incidental damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of the use or inability to use such product even if Alcatel-Lucent has been advised of the possibility of such damages.

**TERMINATION**

This License is effective until terminated. Upon termination, you shall destroy the written materials and all copies of the Software, including back-up copies, if any.

**EXPORT COMPLIANCE**

END USER REPRESENTS, WARRANTS AND AGREES THAT IT WILL NOT USE, EMPLOY, OPERATE, DISPLAY, OR THE LIKE, OR CAUSE OR ALLOW TO BE USED, EMPLOYED, OPERATED, DISPLAYED, OR THE LIKE, DIRECTLY OR INDIRECTLY ANY EQUIPMENT, PRODUCT, PARTS, SOFTWARE, DOCUMENTATION, AND/OR TECHNICAL DATA IN ANY FORM OUTSIDE THE UNITED STATES OF AMERICA EXCEPT IN COMPLIANCE WITH APPLICABLE LAW AND REGULATION.

END USER REPRESENTS, WARRANTS AND AGREES THAT IT WILL NOT EXPORT, RE-EXPORT, RESELL, SHIP OR DIVERT, OR CAUSE OR ALLOW TO BE EXPORTED, RE-EXPORTED, RESOLD, SHIPPED OR DIVERTED, DIRECTLY OR INDIRECTLY ANY EQUIPMENT, PRODUCT, PARTS, SOFTWARE, DOCUMENTATION, AND/OR TECHNICAL DATA IN ANY FORM TO ANY COUNTRY OUTSIDE THE UNITED STATES OF AMERICA EXCEPT IN COMPLIANCE WITH APPLICABLE LAW AND REGULATION.

**U.S. GOVERNMENT RIGHTS**

**For contracts and subcontracts at any level with agencies of the Department of Defense**, the Government's rights in Alcatel-Lucent: (1) commercial computer software (as that term is defined in 48 C.F.R. 252.227-7014(a)(1)) and commercial computer software documentation shall be governed, pursuant to 48 C.F.R. 227.7201 through 227.7202-4, by Alcatel-Lucent's standard commercial license(s) for the respective product(s); (2) computer software and computer software documentation other than commercial computer software and commercial computer software documentation shall be governed by 48 C.F.R. 252.227-7014; (3) technical data pertaining to commercial items, components, or processes (as that term is defined in 48 C.F.R. 2.101) other than computer software or computer software documentation shall be governed by 48 C.F.R. 252.227-7015(b); and (4) technical data for non-commercial items other than software or software documentation shall be governed by 48 C.F.R. 252.227-7013.

**For contracts with U.S. Government agencies other than the Department of Defense agencies**, and unless otherwise specified pursuant to the applicable agency FAR Supplement, the Government's rights in: (1) commercial computer software and commercial computer software documentation shall be governed, pursuant to 48 C.F.R. 2.101 and 12.212, by Alcatel-Lucent's standard commercial license(s) for the respective product(s); (2) computer software and computer software documentation other than commercial computer software and commercial computer software documentation shall be governed by 48 C.F.R. 52.227-14, Alternative III; and (3) technical data shall be governed by 48 C.F.R. 52.227-14 including, where applicable, Alternatives I or II.

**For grants, cooperative agreements, CRADAs, other transactions authority, and other non-procurement vehicles**, and procurements other than those covered by the FAR and DFARS provisions referenced in this Section, license requirements may differ, and the parties may negotiate mutually acceptable terms consistent with government regulations and requirements.

**MISCELLANEOUS**

For the purpose of this license, Alcatel-Lucent shall be deemed to include any company of the Alcatel-Lucent Group.

**ALCATEL-LUCENT**

SIGNED: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**GENERAL SERVICES ADMINISTRATION**

SIGNED: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



**ALLIED TELECOM GROUP, LLC**  
**1120 20<sup>TH</sup> STREET, NW, SUITE 500S**  
**WASHINGTON, DC 20036**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Allied Telecom Group, LLC** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**ALLIED TELECOM GROUP, LLC**

**ALLIED TELECOM GROUP, LLC LICENSE, WARRANTY AND SUPPORT TERMS**

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**Service Delivery & Acceptance** - Prior to delivering Service to Ordering Activity, Contractor through ALLIED will perform test procedures to ensure that the Service conforms to the applicable technical specifications. Contractor through ALLIED shall notify Ordering Activity when the Service has been successfully installed and is available for Ordering Activity's use ("In-Service Date"). If ALLIED makes the Service available to the Ordering Activity, but, Ordering Activity for whatever reason is not ready to accept and use the Service, billing for the installed Service shall nonetheless commence on the In-Service Date. This applies to circumstances including, but not limited to, if Ordering Activity does not have its own equipment in place to begin using the Service. Any use of a

Service, other than for verification and acceptance testing, shall constitute immediate acceptance of the Service without the formality of executing an Acceptance Notice.

**Required Maintenance** – Contractor through ALLIED reserves the right to perform maintenance on or upgrade its network, its infrastructure, its service and its equipment without prior notice or liability. Such action may cause a partial or full disruption of the Service. However, and subject to ALLIED's business needs, Contractor through ALLIED will use commercially reasonable efforts to perform maintenance on and upgrades to its network and the Service in a manner so as to avoid unduly interfering with Ordering Activity's use of the Service.

**Ordering Activity Responsibilities** - Ordering Activity is responsible for all internal wiring, Ordering Activity equipment (e.g. Ordering Activity phones, handsets, computers), installation of hardware on Ordering Activity equipment, and arrangement of access rights for ALLIED including space for cables, conduits, and equipment as necessary for ALLIED-authorized personnel to install, repair, inspect, maintain, replace, or remove any and all facilities and equipment provided by ALLIED. Upon request by ALLIED, Ordering Activity will work directly with their building owner or property management firm and ALLIED, to secure a Building Access Agreement (BAA). Ordering Activity shall provide a secured space with electrical power, climate control and protection against fire, vandalism, and other casualty for equipment. Ordering Activity is responsible for ensuring that Ordering Activity's equipment is compatible for the Services and with the ALLIED network.

**Acceptable Use** – Service may only be used for lawful purposes. Unauthorized transmission or storage of any information, data, or material in violation of any federal, state or local regulation or law is prohibited. This includes but is not limited to: copyrighted material, material which has been legally judged threatening or obscene or material protected by trade secret.

**Disclaimer of Warranty; Limitation of Liability** – ALLIED exercises no control whatsoever over the content of the information passing through its network. ALLIED makes no warranty of merchantability or fitness for a particular purpose. ALLIED will not be responsible for any damages suffered by Ordering Activity or any other party (including any users of any Service provided or granted by Ordering Activity), including loss of data resulting from delays, non-deliveries, mis-deliveries, or service interruptions caused by Ordering Activity's own negligence or Ordering Activity errors or omissions. Use of any information obtained via ALLIED is at Ordering Activity's own risk. ALLIED specifically denies any responsibility for the accuracy or quality of information obtained through its Service.

**Performance** - If connection performance falls below levels expected by the Ordering Activity and these performance deficiencies are related to issues under ALLIED's control, Ordering Activity shall promptly notify ALLIED's Operation Center at support@alliedtelecom.net regarding the nature of the problem. Contractor through ALLIED will then have up to fifteen (15) days to remedy the problem. If ALLIED is unable to remedy the problem, Ordering Activity may terminate the SA without further liability and any unapplied payments for the remaining contract term will be refunded.

**Warranties** - ALLIED does not warrant that its Service will be uninterrupted or error free, nor does ALLIED in any way warrant that the areas accessed or information downloaded by the Ordering Activity will be free of errors, defects or viruses which may interrupt, corrupt, delete or render unusable the Ordering Activity's files or system(s). ALLIED will not be responsible for any damages Ordering Activity suffers. This includes, but is not limited to, loss of data resulting from delays, non-deliveries, mis-deliveries, or service interruptions caused by Ordering Activity's own negligence or Ordering Activity errors or omissions, or due to inadvertent release or disclosure of information sent by or to Ordering Activity.

#### **Equipment**

Equipment used in data services, including internet services, is defined as Data Equipment. Unless otherwise specified in writing, all Data Equipment supplied to Ordering Activity by ALLIED remains the property of ALLIED. Upon discontinuance or termination of Services, all Data Equipment must be returned to ALLIED within ten (10) days of the final day of Service to avoid replacement cost at current market price.

Voice over Internet Protocol (VoIP) refers to a technology that enables the use of the internet as the transmission medium for telephone calls by sending voice data in packets using IP rather than by traditional circuit switched technology. Equipment used in VoIP, including but not limited to any and all end user devices and equipment, is defined as Phone Equipment. Faulty and/or defective Phone Equipment may be returned within thirty (30) days from the purchase or ship date. Returned Phone Equipment may not be deemed as returnable if a determination has been made by Allied that the equipment is ineligible for return (e.g., physical damage, not in substantially the same condition as when it was delivered and received). In addition, if this SA is terminated for any reason, such termination is Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.) Customer's termination liability shall include any amounts due on the Phone Equipment which remains due to ALLIED. For equipment on an amortized payment plan, ALLIED reserves the right to include in the termination liability a processing fee.

**E911 and Voice Services** - Ordering Activity agrees and acknowledges that due to the unique nature of VoIP services (including, but not limited to mobility and portability of dial-tone service), there is a potential for inaccurate Ordering Activity provided physical address information, thus emergency E911 operator services cannot be provided to Ordering Activity by ALLIED with certainty. Additionally, If Ordering Activity uses a Private Branch Exchange (PBX) Key System or other multiline telephone system in connection with the Service provided by ALLIED, Ordering Activity is responsible for programming the telephone system to ensure that agencies receiving E911 emergency calls through the telephone system will receive appropriate information about the location of the caller. During a power outage at Ordering Activity location, normal phone service, including E911 calling, may not be available. ALLIED uses the termination address of Ordering Activity telephone service to identify Ordering Activity calling location for E911 calls/service. To ensure that E911 authorities receive Ordering Activity's correct address, your ALLIED business telephone services should not be moved without advance notification to ALLIED. Ordering Activity must provide at least two (2) business days notice to ALLIED to move or relocate business telephone service. It can take up to two (2) business days for Ordering Activity's new address to be updated in E911 systems.

**Letter of Agency** - The Letter of Agency executed in connection with this Attachment A shall be valid during the term of this Attachment A for all telephone lines purchased hereunder. Ordering Activity may purchase additional telephone lines under this Attachment A for the Service location(s) or additional location(s) at pricing provided in Contractor's Schedule Contract.

**Toll Fraud** - Ordering Activity is responsible for ensuring that the Ordering Activity Premises Equipment (CPE) such as a PBX Key System or other multiline telephone system, provisioned on the Ordering Activity's network is protected from fraudulent or unauthorized access. The Ordering Activity is responsible for payment of all charges on Ordering Activity's monthly billing statement, including any charges resulting from fraudulent or unauthorized access to any CPE. Ordering Activity agrees to notify ALLIED promptly if it becomes aware of any fraudulent or unauthorized use of its account, Service, or equipment. ALLIED shall not be liable for any damages whatsoever resulting from fraudulent or unauthorized use of Ordering Activity's account and the payment of all charges to Ordering Activity's account shall be and remain the responsibility of Ordering Activity.

**APPIAN CORPORATION**  
1875 EXPLORER STREET, 4<sup>TH</sup> FLOOR  
RESTON, VA 20190

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Appian Corporation** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's



Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS  
APPIAN CORPORATION**

**A. APPIAN CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS**

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**DEFINITIONS:** The terms in this Section 1 and any other capitalized terms defined in the other sections of this Agreement have the meanings stated.

“Agreement” means these Attachment A terms and conditions and the attached schedules.

“Appian” means Appian Corporation.

“Appian Software” means an object code version of the software application, the Documentation and all updates, new versions, enhancements and corrections to the Appian Software received by Ordering Activity under this Agreement.

“Contractor” means EC America, Inc.

“Correction” means, without limitation, workarounds, support releases, component replacements, patches and/or Documentation changes, as Appian deems reasonably appropriate.

“Ordering Activity” means Ordering Activity, Subscriber or End User identified in the applicable Order who receives a licenses and/or services under this Agreement.

“Documentation” means the specifications, use case scenarios and instructions for the proper use of the Appian Software provided under the documentation section of the Appian Forum website, <https://forum.appian.com> or other URL as notified to Ordering Activity in writing from time to time and provided for informational purposes only. .

“Maintenance Services” is as defined in Section A(3) below.

“ User” means an employee, subcontractor or consultant of Ordering Activity, who (i) is compliant with the terms herein, and (ii) has an active user account in the Appian Software allowing him/her to authenticate into the Appian Software.

“Order” means a purchase order from Ordering Activity.

“Party” means, individually, Ordering Activity or Contractor, and “Parties” means Ordering Activity and Contractor, collectively.

“Release” means a new version of the Appian Software identified by a decimal point move in the version number in the tenths place (e.g. 5.1 to 5.2). In the event of a full integer move in the version number (e.g. 5.7 to 6.0), the new integer number (6.0) will be considered the current Release.

“Training” is as defined in Section A(5) of this Agreement.

**SOFTWARE LICENSE GRANT:**

General. Subject to Ordering Activity’s compliance with the terms herein and payment of a corresponding sublicense fee, the Contractor through Appian grants Ordering Activity a personal, non-transferable, non-exclusive license, without right of sublicense, to allow certain access and use of the Appian Software, as more particularly described in this Agreement and in the applicable Order.

If the applicable Order does not restrict the purposes for which Ordering Activity can use the Appian Software, Ordering Activity is authorized to use the Appian Software for its general business purposes, subject to this Agreement. Appian software is licensed based on the following subscription types:

**Application Specific User Subscription.** An Application Specific User Subscription allows a specific User to access and use the Appian Software an unlimited number of times during the Subscription Period solely to use the application identified in the line item above.

**Enterprise User Subscription.** An Enterprise User Subscription allows a specific User to access and use the Appian Software an unlimited number of times during the Subscription Period. Enterprise User Subscriptions may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or who have otherwise changed job status or function and no longer use the Cloud Offering.

**License Administrator.** The Ordering Activity employee listed in the applicable Order (the “License Administrator”) is responsible for configuring the Appian Software to authorize Users to access and use the Appian Software. Ordering Activity may change its License Administrator to another Ordering Activity employee, provided one of Ordering Activity’s Maintenance Services contacts, as defined in Section A(3)(b) of this Agreement first submits the name of Ordering Activity’s new License Administrator to Appian’s online technical support case management system.

**Copies of the Appian Software.** Ordering Activity may make a reasonable number of copies of the Appian Software as necessary for Ordering Activity to use the licenses purchased under this Agreement, subject to the restrictions of FAR 52.227-14. All proprietary and restricted rights notices shall be reproduced on such copies, and all copies are subject to this Agreement.

**Third Party Hosting.** Ordering Activity may operate the Appian Software at a third party co-location facility, provided Ordering Activity: (i) notifies Appian of the address and name of the entity operating the co-location facility (“Hosting



Entity”), (ii) authorizes Appian to share the name and address of the Hosting Entity with Appian’s licensors, and (iii) Ordering Activity and the Hosting Entity enter into a written agreement in which the Hosting Entity agrees: (I) to store and/or load the Appian Software only on computers and media that are reasonably secure from unauthorized access, (II) only to operate the Appian Software to make it available to Ordering Activity over the Internet or other transmission medium and not for any other purpose, and (III) not to attempt to reverse engineer, disassemble, decompile or otherwise attempt to derive the source code from the Appian Software.

**License Keys.** Ordering Activity must provide Contractor with the following information for every Ordering Activity Computer and, if applicable, for every computer used by a Hosting Entity, to operate the Appian Software: (i) a fully qualified domain name (FQDN) owned by Ordering Activity, (ii) the operating system, and (iii) the number of CPUs. A CPU is a single central processing unit, and each core of a multi-core processing unit shall equal one CPU. Appian will use this information to develop a license key and/or enabling code (“License Key”) that will allow the Appian Software to operate only on computers matching the information supplied by the Ordering Activity, domain name, operating system and CPU cores. The License Key will allow Ordering Activity to use the Appian Software up to the number and type of licenses purchased.

Deleted.

**Restrictions.**

**General.** Ordering Activity may not reverse engineer, decompile (or otherwise attempt to access or determine the source code of the Software). In addition, except as expressly set forth in this Agreement, Ordering activity may not, modify, adapt or prepare any derivative works from the Appian Software, or any part thereof, nor allow, permit or assist any third party to do any of the foregoing (except to the extent any of the foregoing are permitted by the licensing terms governing use of any open sourced components included with the Appian Software). Ordering Activity agrees not to modify or tamper with the License Key or to attempt to manipulate the number of licenses counted by the License Key. Ordering Activity may only install the Software on servers owned (or leased by Ordering Activity) or the servers of Ordering Activity’s third party infrastructure as a service providers (collectively referred to as “Authorized Servers”).

In addition, Ordering Activity may not:

- (I) re-distribute or sublicense the Appian Software, or any part thereof, to any third party,
- (II) create Internet “links” to the Appian Software or “frame” or “mirror” any content available on the Appian Software on any other server or wireless Internet-based device,
- (III) operate the Appian Software on a service bureau basis, or
- (IV) allow, assist or permit any third party to do any of the foregoing.

**Permitted Usage.** Ordering Activity is authorized to use the Appian Software for its general business purposes, subject to the terms and conditions of this Agreement. Ordering Activity acknowledges that the Appian Software is not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Appian Software or the failure of the Appian Software, could lead to death, personal injury, or severe physical or environmental damage. Ordering Activity agrees not to use the Appian Software for any such purpose.

**User Accounts.** Only the identified individual associated with a particular User account can access the Appian Software, or the data therein, using that account. Without limiting the generality of the foregoing, this means that User accounts may not be: (I) shared amongst individuals or (II) used to provide access to the Appian Software, or the data therein, to individuals who are not the individual associated with the corresponding Named User account. In addition, Ordering Activity may not activate and de-activate User accounts on a daily or other regular basis in order to circumvent the restrictions set forth herein. User licenses may be reassigned from time to time to new users who are replacing former users who have terminated employment or who have otherwise changed job status or function and no longer use the Appian Software

**Use by Users.** Ordering Activity shall limit access to the Appian Software to its Users (a) who have a need to know the Appian Software in the normal course of their duties with Ordering Activity, and (b) who are subject to binding confidentiality obligations with the Ordering Activity. Ordering Activity is responsible for ensuring that any User complies with this Agreement.

**Use by Term Users.** A User license allows a specific named user to access the Appian Software an unlimited number of times during the subscription term specified in the Order. The term shall commence as of the date of the corresponding Order. During this period, Ordering Activity shall receive (I) a license to allow the number of Users listed in the corresponding Order to use the Appian Software in accordance with this Agreement, and (II) associated standard Maintenance Services.

**Licensors.** The Appian Software contains software licensed to Contractor from certain third party licensors (“Third Party Licensors”). Any warranty provided in connection with the Appian Software, if any, is from Contractor, not the Third Party Licensors, and the Third Party Licensors make no warranty to Ordering Activity in connection with the Appian Software, including the implied warranties of merchantability or fitness for a particular purpose. To the extent permitted under applicable law, the Third Party Licensors are not liable for any damages of any kind resulting from Ordering Activity’s use of the Appian Software, including without limitation, direct, indirect, consequential, incidental, and special damages.

**Rights and Obligations upon Termination.** Upon the termination of Ordering Activity’s license, Ordering Activity must cease using the Appian Software and the Appian Community Website. Within five (5) business days after such termination, Ordering Activity must return to Contractor all originals and all copies of the Appian Software in Ordering Activity’s care, custody or control. Ordering Activity will certify to Contractor that it has complied with the foregoing requirements. The foregoing obligations apply to copies of the Appian Software in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or combined with other materials.

**Usage.** If Ordering Activity exceeds the number of licensed Users set forth in the effective Order, Contractor will invoice Ordering Activity for the excessive use and Ordering Activity will pay the invoice within thirty (30) days of the invoice receipt date. Ordering Activity shall either discontinue the excessive use, or Ordering Activity may purchase such additional User subscriptions necessary to bring Ordering Activity into compliance for the remainder of the term of Ordering Activity’s current subscription. Such additional User subscriptions shall be at Contractor’s current GSA Schedule list fees for Appian, irrespective of any discounts offered to Ordering Activity in any Order Form.

Intellectual Property Rights. The Appian Software is Commercial computer software provided pursuant to FAR12.212. This includes all software minor modifications of a type typically delivered to commercial customers (enhancements). Any non software deliverables provided under this Agreement containing Appian's copyrighted material is provided as Limited rights data specified in FAR 52.227-14. The Appian Software and other Appian copyright material provided under this Agreement is licensed to the Ordering Activity, not sold. All rights in the Appian Software or other Appian copyrighted material not provided to Ordering Activity under this Agreement are expressly retained by Appian and its licensors.

**MAINTENANCE AND SUPPORT SERVICES:**

Subject to the terms and conditions of this Agreement, including without limitation Ordering Activity paying the Contractor the required Maintenance Services fee, Contractor shall make available to Ordering Activity the services described in this Section 3 (the "Maintenance Services") during the period set forth in the applicable Order.

**Technical Support.** Appian shall provide Technical Support to allow Ordering Activity's Maintenance Services contacts to report problems and to seek assistance regarding the Ordering Activity's use of the Appian Software. Ordering Activity shall designate Ordering Activity employees to coordinate Ordering Activity's requests for Maintenance Services

("Maintenance Services contacts"). Ordering Activity shall email [support@appian.com](mailto:support@appian.com) with Ordering Activity's Maintenance Services contacts promptly on or after the Effective Date. Ordering Activity may change its Maintenance Services contacts using Appian's case management system. Ordering Activity's Maintenance Services contacts may report problems using Appian's online technical support case management system (<https://community.appian.com/support/> or other URL as notified to Ordering Activity in writing from time to time), by telephone using Appian's authorized technical support phone line, (703) 442-1066 (or such other number that Appian may provide to Ordering Activity from time-to-time), or using any other means that Appian may authorize from time-to-time. Appian shall return support requests within a commercially reasonable time after receipt. Ordering Activity's Maintenance Services contacts may track Technical Support requests using Appian's case management system. Ordering Activity's Maintenance Services contacts must be reasonably familiar with the Appian Software to facilitate discussions with Appian's Maintenance Services staff. Technical Support is provided on the two (2) most recent Releases; provided, however, that Appian shall continue supporting the third most recent Release for a reasonable period sufficient to allow Ordering Activity to implement the newest Releases.

Type	Standard Support	Premier Support
Online case management	☐☐	☐☐
Phone support	☐☐	☐☐
Live screen sharing	☐☐	☐☐
Discussion forums	☐☐	☐☐
Knowledge base	☐☐	☐☐
Maintenance Services contacts	2	10
Case severity/Response times	Priority 1: <1 business hour Priority 2: <2 business hours Priority 3: <8 business hours Priority 4: <12 business hours	Priority 1: <15 minutes Priority 2: <1 hour Priority 3: <4 business hours Priority 4: <8 business hours
Primary Contact		☐☐
Proactive guidance		☐☐
Extended Technical Support and Security Defect Corrections		6 months
New release planning		☐☐
24/7 Support for Priority 1&2 Issues		☐☐

**Response Times.** Appian will be deemed to have responded to an Issue once it responds that it has received the Issue during business hours (an automated email response shall not count as a response). Business hours are 8:00 a.m. to 8:00 p.m. (ET), Monday through Friday, excluding Appian holidays.

**Priority Definitions.**

A Priority 1 Issue occurs when the Appian Software is down in a production setting and no workaround exists, or the workaround is not feasible to implement due to the impact on Ordering Activity's business.

Priority 2 Issue occurs when Users are unable to operate the Core Functionality on a production instance of the Appian Software using the User's then current username and password. Core Functionality means the ability using the Appian Software to: (i) load a designer interface; (ii) publish a generic process; (iii) launch a generic process (including accepting a generic task and entering a generic form); (iv) access a generic dashboard; or (v) run a generic report. Priority 3 Issue occurs when a production instance is negatively affected, but it is not a Priority 1 or 2. All other issues are Priority 4.

**Defect Correction.** When Ordering Activity reports a suspected Defect in the Appian Software to Appian, Appian shall attempt to recreate the suspected Defect based upon information provided by Ordering Activity. If the Defect is confirmed, Appian shall use commercially reasonable efforts to provide Ordering Activity with a Correction. For the purpose herein, a "Defect" is a failure of the Appian Software used by Ordering Activity to operate substantially in accordance with the then current Documentation. Appian is responsible for correcting Defects in only the most recent Release of the Appian Software; provided however, that Appian shall continue supporting the immediately preceding Release for a reasonable period sufficient to allow Ordering Activity to implement the newest Release. Ordering Activity must implement all Corrections within a reasonable time of receipt.

Updates. Contractor through Appian will promptly make available to Ordering Activity all updates, enhancements and corrections to the Appian Software generally released by Appian to its other licensees who have purchased maintenance services for the Appian Software, including all relevant documentation ("Maintenance Releases"). Neither Contractor nor Appian is obligated to provide installation, implementation or testing services in connection with the Maintenance Releases. Maintenance Releases are part of the Appian Software and subject to this Agreement. Contractor through Appian is not obligated to release a Maintenance Release during any particular Maintenance Services term.

Appian Community Website. Appian shall provide Ordering Activity with reasonable access to appropriate areas of Appian's community website, currently named Appian Forum and located at <https://community.appian.com>. This website provides Ordering Activity with access to the Appian Software, Maintenance Releases, online discussion forums and Documentation.

Ordering Activity Obligations. Ordering Activity shall cooperate with Appian's reasonable requests in connection with providing the Maintenance Services, including, without limitation, by providing Appian with timely access to data, information and personnel of Ordering Activity. Ordering Activity is responsible for the accuracy and completeness of all data and information provided to Appian in connection with the Maintenance Services.

Excluded Items. Maintenance Services do not include on-site or in-person assistance or consultation, or extensive training that would normally be provided in formal training classes. In addition, Maintenance Services shall not include Technical Support (beyond an initial response) or Defect Correction to the extent required as a result of the following:

For on-premise licenses to the Appian Software, malfunction of the computer system and communications network on which Ordering Activity has installed and is using the Appian Software;  
Use of the Appian Software contrary to the terms of the then current Documentation;  
Modifications, enhancements or customizations of the Appian Software;  
Any use of the Appian Software in disregard of any known adverse consequences, including without limitation; or  
Ordering Activity's failure to make appropriate backups or to follow warning messages and other written instructions.

#### **MAINTENANCE SERVICES FEE:**

Annual Subscription The Premier Maintenance Services fee for the initial term of Maintenance Services is the percentage of the underlying license fee set forth in the applicable Order (Maintenance Services Percentage). Standard Support is included in the price Subscription fee.. Maintenance Services must be purchased on all User licenses for the initial Maintenance Services term (the one (1) year period immediately following the effective date of the Order under which the licenses are purchased. Ordering Activity must purchase the same type of Maintenance Services (standard or premium) on all named User licenses. The Maintenance Services term for User licenses shall renew if agreed upon by the Parties. If Ordering Activity discontinues the Maintenance Services for User licenses at any time, the reinstatement shall be subject to a fee equal to 100% of the then current Maintenance Services fee under the GSA Schedule Contract multiplied by the number of years or any part thereof during which the Maintenance Services were discontinued. Maintenance Services renewals must be exercised on an all or nothing basis (Ordering Activity may not renew Maintenance Services on only a portion of its User licenses . The annual Maintenance Services fee for any renewal shall equal the then current GSA list price.

#### **SERVICES:**

##### **a. TRAINING**

Ordering Activity may purchase Appian's standard training courses, as described on Appian's website, [www.appian.com/training](http://www.appian.com/training) ("Training"). Training is offered at Appian's headquarters, in Reston, Virginia or at Ordering Activity's location.

Training at Appian Headquarters. Training offered at Appian's headquarters is available at the times listed in Appian's course calendar, also available on Appian's website, and is subject to space availability. Ordering Activity must order the number of corresponding Training Credits published for the selected course. Ordering Activities must order one (1) Training Credit for each student per day of Training. If the Ordering Activity purchases unique training, additional charges may apply for course development, course materials, etc. Additional terms associated with the Ordering Activity's purchase of Training are contained in Schedule 1 of this Agreement, which is hereby incorporated by reference.

Training at Ordering Activity Facility. Training offered at Ordering Activity's location will be provided at a time mutually agreed upon between the Parties. Ordering Activity must order one (1) Training Day for each day of Training, provided the maximum number of students for each Training class at the Ordering Activity's site will not exceed eight (8) students, unless additional student attendance is purchased up to a maximum of twelve (12) students per class. Travel and per diem fees for Appian training personnel are not included in the Training fee and will be quoted as part of Appian's associated proposal. The allow-ability of such travel and per diem fees shall be in accordance with the Federal Travel

Regulations. Additional terms associated with the Ordering Activity's purchase of Training is contained in Schedule 1 of this Agreement, which is hereby incorporated by reference.

**b. ELITE SERVICES --- Reserved**

**i. LIMITED WARRANTY AND DISCLAIMER:**

Appian Software. Subject to the limitations set forth below, for a period of forty-five (45) calendar days following the date on which the Ordering Activity receives a License Key for the initial installation of the Appian Software (the "Warranty Period"), Contractor warrants that the Appian Software will operate in substantial conformance with its then current Documentation. If Ordering Activity notifies Contractor of a breach of this warranty during the Warranty Period, Contractor through Appian will attempt to recreate the reported issue based upon information provided by the Ordering Activity. If Contractor or Appian is able to recreate the issue, Contractor's obligation and Ordering Activity's remedy is for Contractor to use commercially reasonable efforts to provide Ordering Activity with a Correction at no additional cost. If Contractor is unable to provide a Correction within a commercially reasonable time after Contractor reproduces the warranty issue, Contractor shall refund to Ordering Activity the amounts Ordering Activity paid for the non-conforming Appian Software, including any prepaid and unearned Maintenance Services fees. Notwithstanding the foregoing, Contractor is not liable for any alleged breach of this warranty caused by (i) failures due to Ordering Activity supplied computers or the operating environment on which the Appian Software resides, (ii) problems due to Ordering Activity's failure to implement currently available updates or upgrades, (iii) failures due to modifications or alterations of the Appian Software, (iv) Ordering Activity using the Appian Software contrary to the then current Documentation, or (v) Ordering Activity combining the Appian Software with materials, hardware or data not contemplated by the parties or approved by Appian, in writing.

Maintenance Services, Training and Elite Services. Subject to the limitations set forth below, Contractor warrants that it shall perform through Appian the Training, Elite Services and Maintenance Services, as applicable, in a professional and workmanlike manner consistent with prevailing industry practices. In the event of a breach of this warranty, Contractor's obligation and Ordering Activity's remedy is for Contractor through Appian to use commercially reasonable efforts to re-perform the defective Training, Elite Services or Maintenance Services, as appropriate, at no additional cost. If Contractor is unable to re-perform the applicable Training, Elite Services or Maintenance Services, within a commercially reasonable time after Ordering Activity notifies Contractor of the corresponding breach of this warranty, Contractor shall refund to Ordering Activity the amount Ordering Activity paid for the defective Training, Elite Services or Maintenance Services, as the case may be. Ordering Activity must notify Contractor of any breach of this warranty, in writing, within five (5) business days after the defective Training, Elite Services or Maintenance Services, as applicable, are provided to Ordering Activity.

Warranty Disclaimer. THE FOREGOING WARRANTIES ARE THE ONLY EXPRESS WARRANTIES PROVIDED BY CONTRACTOR IN CONNECTION WITH THE APPIAN SOFTWARE, TRAINING, ELITE SERVICES AND MAINTENANCE SERVICES. CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED, STATUTORY OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY AND ALL WARRANTIES IMPLIED FROM CUSTOM, USAGE IN TRADE OR COURSE OF DEALING. THE APPIAN SOFTWARE, TRAINING, ELITE SERVICES AND MAINTENANCE SERVICES ARE PROVIDED "AS IS" WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTION, QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH ORDERING ACTIVITY. ORDERING ACTIVITY ACKNOWLEDGES THAT THERE IS NO WARRANTY AGAINST INTERFERENCE WITH ENJOYMENT OR INFRINGEMENT IN CONNECTION WITH THE APPIAN SOFTWARE, TRAINING, ELITE SERVICES OR MAINTENANCE SERVICES. CONTRACTOR DOES NOT WARRANT THAT THE APPIAN SOFTWARE IS FREE FROM ERROR OR WILL FUNCTION WITHOUT INTERRUPTION.

**LIMITATION OF LIABILITY**

Exclusion of Consequential Damages. EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN 7.(iii) BELOW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES PROVIDED HOWEVER, THAT IN THE EVENT ORDERING ACTIVITY MAKES UNAUTHORIZED COPIES OF THE SOFTWARE, CONTRACTOR SHALL BE ENTITLED TO RECOVER THE FULL AMOUNT OF ANY LICENSE FEES THAT WOULD RELATE TO SUCH COPIES.

LIMITATION OF DIRECT DAMAGES. EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN 7.(III) BELOW, THE AGGREGATE AND CUMULATIVE LIABILITY OF CONTRACTOR AND LICENSORS FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY ORDERING ACTIVITY UNDER THE ORDER GIVING RISE TO SUCH LIABILITY, AND IF SUCH DAMAGES RELATE TO PARTICULAR SOFTWARE, TRAINING, ELITE SERVICES OR MAINTENANCE SERVICES, SUCH LIABILITY SHALL BE LIMITED TO FEES PAID FOR THE RELEVANT SOFTWARE. TRAINING, ELITE SERVICES OR MAINTENANCE SERVICES GIVING RISE TO THE LIABILITY.

Non-Applicability to Statutory or Regulatory Rights. Nothing herein shall operate to impair or prejudice the U.S.

Government's right (a) to recover for fraud or crimes arising out of or relating to this Agreement under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.21572 Price Adjustment

– Failure to Provide Accurate Information (August 1997) or GSAR 552.238-75 Price Reductions (May 2004) Alternate I (May 2003).

**INTELLECTUAL PROPERTY INFRINGEMENT**

If a third party makes a claim against Ordering Activity that the Appian Software directly infringes any patent, copyright, or trademark or misappropriates any trade secret ("IP Claim"); Contractor will to the extent permitted by 28 U.S.C. 516 (i) assist in defending Ordering Activity against the IP Claim at Contractor's cost and expense, and (ii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Ordering Activity by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Contractor arising out of such IP Claim; provided that: (I) Ordering Activity promptly notifies Contractor in writing no later than sixty (60) days after Ordering Activity's receipt of notification of a potential claim and (II) Ordering Activity



provides Contractor, at Contractor's request and expense, with the assistance, information and authority necessary to perform Contractor's obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (I) the use of a superseded or altered release of the Appian Software if the infringement would have been avoided by the use of a current unaltered release of the Appian Software, (II) the modification of the Appian Software, (III) the use of the Appian Software other than in accordance with the then current Documentation or this Agreement, or (IV) any materials or information provided to Contractor by Ordering Activity, for which Ordering Activity shall be solely responsible.

ii.

If the Appian Software is held to infringe or are believed by Contractor to infringe, Contractor shall have the option, at its expense, to (i) replace or modify the Appian Software to be non-infringing, or (ii) obtain for Ordering Activity a license to continue using the Appian Software. If it is not commercially reasonable to perform either of the foregoing options, then Contractor may terminate the license for the infringing Appian Software and refund the license fees paid for the Appian Software upon return of the Appian Software by Ordering Activity. This section states Contractor's entire liability and Ordering Activity's exclusive remedy for any claim of infringement; provided, however, if the license is for a cloud subscription described in Section B of this Agreement, then Appian shall only refund to Ordering Activity those license fees that were pre-paid and unearned at the time Appian terminates the license.

## CLOUD SUBSCRIPTION AGREEMENT

**DEFINITIONS** The terms defined in this Section 1 and any other capitalized terms defined in the other sections of this Cloud Subscription Agreement have the meanings stated.

**"Agreement"** means, collectively, this Cloud Subscription Agreement and any Order Forms.

**"Cloud Offering"** means Appian's baseline software (including all updates and enhancements to the same that Appian provides under section 4 of this Cloud Subscription Agreement), the Documentation, and the information technology infrastructure used to make Appian's software available to Subscriber over the Internet.

**"Data"** means the data, information or material that Subscriber or its Users submit to the Cloud Offering under this Agreement. Data shall not include anything initially provided to Subscriber by Appian.

**"Documentation"** means the contents provided under the documentation section of the Appian Community website, <https://docs.appian.com>, or other URL as notified to the Subscriber in writing from time to time.

**"Order Form"** means one or more order forms signed by the Parties or the purchase order issued by an Ordering Activity and accepted by the GSA Schedule-holder Contractor.

**"User"** means an employee, contractor or subcontractor of Subscriber who has a user account in the Cloud Offering allowing him/her to authenticate into the Cloud Offering.

### SUBSCRIPTION

**License.** During the term of the subscriptions that Subscriber purchases, Appian grants Subscriber a non-transferable, nonexclusive license to access the Cloud Offering via a username and password over the Internet. Subscriber may use the licenses purchased under this Agreement for Subscriber's general business purposes, unless the applicable Order Form restricts Subscriber's use to a particular application, in which case Subscriber may only use the Cloud Offering in connection with the specified application.

**Restrictions.** Except to the extent expressly authorized in this Agreement or in the Documentation, Subscriber may not: (i) reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Cloud Offering, (ii) operate the Cloud Offering for use by third parties or otherwise operate the Cloud Offering on a service bureau basis, (iii) modify, copy, reproduce or create a derivative from the Cloud Offering, in whole or in part, or (iv) allow, permit or assist any party to do any of the foregoing. In addition, unless expressly authorized by Appian in the applicable Order Form, Subscriber agrees not to use the Cloud Offering in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Cloud Offering or the failure of the Cloud Offering, could lead to death, personal injury, or severe physical or environmental damage.

**Users Accounts.** Only the identified individual associated with a particular User account can access the Cloud Offering using that account. User accounts may not be shared among individuals, or used to provide access to the Cloud Offering to individuals who are not the individual associated with the corresponding User account. Subscriber may not activate and de-activate User accounts on a daily or other regular basis in order to circumvent license restrictions. To the extent that Subscriber configures Appian's software to be accessed or used through a separate system or interface (e.g. "headless"), users of the Appian software through such separate system or interface must be licensed under this Agreement, regardless of whether such person has an Appian User account or authenticates into the Cloud Offering. If Subscriber exceeds the number of licensed Users set forth in the effective Order Form(s), Appian will invoice Subscriber for the excessive use and Subscriber will pay the invoice within thirty (30) days of the invoice receipt date. Subscriber shall either discontinue the excessive use, or Subscriber may purchase such additional User subscriptions necessary to bring Subscriber into compliance for the remainder of the term of Subscriber's current subscription. Such additional User subscriptions shall be at Appian's current GSA Schedule list fees irrespective of any discounts offered to Subscriber in any Order Form.

**Subscriber Responsibilities.** Subscriber must use the Cloud Offering in accordance with all applicable laws. Subscriber is responsible for the password security of User accounts and the level of access granted to an individual User by Subscriber's Cloud Offering administrators, as well as any other security configurations set by Subscriber. Subscriber is responsible for any violation of this Agreement by its Users. Subscriber shall promptly report to Appian any copying or distribution of the Cloud Offering in violation of this Agreement that is known or suspected by Subscriber and provide Appian with reasonable assistance to stop such violation.

**Security.** Appian will maintain an annual Service Organization Control (SOC) Report (or other similar or replacement report as the industry adopts) in connection with the Cloud Offering ("SOC Report"). Subject to agreed upon usage terms, Appian will provide Subscriber with Appian's then current SOC Report. During the term of this Cloud Subscription Agreement, Appian will maintain such security measures identified in the then current SOC Report or, if Appian determines that more effective measures should be implemented, apply such replacement security measures. Subscriber may perform security testing with respect to the Cloud Offering, but only with Appian's prior written consent, not to be unreasonably withheld.

**Intellectual Property Rights.** The Cloud Offering and all intellectual property rights therein are licensed to Subscriber, not sold. All rights in the Cloud Offering not provided to Subscriber under this Agreement are retained by Appian and its licensors.

**DATA** As between the Parties, the Data belongs to Subscriber. Subscriber is responsible for responding to any notices sent to Subscriber (or any User) by any third party claiming that the Data violates such party's rights. Subscriber grants Appian a worldwide, irrevocable, royalty-free, nonexclusive, sublicensable right during the term of this Cloud Subscription Agreement to use the Data for the purposes of providing the Cloud Offering to Subscriber. Appian shall backup the Data on a nightly basis. The Data shall be retained for at least twenty eight (28) calendar days.

## MAINTENANCE SERVICES

**Maintenance Services.** Appian shall provide Subscriber with the following maintenance services ("Maintenance Services") during the term of the Subscriber's subscription to the Cloud Offering:

**Updates.** Appian will install the upgrades and patches to the Cloud Offering that become available.

**Technical Support.** Subscriber shall designate up to two (2) Subscriber employees to coordinate Subscriber's requests for Maintenance Services. Subscriber's Maintenance Services contacts may report problems and seek assistance regarding Subscriber's use of the Cloud Offering using Appian's online technical support case management system, by telephone using Appian's authorized technical support phone line, or using any other means that Appian may authorize from time-to-time. Subscriber's Maintenance Services contacts may track Technical Support requests using Appian's case management system. Subscriber shall email support@appian.com with Subscriber's Maintenance Services contacts promptly on or after the Effective Date. Subscriber may change its Maintenance Services contacts using Appian's case management system.

**Remote Maintenance Only.** Maintenance Services do not include on-site or in-person assistance or consultation, or training that would normally be provided in formal training classes.

**Scheduled Maintenance.** Appian may specify up to a contiguous four (4) hour period during off peak hours when the Cloud Offering will not be available and during which Appian can provide any needed maintenance. Appian will use reasonable efforts to provide one week prior notice of all scheduled maintenance periods, provided that Appian may without prior notice suspend the Cloud Offering to install emergency patches or other urgent corrective measures.

RESERVED.

RESERVED.

RESERVED.

## LIMITED WARRANTIES AND DISCLAIMERS

**Service Level Agreement.** Appian shall provide the Service Level Agreement attached to this Cloud Subscription Agreement as Schedule 1 in connection with the Cloud Offering.

**Virus.** Prior to delivery of the Cloud Offering to Subscriber, Appian will first scan the same using commercially available up to date virus detection software, and will remediate any issue discovered by such software.

Limited Warranty, **Disclaimer.** APPIAN WARRANTS THAT THE CLOUD OFFERING WILL, FOR THE TERM OF A SUBSCRIPTION PERFORM SUBSTANTIALLY IN ACCORDANCE WITH APPIAN CLOUD SERVICE LEVEL

AGREEMENT. Subject to the limitations set forth below, Appian warrants that it shall perform the Maintenance Services in a professional and workmanlike manner consistent with prevailing industry practices. In the event of a breach of this warranty Appian shall, as Customer's exclusive remedy, use commercially reasonable efforts to re-perform the non-conforming Professional Services as soon as reasonably practicable, and at no additional cost to Customer. Customer must notify Appian of any breach of this maintenance service warranty in writing within five (5) business days after the non-conforming services are provided to Customer.

EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES PROVIDED IN CONNECTION WITH THE CLOUD OFFERING AND MAINTENANCE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES ARE DISCLAIMED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**LIMITATION OF LIABILITY** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY CAUSE OR ACTION (INCLUDING CONTRACT, NEGLIGENCE, TORT OR STRICT LIABILITY) ARISING FROM OR OUT OF THIS AGREEMENT FOR (a) ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, AND (b) AGGREGATE LIABILITY OF GREATER THAN THE FEES ACTUALLY PAID BY SUBSCRIBER UNDER THIS PURCHASE ORDER.

OBLIGATIONS UNDER SECTION 10 OF THIS CLOUD SUBSCRIPTION AGREEMENT AND SUBSCRIBER'S OBLIGATION TO MAKE PAYMENTS AS DUE SHALL NOT BE SUBJECT TO THE LIMITATION SET FORTH IN 9(b) ABOVE. IN ADDITION, DAMAGES ASSOCIATED WITH EITHER PARTY VIOLATING THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY, SHALL NOT BE SUBJECT TO THE LIMITATION SET FORTH IN SECTIONS 9(a) OR 9(b) ABOVE. THE LIMITATIONS SET FORTH IN THIS SECTION ARE INDEPENDENT OF ANY LIMITED REMEDY SET FORTH HEREIN, SHALL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

RESERVED.

RESERVED.

## GENERAL

RESERVED.

**Relationship.** This Agreement does not create a joint venture, partnership, employment, or agency relationship.

**Marketing.** To the extent permitted by GSAR 552.203-71, and with the Subscriber's prior written consent, (a) Appian may publicly identify Subscriber as an Appian customer and uses its logo on Appian's website and in presentations to current or prospective customers or investors; (b) Appian may issue a mutually agreed upon press release announcing Subscriber's status as an Appian customer; (c)reserved; and (d) upon successful launch of an application in the Cloud Offering, Appian may record and produce a video concerning Subscriber's use of Appian for such application, which may be distributed via Appian.com.

**Severability.** If any provision of this Agreement is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

**Waiver.** The waiver by either Party of a breach or right under this Agreement will not constitute a waiver of any other or subsequent breach or right.



**RESERVED.**

**RESERVED.**

**Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**RESERVED.**

**Survival.** Provisions herein which by their nature extend beyond the termination of this Agreement shall remain in effect until fulfilled.

**Appian Cloud  
Service Level Agreement**

**1. DEFINITIONS-** The terms defined in this Section 1 as well as terms defined in the Cloud Subscription Agreement (or similar master terms and conditions) agreed to between the parties (the "Agreement") are applicable to this Service Level Agreement. Subscriber's level of Service (Standard or Premier) will be identified in Subscriber's Order Form.

a. **Core Functionality** means the ability to use the Cloud Offering to: (i) load a designer interface; (ii) publish a generic process; (iii) launch a generic process (including accepting a generic task and entering a generic form); (iv) access a generic dashboard; or (v) run a generic report.

b. **Correction** means, without limitation, workarounds, support releases, component replacements, patches and/or documentation changes, as Appian deems reasonably appropriate.

c. **High Availability** - High Availability means that Subscriber's production instance of the Cloud Offering will be provided simultaneously through three Availability Zones without a single point of failure. (Appian's standard Cloud Offering provides service through a single Availability Zone only.) Each Availability Zone will be located in the Subscriber's selected region. Appian will maintain such servers and storages necessary to keep up to date with Subscriber's applications and data in order to operate Subscriber's Cloud Offering in such three Availability Zones. As a part of the High Availability Offering, Appian will provide Subscriber with a Recovery Point Objective (RPO) of 1 minute and a Recovery Time Objective (RTO) of 15 minutes. RPO means that the Subscriber data restored to the High Availability Cloud Offering will be no older than 1 minute prior to the event that led to the Cloud Offering no longer writing data to the High Availability database servers. RTO means that the High Availability Cloud Offering will be unavailable for no longer than 15 minutes in the event of unscheduled unavailability of the Cloud Offering for any reason within the control of Appian or Appian's service providers. Appian's exclusive obligation and Subscriber sole remedy for any failure by Appian to meet the RTO or RPO in a month will be Subscriber's right to a 100% Service Credit against the Premier Support (including High Availability for Production) fees payable for that month.

d. **Issue** means, collectively, a Priority 1, Priority 2, Priority 3 or Priority 4 Issue.

i. **Priority 1 Issue** means a User is unable to access the login page on a production instance of the Cloud Offering using the User's then current username and password.

ii. **Priority 2 Issue** means a User is unable to operate the Core Functionality on a production instance of the Cloud Offering using the User's then current username and password.

iii. **Priority 3 Issue** means a functional feature of the Cloud Offering is impacted, but it is feasible to continue production/development, as the issue is not critical or a workaround is feasible.

iv. **Priority 4 Issue** means all other issues which are not Priority 1, 2 or 3.

e. **Proactive Guidance** means advice from an Appian lead engineer on issues that may affect performance of Subscriber's instance of the Cloud Offering.

**2. SERVICE OBLIGATIONS** - Appian's service obligations are dependent on Subscriber's level of Service, as set forth in the following chart:

Type	Standard	Premier
Maintenance Services contacts	2	12
Online case management	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Phone support	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Live screen sharing	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Discussion forums	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Knowledge base	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Business hours support	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
24x7x365 support		<input checked="" type="checkbox"/>
High Availability for Production RTO: 15 minutes RPO: 1 minute		<input checked="" type="checkbox"/>
Lead engineer		<input checked="" type="checkbox"/>
Proactive Guidance		<input checked="" type="checkbox"/>
New release planning		<input checked="" type="checkbox"/>
Bring Your Own Encryption Key		<input checked="" type="checkbox"/>
Enhanced Data Pipeline*		<input checked="" type="checkbox"/>
Log Streaming*		<input checked="" type="checkbox"/>

\*features are described at docs.appian.com

Case Severity	Standard Response Time	Premier Response Time
Priority 1	<1 business hour	<15 minutes (24x7x365)
Priority 2	<2 business hours	<1 hour (24x7x365)
Priority 3	<8 business hours	<3 business hours
Priority 4	<12 business hours	<6 business hours

a. **Response Measurements** - Appian will use commercially reasonable efforts to respond to Issues within the response times listed. A Priority 1 or 2 Issue shall be deemed reported, and Appian’s response time shall commence, once Subscriber reports the issue as a Priority 1 or 2 issue using Appian’s authorized telephone support number. A Priority 3 Issue or Priority 4 Issue shall be deemed reported, and Appian’s response period shall commence, once Subscriber reports the Priority 3 Issue or Priority 4 Issue using any authorized methods for requesting Technical Support. Appian will be deemed to have responded to an Issue once it responds that it has received the Issue (an automated email response shall not count as a response). Business hours are 8:00 a.m. to 8:00 p.m. (US ET), Monday through Friday, excluding Appian holidays.

b. **Availability** - Subject to the exclusions noted below, if in any given month Subscriber reports a Priority 1 or 2 Issue, and it takes Appian longer than the percentage of time occurring in the applicable month noted below (“Aggregate Availability”) to provide a corresponding Correction in

accordance with the applicable Technical Support service hours, Appian will provide Subscriber with a credit of the percentage of the applicable monthly subscription fee in effect during the applicable month in the amount described below (each such credit is referred to as a "Service Credit"). The Aggregate Availability for Priority 1 Issues is calculated as 100 percent minus the quotient of the time required by Appian to provide Corrections for all Priority 1 Issues reported in a month, divided by the total number of minutes occurring in that month. Likewise, the Aggregate Availability for Priority 2 Issues is calculated as 100 percent minus the quotient of the time required by Appian to provide Corrections for all Priority 2 Issues reported in a month divided by the total number of minutes occurring in that month. The Service Credits are Appian's exclusive obligation, and Subscriber's sole remedy associated with any Issues. A Priority 1 Issue may not be reported both as a Priority 1 and a Priority 2 Issue.

Priority Level	Monthly Availability %	Service Credit*
Priority 1	<99.95% but ≥ 99.0%	10%
	<99.0%	30%
Priority 2	<99.0%	15%

\*Credit percentages are as a percentage of monthly applicable Subscription Fee. If the Subscription Fee for the Cloud Offering is paid other than monthly, the monthly subscription fee shall be calculated as the pro rata equivalent of one month of the subscription fee specified in the applicable Order Form.

c. **Requesting Service Credits** - Subscriber must request Service Credits, in writing, within 30 calendar days after Appian provides the corresponding Correction. Service Credits not requested within this time shall expire.

d. **Exclusions.** Issues caused by any of the following situations shall not trigger Appian's obligations under this Service Level Agreement:

- i. Any time the Cloud Offering is not available as a result of scheduled maintenance activities, Subscriber initiated maintenance or any other agreed-to scheduled downtime activity;
- ii. Unavailability of or errors in the Cloud Offering due to the following, to the extent developed by or incorporated by Subscriber or its agents: (I) modifications or plug-ins to the Cloud Offering, or (II) unsupported programming, unsupported integrations or malicious activities;
- iii. Unavailability of or errors in the Cloud Offering as a result of Subscriber using the Cloud Offering contrary to the then current Documentation;
- iv. Events outside Appian's reasonable control, not caused by Appian's fault or negligence, or Subscriber provided infrastructure or integration being unavailable;
- v. Any time the Cloud Offering is not available as a result of Subscriber exceeding the resources allocated under the applicable Order Form, as described in the configuration and associated infrastructure section of the Order Form.

e. **Termination** - Subscriber may terminate the Agreement for cause if Appian refunds to Subscriber the maximum amount of Service Credits to Subscriber for Priority 1 Issues in any two consecutive months, provided Subscriber notifies Appian of its intent to elect this remedy, in writing, within 30 calendar days after the second month.



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## APPIAN SUPPLEMENTAL TERMS

### *Infrequent user (403-17500):*

**Cloud Subscription -** A Cloud Infrequent User is a user that accesses a single application no more than four times per month. If a Cloud Infrequent User's access extends from one day to another, each day counts as an access.

### *On-premises Infrequent User (402-17500):*

**On Premises Term License -** An On Premises Infrequent User is allowed to access a single application up to four times per month. If an On-Premises Infrequent User's access extends from one day to another, each day counts as an access.

### *Input-Only External User (403-16500):*

**Cloud Subscription -** A Cloud Input-Only External User is a person external to Subscriber's organization who may use the Cloud Offering to submit forms or requests only to a single Appian application. Cloud Input-Only External User may not engage in approval processes, complete tasks, or use the Cloud Offering for any purpose other than form submission.

### *Input-Only External User(402-16500):*

**On-premise License -** An On-Premises Input-Only External User is a person outside of Customer's organization that may use the Appian Software to submit forms or requests only to a single Appian application. On-Premises Input-Only External Users may not engage in approval processes, complete tasks, or use the Appian Software for any purpose other than form submission.

### *APPIAN WORKFORCE SAFETY CLOUD TERMS (403-25203):*

**Subscription and Restrictions.** The Appian Workforce Safety Subscription allows Subscriber to deploy, customize, configure, and maintain the Appian Workforce Safety Application (“Application”) in the Cloud Offering for use with respect to managing the processes of managing issues arising from crisis response and return-to-work after crises, including employee readiness case management, return to work screening and rules application, and readiness certification as described in the documentation for the Application. Appian will provision Subscriber with the objects and files necessary to deploy the Application. Subscriber may deploy the Application for

an unlimited number of employees and independent contractors working at the Subscriber's facilities and offices. Subscriber's use of the Application is subject to the same subscription terms and restrictions that apply to Subscriber's usage of the baseline Cloud Offering under the Agreement. The Application is considered Appian confidential information as that term is defined in the Agreement. Appian will indemnify Subscriber from third party intellectual property infringement claims arising from Subscriber's authorized use of the Application, subject to the same indemnification terms and restrictions that apply to Subscriber's use of the Cloud Offering under the Agreement.

**Defect Correction.** If, during the Subscription Period, the Application materially fails to conform to the Application's specific documentation at docs.appian.com (an "Application Defect") and Appian is able to reproduce the Application Defect in the version of the Application provided to the Subscriber, Appian will use commercially reasonable efforts to provide a correction ("Corrected Application").

**Updates.** Appian will provide Subscriber with access to any updates to the Application made generally available to Subscribers of the Application ("Application Update") during the Subscription Period.

**Disclaimers.** Appian is not responsible for installing any Corrected Application or Application Update. Subscriber is solely responsible for any customizations that it may make to the Application ("Subscriber Customizations"). Notwithstanding the generality of the foregoing, Appian is not responsible for modifying any Subscriber Customizations to make it operate with any Corrected Application or any Application Update. The Application may contain form questionnaires or documentation rules associated with return to work eligibility. Any pre-loaded forms, rules and questionnaires are for information purposes only and provided solely to accelerate Subscriber's configuration of the Application. Subscriber is solely responsible for the determination of the appropriateness of the return to work criteria deployed in the Application, and their adherence to local and national laws and regulations. The pre-loaded forms and rules are not medical or legal advice. Appian warrants that the Application will, for a period of sixty

(60) days from the date of your receipt, perform substantially in accordance with Application written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Other than the limited obligations stated in these terms, Appian disclaims all express or implied warranties with respect to the Application, including but not limited to the implied warranties of fitness for a specific or general purpose or merchantability.

**Google Maps API.** During the initial three months of the Subscription Period, Appian will provision Subscriber with a temporary Google Maps API key to display or verify locations using Google Maps within the Application. If Subscriber wishes to continue usage of Google Maps within the Application after the initial three months, Subscriber is responsible for obtaining and updating the Appian application with a Google Maps API key on its own account per the Documentation.



**Appian Workforce Safety Subscription Billing and Cancellation Terms.** The Appian Workforce Safety Subscription will be invoiced on a quarterly basis, in advance. The first payment is due on the Effective Date. Subscriber may cancel its Appian Workforce Safety Subscription effective ninety (90) days after written notice of cancellation to Appian. Provided further, however, that Subscriber is required to pay fees through the end of the quarter during which the effective date of the termination occurs.

***APPRIAN WORKFORCE SAFETY ON-PREMISES TERMS (402-25203):***

**License and Restrictions.** The Apprian Workforce Safety License allows Customer to deploy, customize, configure, and maintain the Apprian Workforce Safety Application (“Application”) in the Apprian Software for use with respect to managing the processes of managing issues arising from crisis response and return-to-work after crises, including employee readiness case management, return to work screening and rules application, and readiness certification as described in the documentation for the Application. Apprian will provision Customer with the objects and files necessary to deploy the Application. Customer may deploy the Application for an unlimited number of employees and independent contractors working at the Customer’s facilities and offices. Customer’s use of the Application is subject to the same subscription terms and restrictions that apply to Customer’s usage of the baseline Apprian Software under the Agreement. The Application is considered Apprian confidential information as that term is defined in the Agreement. Apprian will indemnify Customer from third party intellectual property infringement claims arising from Customer’s authorized use of the Application, subject to the same indemnification terms and restrictions that apply to Customer’s use of the Apprian Software under the Agreement.

**Defect Correction.** If, during the Subscription Period, the Application materially fails to conform to the Application’s specific documentation at docs.apprian.com (an “Application Defect”) and Apprian is able to reproduce the Application Defect in the version of the Application provided to the Customer, Apprian will use commercially reasonable efforts to provide a correction (“Corrected Application”).

**Updates.** Apprian will provide Customer with access to any updates to the Application made generally available to Customers of the Application (“Application Update”) during the License Period.

**Disclaimers.** Apprian is not responsible for installing any Corrected Application or Application Update. Customer is solely responsible for any customizations that it may make to the Application (“Customer Customizations”). Notwithstanding the generality of the foregoing, Apprian is not responsible for modifying any Customer Customizations to make it operate with any Corrected Application or any Application Update. The Application may contain form questionnaires or documentation rules associated with return to work eligibility. Any pre-loaded forms, rules and questionnaires are for information purposes only and provided solely to accelerate Customer’s configuration of the Application. Customer is solely responsible for the determination of the appropriateness of the return to work criteria deployed in the Application, and their adherence to local and national laws and regulations. The pre-loaded forms and rules are not medical or legal advice. Apprian warrants that the Application will, for a period of sixty

(60) days from the date of your receipt, perform substantially in accordance with Application written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Appian disclaims all express or implied warranties with respect to the Application, including but not limited to the implied warranties of fitness for a specific or general purpose or merchantability.

**Appian Workforce Safety License Billing and Cancellation Terms.** The Appian Workforce Safety License will be invoiced on a quarterly basis, in advance. The first payment is due on the Effective Date. Customer may cancel its Appian Workforce Safety License effective ninety days after written notice of cancellation to Appian. Provided further, however, that Customer is required to pay fees through the end of the quarter during which the effective date of the termination occurs.

**Google Maps API.** During the initial three months of the License Period, Appian will provision Customer with a temporary Google Maps API key to display or verify locations using Google Maps within the Application. If Customer wishes to continue usage of Google Maps within the Application after the initial three months, Customer is responsible for obtaining and updating the Appian application with a Google Maps API key on its own account per the Documentation.

***Appian Rpa Terms (SKU 403-27000, 403-25000, 402-25000):***

**Appian RPA Subscription.** The Appian RPA Subscription grants Subscriber a license to use the Appian RPA Software pursuant to the same license terms and conditions that apply to Subscriber's license to use the Cloud Offering, subject to the following additional terms and restrictions. The Appian RPA Software contains four components: (1) the Appian RPA Console, a cloud based application which Subscriber may use and access over the Internet to deploy new robotic processes, manage resources, review data and metrics, and configure platform settings; (2) the Appian RPA Server, a cloud based service that Subscriber can use and access over the Internet to execute robotic processes and deploy RPA code; (3) the Appian RPA integrated developer environment, which Subscriber can install on Subscriber's computers and/or servers to develop Appian RPA robots; and (4) Appian RPA Agents, which Subscriber can download, install and deploy on Subscriber's computers and/or servers. Subscriber may use the Appian RPA Subscription to deploy an unlimited number of Appian RPA Robots. Additional cloud infrastructure may be necessary to deploy additional Appian RPA robots, and must be purchased separately.

**Subscription and Usage Requirement.** Subscriber may only use the RPA Software in connection with applications built on the Cloud Offering and during Subscriber's license to use the Cloud Offering.

**Support.** Any material non-conformity between the operation of the Appian RPA Software and Appian's corresponding documentation is considered an Issue and subject to resolution under Appian's Service Level Agreement. Subscriber is responsible for correcting defects in the Appian RPA robots created by Subscriber and its contractors. Notwithstanding anything to the contrary in the Service Level Agreement, Appian may, without liability to Subscriber, conduct scheduled downtime on the Appian RPA Software for up to ten (10) minutes each day. Appian will make reasonable efforts to schedule such maintenance at times that will minimize the impact on its subscribers' authorized use of the Appian RPA Software.

*Deprecated payment terms.*

**Appian RPA Billing and Cancellation Terms.** Notwithstanding any other payment terms in this Order Form, the Appian RPA Subscription will be invoiced on a quarterly basis. The first payment is due on the Effective Date. Subscriber may cancel its Appian RPA Subscription effective ninety (90) days after written notice of cancellation to Appian. Provided further, however, that Subscriber is required to pay fees through the end of the quarter during which the effective date of the termination occurs.

***Quick Start Subscription Cloud (SKU #403-28000 & # 402-28000):***

**Quick Start Subscription.** The Quick Start Subscription permits Subscriber to provision up to three Application Writer Users to write an unlimited number of applications that may be deployed to an unlimited number of Users within Subscriber's organization, or external customers of Subscriber's business during the Subscription Period. At the end of the Subscription Period, should Subscriber choose to continue to use the applications deployed during the Subscription Period, the Subscriber will engage in the Renewal Process described below.

**Renewal Process.** At the end of the Subscription Period, Subscriber shall work in good faith with Appian to identify the applications developed by Subscriber during the Subscription Period, including the functions of such applications, the identity of the user groups for such applications, and each user group's usage of the application. The parties may then enter into a Renewal Order Form that identifies such applications and provides Subscriber with a flat application subscription (i.e., a subscription defined by application usage rather than user counts) for each such application. Appian shall not be required to provide Subscriber with a flat application subscription for any application that is in wireframe condition or not substantially completed prior to the end of the Quick Start Subscription Period. Following expiration of the Quick Start term, the Parties shall agree to an annual subscription fee based on GSA Schedule Price List. T

**Application Writer Users.** An Application Writer User is a User with access to the designer environment of the Cloud Offering that creates and revises applications, objects, and integrations and provisions Users and user groups. Subscriber may not activate and deactivate Application Writer User accounts for the purposes of sharing those accounts among multiple Users, although

Subscriber may re-assign Application Writer User accounts if the person assigned that account is permanently re-assigned, terminates their employment, or is similarly unable to continue in their capacity as an Application Writer User. User accounts created for testing purposes only do not count toward the Application Writer User account limit.

**Provisioning.** As a part of the Quick Start Subscription, Appian will provision and two standard Large non-production instances, each with 75 GB of storage. Subscriber is responsible for purchasing a production instance separately.

## ***Architect Services (SKU 411-71000 & 411-72000):***

### **Architect Services.**

Architect Services equips clients and partners with the tools and resources they need to build optimal solutions. Each customer is assigned an Account Architect and has access to a team of additional Appian experts who guide the customer in five core areas:

**Architecture Planning:** Assistance to plan their enterprise architecture with Appian.

**How To?:** Guidance on incorporating Appian's newest features and other technologies such as artificial intelligence, machine learning, and RPA.

**Technical Practices:** Assistance to establish technical practices to ensure successful projects. These activities include setting up automated testing and deployment, managing concurrent development, and establishing development and UX patterns and best practices.

**Developer Support:** Assistance with solution design, targeted application reviews, and on-demand development troubleshooting.

**Health Monitoring:** Assistance with Health Check and performance tuning to ensure applications are running optimally. Architect Services allows a customer to ask for assistance on as many matters as they'd like during their subscription period; however the service is available with two levels of service: 1 concurrent request and 3 concurrent requests.

Minimum period of performance is two-months (with auto-renewal) for partners or six months for clients.

Includes an assigned Account Architect focused on the customer's success. Account Architect serves as the primary contact, ensures high quality work for the account, and runs the weekly planning meeting.

Includes weekly planning meetings and up to one onsite visit per year.

Services are provided remotely from Appian offices.

Services are associated with a defined list of projects for a single account. This is especially important when Architect Services is sold to a partner.

Architect Services shall commence on the Order Effective Date, unless a Start Date is stated in the Order Terms above, and continue for the number of months set forth above. The Services shall be provided as described in the Architect Services General Terms and Conditions attached to this Order Form. Upon the expiration of the initial term during which the Architect Services are purchased, as described above, the Architect Services shall renew for consecutive terms of the same duration and at the same terms and pricing that applied during the initial term. The Architect Services shall not renew for an additional term if either party notifies the other party, in writing, of its desire to not renew the services at least 15 calendar days prior to the expiration of the then current term.

**Architect Services Payment.** The fees for Architect Services are due in advance for the entire term of the subscription to Architect Services, with the payment due on the Order Effective Date for the initial Subscription Period, and on the first day of each renewal Subscription Period thereafter.



**ATTIVO NETWORKS, INC.**  
47697 WESTINGHOUSE DR., SUITE 201  
FREEMONT, CA 94539

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Attivo Networks, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**ATTIVO NETWORKS, INC.**

**ATTIVO NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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**Version 3, 29 June 2007**

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The "source code" for a work means the preferred form of the work for making modifications to it. "Object code" means any non-source form of a work.

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The "Corresponding Source" for a work in object code form means all the source code needed to generate, install, and (for an executable work) run the object code and to modify the work, including scripts to control those activities. However, it does not include the work's System Libraries or general-purpose tools or generally available free programs which are used unmodified in performing those activities but which are not part of the work. For example, Corresponding Source includes interface definition files associated with source files for the work, and the source code for shared libraries and dynamically linked subprograms that the work is specifically designed to require, such as by intimate data communication or control flow between those subprograms and other parts of the work.

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Convey the object code in, or embodied in, a physical product (including a physical distribution medium), accompanied by the Corresponding Source fixed on a durable physical medium customarily used for software interchange.

Convey the object code in, or embodied in, a physical product (including a physical distribution medium), accompanied by a written offer, valid for at least three years and valid for as long as you offer spare parts or Ordering Activity support for that product model, to give anyone who possesses the object code either (1) a copy of the Corresponding Source for all the software in the product that is covered by this License, on a durable physical medium customarily used for software interchange, for a price more than your reasonable cost of physically performing this conveying of source, or (2) access to copy the Corresponding Source from a network server at no charge.

Convey individual copies of the object code with a copy of the written offer to provide the Corresponding Source. This alternative is allowed only occasionally and non-commercially, and only if you received the object code with such an offer, in accord with subsection 6b.

Convey the object code by offering access from a designated place (gratis or for a charge), and offer equivalent access to the Corresponding Source in the same way through the same place at no further charge. You need not require recipients to copy the Corresponding Source along with the object code. If the place to copy the object code is a network server, the Corresponding Source may be on a different server (operated by you or a third party) that supports equivalent copying facilities, provided you maintain clear directions next to the object code saying where to find the Corresponding Source. Regardless of what server hosts the Corresponding Source, you remain obligated to ensure that it is available for as long as needed to satisfy these requirements.

Convey the object code using peer-to-peer transmission, provided you inform other peers where the object code and Corresponding Source of the work are being offered to the general public at no charge under subsection 6d.

A separable portion of the object code, whose source code is excluded from the Corresponding Source as a System Library, need not be included in conveying the object code work.

A "User Product" is either (1) a "consumer product", which means any tangible personal property which is normally used for personal, family, or household purposes, or (2) anything designed or sold for incorporation into a dwelling. In determining whether a product is a consumer product, doubtful cases shall be resolved in favor of coverage. For a particular product received by a particular user, "normally used" refers to a typical or common use of that class of product, regardless of the status of the particular user or of the way in which the particular user actually uses, or expects or is expected to use, the product.

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The requirement to provide Installation Information does not include a requirement to continue to provide support service, warranty, or updates for a work that has been modified or installed by the recipient, or for the User Product in which it has been modified or installed. Access to a network may be denied when the modification itself materially and adversely affects the operation of the network or violates the rules and protocols for communication across the network.

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A "Combined Work" is a work produced by combining or linking an Application with the Library. The particular version of the Library with which the Combined Work was made is also called the "Linked Version".

The "Minimal Corresponding Source" for a Combined Work means the Corresponding Source for the Combined Work, excluding any source code for portions of the Combined Work that, considered in isolation, are based on the Application, and not on the Linked Version.

The "Corresponding Application Code" for a Combined Work means the object code and/or source code for the Application, including any data and utility programs needed for reproducing the Combined Work from the Application, but excluding the System Libraries of the Combined Work.

**1. Exception to Section 3 of the GNU GPL**

You may convey a covered work under sections 3 and 4 of this License without being bound by section 3 of the GNU GPL.

**2. Conveying Modified Versions**

If you modify a copy of the Library, and, in your modifications, a facility refers to a function or data to be supplied by an Application that uses the facility (other than as an argument passed when the facility is invoked), then you may convey a copy of the modified version:

under this License, provided that you make a good faith effort to ensure that, in the event an Application does not supply the function or data, the facility still operates, and performs whatever part of its purpose remains meaningful, or

under the GNU GPL, with none of the additional permissions of this License applicable to that copy.

**3. Object Code Incorporating Material from Library Header Files**

The object code form of an Application may incorporate material from a header file that is part of the Library. You may convey such object code under terms of your choice, provided that, if the incorporated material is not limited to numerical parameters, data structure layouts and accessors, or small macros, inline functions and templates (ten or fewer lines in length), you do both of the following:

Give prominent notice with each copy of the object code that the Library is used in it and that the Library and its use are covered by this License.

Accompany the object code with a copy of the GNU GPL and this license document.

**4. Combined Works**

You may convey a Combined Work under terms of your choice that, taken together, effectively do not restrict modification of the portions of the Library contained in the Combined Work and reverse engineering for debugging such modifications, if you also do each of the following:

Give prominent notice with each copy of the Combined Work that the Library is used in it and that the Library and its use are covered by this License.

Accompany the Combined Work with a copy of the GNU GPL and this license document.

For a Combined Work that displays copyright notices during execution, include the copyright notice for the Library among these notices, as well as a reference directing the user to the copies of the GNU GPL and this license document.

Do one of the following:

Convey the Minimal Corresponding Source under the terms of this License, and the Corresponding Application Code in a form suitable for, and under terms that permit, the user to recombine or relink the Application with a modified version of the Linked Version to produce a modified Combined Work, in the manner specified by section 6 of the GNU GPL for conveying Corresponding Source.

Use a suitable shared library mechanism for linking with the Library. A suitable mechanism is one that (a) uses at run time a copy of the Library already present on the user's computer system, and (b) will operate properly with a modified version of the Library that is interface-compatible with the Linked Version.

Provide Installation Information, but only if you would otherwise be required to provide such information under section 6 of the GNU GPL, and only to the extent that such information is necessary to install and execute a modified version of the Combined Work produced by recombining or relinking the Application with a modified version of the Linked Version. (If you use option 4d0, the Installation Information must accompany the Minimal Corresponding Source and Corresponding Application Code. If you use option 4d1, you must provide the Installation Information in the manner specified by section 6 of the GNU GPL for conveying Corresponding Source.)

**5. Combined Libraries**

You may place library facilities that are a work based on the Library side by side in a single library together with other library facilities that are not Applications and are not covered by this License, and convey such a combined library under terms of your choice, if you do both of the following:

Accompany the combined library with a copy of the same work based on the Library, uncombined with any other library facilities, conveyed under the terms of this License.

Give prominent notice with the combined library that part of it is a work based on the Library, and explaining where to find the accompanying uncombined form of the same work.

**6. Revised Versions of the GNU Lesser General Public License**

The Free Software Foundation may publish revised and/or new versions of the GNU Lesser General Public License from time to time. Such new versions will be similar in spirit to the present version, but may differ in detail to address new problems or concerns. Each version is given a distinguishing version number. If the Library as you received it specifies that a certain numbered version of the GNU Lesser General Public License "or any later version" applies to it, you have the option of following the terms and conditions either of that published version or of any later version published by the Free Software Foundation. If the Library as you received it does not specify a version number of the GNU Lesser General Public License, you may choose any version of the GNU Lesser General Public License ever published by the Free Software Foundation. If the Library as you received it specifies that a proxy can decide whether future versions of the GNU Lesser General Public License shall apply, that proxy's public statement of acceptance of any version is permanent authorization for you to choose that version for the Library.

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Version 2.0, January 2004

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"License" shall mean the terms and conditions for use, reproduction, and distribution as defined by Sections 1 through 9 of this document.

"Licensor" shall mean the copyright owner or entity authorized by the copyright owner that is granting the License.

"Legal Entity" shall mean the union of the acting entity and all other entities that control, are controlled by, or are under common control with that entity. For the purposes of this definition, "control" means (i) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (ii) ownership of fifty percent (50%) or more of the outstanding shares, or (iii) beneficial ownership of such entity.

"You" (or "Your") shall mean an individual or Legal Entity exercising permissions granted by this License.

"Source" form shall mean the preferred form for making modifications, including but not limited to software source code, documentation source, and configuration files.

"Object" form shall mean any form resulting from mechanical transformation or translation of a Source form, including but not limited to compiled object code, generated documentation, and conversions to other media types.

"Work" shall mean the work of authorship, whether in Source or Object form, made available under the License, as indicated by a copyright notice that is included in or attached to the work (an example is provided in the Appendix below).

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**AUTHENTIC8**  
201 SAN ANTONIO CIRCLE SUITE 245  
MOUNTAIN VIEW, CA 94040

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

**Scope.** This Rider and the attached **Authentic8** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract").

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The Government Customer is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

**Choice of Law.** Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

**Force Majeure.** Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

**Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

**Customer Indemnities.** Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

**Contractor Indemnities.** All Manufacturer Specific Terms that (1) violate DOJ's jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

**Renewals.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

**Future Fees or Penalties.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.

**Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.

**Installation and Use of the Software.** Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Dispute Resolution and Venue.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS  
AUTHENTIC8**

**AUTHENTIC8 LICENSE, WARRANTY AND SUPPORT TERMS**

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**Authentic8 Terms of Service as of 6 July 2012**

Legalese can be tedious and heavy. Authentic8 wants to deliver a valuable service, but there are some basic ground rules, which are described below. You need to read the complete document, but basically:

When you register to use Authentic8, we store the information you give us, including any website credentials that you chose to store with us.

Should you store your credentials with us, Authentic8 will help you log in to your web-based accounts. Our servers do this automatically, and we will never access your credentials unless you tell us to.

We can't always anticipate problems with other websites or web services, and so we can't be responsible for your relationship with those third parties.

Please don't attempt to decompile or otherwise reverse engineer our software.

Likewise, we take a rather dim view of someone trying to hack or spoof Authentic8 so please don't try to attack our service.

Please don't do anything illegal using Authentic8. We reserve the right to report illegal activities to the appropriate law enforcement or civil authorities.

If you're an administrator, you agree that all your users will be bound by these terms.

We believe in rapid iteration, and so we're always updating Authentic8, including the App software you install on your computer. We do this to give you access to new features, as well as to constantly improve security. When we make changes, we'll do our best to inform you.

That is essentially it. The full legal text is below—and you should review it—but we wanted to give you some plain language up front. Thanks for reading.

Authentic8, Inc. ("Authentic8," "we" or "our") provides an internet security service through our website, accessible at [www.authentic8.com](http://www.authentic8.com) and our Authentic8 App software (together the "Authentic8 Service"). Please read carefully the following terms and conditions ("Terms") and our Privacy Policy, which may be found at <http://www.authentic8.com/privacy/>. These Terms govern your access to and use of the Authentic8 Service and constitute a binding legal agreement between the Ordering Activity and Authentic8. If you accept these Terms or use the Authentic8 Service on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms and, in such event, "you" and "your" will refer and apply to that company or other legal entity. If you have been granted access to and use of the Authentic8 Service by and on behalf of the primary account holder, whether directly or through an administrator, you also agree to abide by these Terms.

**YOU ACKNOWLEDGE AND AGREE THAT, BY EXECUTING THIS AGREEMENT IN WRITING, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE AUTHENTIC8 SERVICE.**

**Acknowledgment and Disclaimer**

You acknowledge that the Authentic8 Service may not be in final form or fully functional and may not operate properly or contain errors. You assume all risk arising from use of the Authentic8 Service including, without limitation, the risk of damage to your computer system or the corruption or loss of content or information.

Authentic8 warrants that the Services will be performed substantially in accordance with the SOFTWARE written materials accompanying it. In the event that the Services do not perform in accordance with SOFTWARE written materials accompanying it due to reasons within Authentic8's control, for a period of sixty (60) days Authentic8 will repair the service in order to bring it into accordance, or provide a refund of subscription fees. Authentic8 Services warrants that the services will, for a period of sixty(60) days from the date of your receipt, will be performed in accordance with the terms and conditions of the GSA Schedule Contract. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, The Authentic8 Service is provided "AS IS," without warranty of any kind. Authentic8 makes no representations or warranties regarding the suitability of the Authentic8 Service for your intended requirements or purposes or regarding any data or information that you download or access through the use of the Authentic8 Service.

**Feedback**

You agree that all feedback and comments and suggestions for improvements to the Authentic8 Service (collectively, "Feedback") provided to Authentic8 will be the sole and exclusive property of Authentic8 and you hereby assign to Authentic8 and agree to assign to Authentic8 all of your right, title, and interest in and to all Feedback, including all intellectual property rights therein. At Authentic8's request and expense, you will execute documents and take such further acts as Authentic8 may reasonably request to assist Authentic8 to acquire, perfect and maintain its intellectual property rights and other legal protections for the Feedback.

## Eligibility

The Authentic8 Service is intended solely for persons who are 18 or older. Any access to or use of the Authentic8 Service by anyone under 18 is expressly prohibited. By accessing or using the Authentic8 Service you represent and warrant that you are 18 or older.

## Registration

Past a trial period designated by Authentic8, you may only use the Authentic8 Service if you have a current, valid subscription. In order to use the Authentic8 Service, you must register to create an Authentic8 user account. During the registration process, you will be required to provide certain information and you will establish a username and a password. You agree to provide accurate, current and complete information during the registration process and to update such information to keep it accurate, current and complete. You are responsible for safeguarding your login credentials. You agree not to disclose your login credentials to any third party and to take sole responsibility for any activities or actions under your user account, whether or not you have authorized such activities or actions, including actions taken by users to whom you have granted access and use of the Authentic8 Service on your behalf, directly or through your account administrators. You will immediately notify Authentic8 of any unauthorized use of your user account.

## Third Party Websites – Account Information

As a registered user of the Authentic8 Service, you may have the option of providing Authentic8 with login information and credentials, including but not limited to usernames and passwords, and other account information for your personal accounts with certain third party websites, in order to allow Authentic8 to use, store and submit your credentials on your behalf to access your accounts with such third party websites. By providing Authentic8 with such credentials, you understand and agree that Authentic8 will use, store and submit your credentials on your behalf, in order to provide the Authentic8 Service in accordance with your user account settings. You have the ability to disable the storage and submission of your credentials for your account with any third party website at any time by adjusting your Authentic8 user account settings. PLEASE NOTE THAT YOUR RELATIONSHIP WITH EACH THIRD PARTY WEBSITE IS GOVERNED BY THE AGREEMENT YOU HAVE WITH SUCH THIRD PARTY WEBSITE. ANY RISK OF LOSS RELATING TO THE USE OF SUCH THIRD PARTY WEBSITES REMAINS ENTIRELY WITH YOU. You acknowledge and agree that Authentic8 is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

Authentic8 cannot always anticipate technical or other problems with third party websites which may result in service interruptions, a loss of your personalization settings or an inability to submit your credentials on your behalf. Authentic8 cannot assume responsibility for the deletion, non-delivery or failure to store or submit on your behalf any of your credentials, or loss of other information or settings on such third party websites.

## Rights You Grant to Authentic8

By submitting your credentials for third party websites to Authentic8, you hereby authorize Authentic8 to use, store and submit such credentials on your behalf, log into such third party websites on your behalf and to configure the Authentic8 Service so that it is compatible with such third party websites. Authentic8 may use, store and submit such credentials on your behalf, but only to the extent necessary to provide the Authentic8 Service to you. You represent and warrant that you are entitled to submit such credentials to Authentic8 for this purpose, without any obligation by Authentic8 to pay any fees or other limitations.

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## Software

We reserve the right to add additional features or functions to the Authentic8 Service, including the Authentic8 App. When installed on your computer, the Authentic8 App communicates with our servers. We may require the updating of the Authentic8 App when we release a new version, or when we make new features available. This update may occur automatically or upon prior notice to you and may occur all at once or over multiple sessions. You acknowledge and agree that we have no obligation to make available to you any subsequent versions of the Authentic8 App.

Conditioned upon your compliance with the terms and conditions of these Terms and during the trial period and term of your subscription to use the Authentic8 Service only, Authentic8 grants you a non-exclusive and non-transferable license for a single user to use the executable form of the Authentic8 App on a computer owned or controlled by you, solely for your personal, non-commercial purposes, as described herein. Authentic8 reserves all rights not expressly granted to you in this Agreement. The license to the Authentic8 App granted under these Terms remains in effect unless earlier terminated in accordance with these

Terms. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Authentic8 shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

## Restrictions

Except as expressly specified in these Terms, you agree not to modify the Authentic8 App, including but not limited to adding new features or otherwise making adaptations that alter its functionality. You agree to not use or allow others to use the Authentic8 application except in conjunction with an

authorized subscription from Authentic8. You acknowledge and agree that portions of the Authentic8 Service, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Authentic8 and its licensors. Accordingly, you agree not to disassemble, decompile or reverse engineer the Authentic8 Service, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition.

#### Payment Terms

Authentic8 offers new users a free trial to use the Authentic8 Service, which begins on the first day you register to use the Authentic8 Service (the "Trial"). Authentic8 may offer various account levels and subscription terms. A description of the features associated with these account levels, subscription terms and fees are available by contacting sales@authentic8.com. You agree to pay the applicable subscription fees that may accrue in relation to your use of the Authentic8 Service, if any, and you expressly agree that we are authorized to charge your Method of Payment for such amounts. Subscription fees will be payable in advance in accordance with the subscription term and billing cycle designated at enrollment, or subsequently established through your account page or otherwise in writing with Authentic8. Unless you cancel your Account prior to the end of the then current subscription term, your subscription term will automatically renew. For accounts set up on an invoice basis, unless an alternate billing cycle is established, you agree to pay all amounts stated in such invoices within thirty (30) days of receipt of the invoice. For corporate accounts, you will be charged additional fees as additional users are added to your account after the 30 day Trial with each user. All fees are non-refundable and non-transferable except as expressly provided in these Terms. All fees and applicable taxes, if any, are payable in United States dollars. Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Authentic8 shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

#### Privacy

See Authentic8's Privacy Policy at <http://www.authentic8.com/privacy/> for information and notices concerning Authentic8's collection and use of your personal information.

#### Ownership

The Authentic8 Service is protected by copyright, trademark, and other laws of the United States and foreign countries. Except as expressly provided in these Terms, Authentic8 and its licensors exclusively own all right, title and interest in and to the Authentic8 Service, including all associated intellectual property rights. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Authentic8 Service.

#### User Content

Users may have the ability to post, upload, publish, submit or transmit text, graphics, images, information or other materials to be made available through the Service ("User Content"). By making available any User Content through the Service, you hereby grant to Authentic8 a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast and otherwise exploit such User Content only on, through or by means of the Service. Authentic8 does not claim any ownership rights in any such User Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit any such User Content.

You acknowledge and agree that you are solely responsible for all User Content that you make available through the Service. Accordingly, you represent and warrant that: (i) you either are the sole and exclusive owner of all User Content that you make available through the Service or you have all rights, licenses, consents and releases that are necessary to grant to Authentic8 the rights in such User Content, as contemplated under these Terms; and (ii) neither the User Content nor your posting, uploading, publication, submission or transmittal of the User Content or Authentic8's use of the User Content (or any portion thereof) on, through or by means of the Service will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

#### General Prohibitions

You agree not to do any of the following:

Post, upload, publish, submit or transmit any text, graphics, images, software, music, audio, video, information or other material that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any other person; or (vii) promotes illegal or harmful activities or substances.

Use, display, mirror or frame the Authentic8 Service, or any individual element within, Authentic8's name, any Authentic8 trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Authentic8's express written consent;

Access, tamper with, or use non-user areas of the Authentic8 Service, Authentic8's computer systems, or the technical delivery systems of Authentic8's providers;

Attempt to probe, scan, or test the vulnerability of any Authentic8 system or network or breach any security or authentication measures;

Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Authentic8 or any of Authentic8's providers or any other third party (including another user) to protect the Authentic8 Service;

Attempt to access or search the Authentic8 Service or download information or data from the Authentic8 Service through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Authentic8 or other generally available third party web browsers;

Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;

Use any meta tags or other hidden text or metadata utilizing a Authentic8 trademark, logo URL or product name without Authentic8's express written consent;

Use the Authentic8 Service for any commercial purpose or the benefit of any third party or in any manner not permitted by these Terms;

Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Authentic8 Service to send altered, deceptive or false source-identifying information;

Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Authentic8 Service;

Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Authentic8 Service;

Collect or store any personally identifiable information from Authentic8 Service from other users of the Authentic8 Service without their express permission;

Impersonate or misrepresent your affiliation with any person or entity;

Violate any applicable law or regulation; or

Encourage or enable any other individual to do any of the foregoing.

Authentic8 will have the right to investigate and prosecute violations of any of the above to the fullest extent of the law. Authentic8 may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms. You acknowledge that Authentic8 has no obligation to monitor your access to or use of the Authentic8 Service or to review or edit any User Content, but has the right to do so for the purpose of operating the Authentic8 Service, to ensure your compliance with these Terms, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body.

Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Copyright Policy

Authentic8 respects copyright law and expects its users to do the same. Please see Authentic8's Copyright Policy at [www.authentic8.com/copyright](http://www.authentic8.com/copyright) for further information.

#### Proprietary Rights Notices

All trademarks, service marks, logos, trade names and any other proprietary designations of Authentic8 used herein are trademarks or registered trademarks of Authentic8. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective parties.

#### Controlling Law and Jurisdiction

These Terms and any action related thereto will be governed by the Federal laws of the United States without regard to its conflict of laws provisions.

#### Entire Agreement

These Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), constitute the entire and exclusive understanding and agreement between Authentic8 and you regarding the Authentic8 Service, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Authentic8 and you regarding the Authentic8 Service.

#### Assignment

You may not assign or transfer these Terms, by operation of law or otherwise, without Authentic8's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and of no effect. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

#### Notices

Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms, will be in writing and given: (i) by Authentic8 via email (in each case to the address that you provide) or (ii) by posting to your user account page. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

#### General

The failure of Authentic8 to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Authentic8. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

#### Contacting Authentic8

If you have any questions about these Terms, please contact Authentic8 at [support@authentic8.com](mailto:support@authentic8.com).



**SUBSCRIPTION SERVICES AGREEMENT**

This Agreement (this "**Agreement**") is entered into between Authentic8, Inc. ("**Authentic8**") and the company identified below ("**Ordering Activity**") and is effective as of the date signed by Authentic8 below (the "**Effective Date**").

Company:		Address:	
Contact:			

**ORDER FORM**

<b>SUBSCRIPTION TERMS</b>	
Authentic8 Service:	<i>Enter service description depending on use case: locked down, escape valve, Toolbox</i>
Subscription Term:	12 months
Start Date:	ENTER THE DATE THAT THIS AGREEMENT IS SIGNED
Auto-renew:	N/A
Subscription Fees:	\$__ per Authorized User per year Subscription Fees represent direct fulfillment from Authentic8 to Ordering Activity, and are net of any Reseller or other fulfillment partner fees.
Authorized Users:	Enter contracted number
Additional Users:	\$__ per additional Authorized User per year
Annualized Contract Value:	
Access Terms:	Describe any conditions or restrictions around accessing Silo, the need for login credentials (if any), account sharing, number of devices etc.
Additional Terms:	Enter or say none.
Support Terms:	Ordering Activity will provide direct first tier support to Authorized Users Authentic8 will provide second tier support escalation to Ordering Activity via email and phone during the regular business hours of: 9am-6pm (Pacific Time), Monday-Friday (excluding national holidays). Authentic8 Service availability will be governed by <b>Exhibit A</b> , Support Terms and Service Availability

This Agreement is subject to the attached terms and conditions, which is a part of this Agreement. By executing this Agreement, Ordering Activity agrees to be bound by those terms and conditions for the use of the Authentic8 Service. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**ORDERING ACTIVITY**

**AUTHENTIC8**



By: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Title: Title: \_\_\_\_\_

Date: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Authentic8, Inc. | 201 San Antonio Circle, Suite 245, Mountain View, CA 94040 | [www.authentic8.com](http://www.authentic8.com) **AUTHENTIC8 SERVICE**

**TERMS AND CONDITIONS**

The following terms and conditions govern the access and use of the cloud-based security service provided by Authentic8 (the "**Authentic8 Service**") during the subscription term and any renewal term (the "**Subscription Term**"), as described in the attached order form to this Agreement (the "**Order Form**").

**1. AUTHORIZED USERS**

1.1 Ordering Activity will determine the access controls for its employees and agents who are authorized to use the Authentic8 Service ("**Authorized Users**") in connection with Ordering Activity's account. The Authentic8 Service may only be accessed and used by Authorized Users from compatible devices and may require login credentials, the use of which will be governed by the access terms in the associated Order Form. Ordering Activity is responsible for the activity occurring under its account by its Authorized Users (and their compliance with this Agreement).

1.2 Ordering Activity may from time to time replace an Authorized User who has terminated or changed their job status or function, or otherwise no longer requires use of the Authentic8 Service. Ordering Activity may add Authorized Users to its account at any time during the Subscription Term. Ordering Activity may only decrease the number of Authorized Users at the end of the Subscription Term (prior to the renewal). Authentic8 shall invoice Ordering Activity for any Authorized Users added during the Subscription Term in excess of the contracted number according to the terms set forth in the applicable Purchase Order.

**2. AUTHENTIC8 SERVICE**

2.1 Subject to the terms and conditions of this Agreement, Ordering Activity may access and use the Authentic8 Service for its business purposes during the Subscription Term and in accordance with the terms and limitations set forth in the Order Form.

2.2 In order to use the Authentic8 Service, each Authorized User must download the Authentic8 client software application (the "**Authentic8 App**") from the Authentic8 website or the applicable app store and install it on each device that will use the Authentic8 Service. Ordering Activity agrees to stay current with latest version of the Authentic8 App, and acknowledges that Authentic8 reserves the right to deprecate older versions of the Authentic8 App subject to notification. Ordering Activity will only allow the installation the Authentic8 App on compatible devices that are supported by Authentic8. Ordering Activity and its Authorized Users may not modify, alter, decompile or reverse engineer the Authentic8 App.

**3. USE OF THE AUTHENTIC8 SERVICE**

3.1 Ordering Activity, and/or its Authorized Users may provide Authentic8 with certain login and other account information for websites and web-based applications that Authorized Users will access through the Authentic8 Service ("**Account Access Information**"). Authorized Users may only use the Authentic8 Service to access accounts for which they are authorized by Ordering Activity to access and use. By providing Account Access Information, the account owner (whether Ordering Activity or its Authorized Users) permits Authentic8 to use (and, if elected, store) the Account Access Information on behalf of the account owner. The account owner can remove any Account Access Information stored with the Authentic8 Service at any time. In no event shall Account Access Information associated with Authorized Users personal websites be accessible or made available to Ordering Activity. Authentic8 will maintain administrative and technical safeguards to protect the security and confidentiality of the Account Access Information stored in the Authentic8 Service in accordance with applicable industry standards; however, Ordering Activity, and its Authorized Users are ultimately responsible for taking appropriate steps to maintain the security and confidentiality of its Account Access Information.

3.2 Ordering Activity, and its Authorized Users, agree not to: (1) use the Authentic8 Service or other than as authorized in this Agreement; (2) resell, sublicense, or otherwise make the Authentic8 Service available to any third party; (3) use the Authentic8 Service to support any activity that is illegal or that violates the proprietary rights of others; (4) interfere with or disrupt the integrity or performance of the Authentic8 Service or any websites or web-based applications; (5) deactivate, impair, or circumvent any security or authentication measures of the Authentic8 Service or any websites or web-based applications; (6) access the Authentic8 Service for purposes of monitoring its performance or functionality; or (7) authorize any third parties to do the above.

3.3 Authentic8 is not responsible or liable for: (1) the availability, accuracy, or security of any websites or web-based applications accessed through the Authentic8 Service, (2) the content, products, or services on or available from those websites or web-based applications; or (3) the deletion, non-delivery or failure to store or submit Account Access Information, or a loss of other information or settings on the websites and web-based applications accessed through the Authentic8 Service.

**4. SUPPORT AND AVAILABILITY**

4.1 During the Subscription Term, Authentic8 will provide technical support for the Authentic8 Service according to the terms set forth in **Exhibit A** ("Support Terms and Service Availability"). Authentic8 will make the Authentic8 Service available in accordance with **Exhibit A** and will use reasonable efforts to maintain the Authentic8 Service in a manner that minimizes errors and service interruptions.

**5. SUBSCRIPTION FEES**

5.1 Authentic8 shall invoice Ordering Activity for the fees or charges for the Authentic8 Service as specified in the Order Form ("**Subscription Fees**"). All Subscription Fees are quoted in United States dollars. Subscription Fees for the contracted number of Authorized Users will be invoiced and are due within 30 days from the date of invoice, or as otherwise stated in the GSA Schedule Contract or Purchase Order(s). Incremental service fees incurred by adding Authorized Users during the Subscription Term will be invoiced according to the terms set forth in the GSA Schedule Contract and the Purchase Order. All payment obligations are non-cancelable and once paid are nonrefundable.

5.2 Authentic8 shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. 5.3 Authentic8 reserves the right to modify the Subscription Fees or introduce new fees at its discretion by providing 30 days prior notice to Ordering Activity. Notwithstanding the foregoing, any changes to the Subscription Fees will not apply to Ordering Activity's current Subscription Term, and will instead take effect at the beginning of the renewal term.

## RESERVED

### 7. TERMINATION

7.1 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Authentic8 shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

7.2 Upon any expiration or termination of this Agreement, Ordering Activity's right to access and use the Authentic8 Service will automatically terminate, and Ordering Activity may not continue to access or use the Authentic8 Service. Authentic8 will have no liability for any costs, losses, damages, or liabilities arising out of or related to Authentic8's exercise of its termination rights under this Agreement. Any payment obligations as of the expiration or termination (or that relate to activity during the Subscription Term) will remain in effect. The obligations and provisions of Sections 8 through 12 will survive any expiration or termination of the Agreement.

### 8. PROPRIETARY RIGHTS

8.1 Authentic8 owns all right, title and interest in and to the Authentic8 Service and the Authentic8 App, including all worldwide intellectual property rights therein ("**Authentic8 IP**"). This Agreement does not convey any proprietary interest in or to any Authentic8 IP or rights of entitlement to the use thereof except as expressly set forth herein. Ordering Activity grants Authentic8 the right to use its name (and the corresponding trademark or logo) on Authentic8's website and marketing materials to identify Ordering Activity as a Ordering Activity; provided, however, that any such use must be pre-approved by Ordering Activity, which will not be unreasonably withheld or delayed. 8.2 Authentic8 will be free to use any suggestions, ideas, feedback, or recommendations provided by Customer regarding the Authentic8 Service or the Authentic8 App ("**Feedback**"), and by providing any Feedback, Customer grants Authentic8 a worldwide, perpetual, irrevocable, fully-paid and royalty-free license to use and exploit that Feedback for any purpose and without any further obligation. Authentic8 acknowledges that the ability to use this Agreement and any Feedback received in advertising is limited by GSAR 552.203-71.

8.3 Each party understands that the other party may need to disclose certain non-public information relating to the disclosing party's business that is marked or identified as "confidential" at the time of disclosure ("**Confidential Information**") in connection with the use and/or performance of the Authentic8 Service. The receiving party agrees to take reasonable precautions to protect such Confidential Information, and to not disclose (without the disclosing party's prior authorization) to any third person any such Confidential Information. Confidential Information does not include any information that the receiving party can show: (1) is or becomes generally available to the public, or (2) was in its possession or was known prior to receipt from the disclosing party, or (3) was rightfully disclosed to it without restriction by a third party, or (4) was independently developed without use of any Confidential Information of the disclosing party. The receiving party may disclose Confidential Information if the disclosure is necessary to comply with a valid court order or subpoena (in which case the receiving party will, unless expressly prohibited by the terms of the court order or subpoena, promptly notify the disclosing party and cooperate with the disclosing party if the disclosing party chooses to contest the disclosure requirement, seek confidential treatment of the information to be disclosed, or to limit the nature or scope of the information to be disclosed). Authentic8 recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

### 9. DISCLAIMERS

9.1 Authentic8 warrants that the Services will be performed substantially in accordance with the SOFTWARE written materials accompanying it. In the event that the Services do not perform in accordance with SOFTWARE written materials accompanying it due to reasons within Authentic8's control, for a period of sixty (60) days Authentic8 will repair the service in order to bring it into accordance, or provide a refund of subscription fees. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING The Authentic8 Service and the Authentic8 App are provided "AS IS" and on an "AS AVAILABLE" basis. Authentic8 does not warrant that the Authentic8 Service will be provided without interruption or be completely error free. AUTHENTIC8 DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

9.2 Ordering Activity acknowledges that, despite the security features of the Authentic8 Service, no service can provide a completely secure mechanism of electronic transmission and that there are persons and entities that may attempt to breach Authentic8's security measures. Authentic8 will not be liable for any security breach (or other events) caused by circumstances outside of its reasonable control. Authentic8 is not responsible for any data or information that Ordering Activity, or its Authorized Users, download or access through the use of the Authentic8 Service. Ordering Activity assumes all risk from the use of the Authentic8 Service including any damage to its computer system or devices or the corruption or loss of its data and information when accessing or using the Authentic8 Service.

## 10. RESERVED

### 11. INDEMNIFICATION

11.1 Authentic8 will: (1) defend Ordering Activity against any third party suit, claim, action or demand (a "**Claim**") alleging that the Authentic8 Service infringes any copyright or trademark or misappropriates a trade secret of a third party; and (2) indemnify and hold Ordering Activity harmless from any final award of damages or settlement amount arising in connection with any such Claim.

11.2 The foregoing indemnity obligations are conditioned on Ordering Activity notifying Authentic8 promptly in writing of any actual or threatened Claim, Ordering Activity giving Authentic8 control of the defense thereof and any related settlement negotiations, and Ordering Activity cooperating and, at Authentic8's request and expense, assisting in such defense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

## 12. GENERAL

12.1 The parties are independent contractors, and no branch or agency, partnership, association, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by this Agreement. This Agreement is intended for the sole and exclusive benefit of the parties and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

12.2 This Agreement is governed by and construed in accordance with the Federal laws of the United States, without giving effect to the principles of conflict of law. If any portion of this Agreement is found to be void or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

12.3 Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent. Any attempt to assign this Agreement other than as permitted above will be null and void.

12.4 All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section.

12.5 This Agreement, together with the Underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), constitutes the complete and exclusive understanding and agreement between the parties regarding this subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to this subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties.

[END]

**EXHIBIT A:**

**SUPPORT TERMS AND SERVICE AVAILABILITY**

Capitalized terms not defined below will have the meaning ascribed to them in the Agreement. Additional terms used herein are defined below.

**1. SUPPORT AND MAINTENANCE**

**1.1 Technical Support.** Ordering Activity will provide direct first tier technical support directly to its Authorized Users. Authentic8 will provide second tier support escalation to Ordering Activity via email and phone during the regular business hours of: 9am-6pm, Pacific Time, Monday-Friday (excluding national holidays).

**1.2 Maintenance.** Authentic8 will make updates (error corrections, bug fixes, enhancements and/or improvements) to the Authentic8 Service on an ongoing basis. Except in the case of emergencies, Authentic8 will schedule maintenance during appropriate, non-peak usage hours (typically between 10pm on Fridays and 12pm on Sundays, Pacific Time) and to the extent possible will provide advance notice of any planned service disruption.

**1.3 Reporting Process.** Only Ordering Activity's Account administrator(s) may contact Authentic8's technical support personnel. In connection with submitting a problem report, Ordering Activity must: (i) notify Authentic8 promptly of problems with the Authentic8 Service, and provide Authentic8 with any documentation available regarding the error sufficient to allow Authentic8 to reproduce the error; and (ii) provide Authentic8 with reasonable assistance, as requested, to troubleshoot the problem.

**2. SERVICE LEVEL**

**2.1 Availability.** The Authentic8 Service will be available 99.9% of the time per month, except for any scheduled maintenance or Service Interruptions ("**Uptime Availability**"). The Authentic8 Service (or a portion of the Authentic8 Service) may be unavailable at certain times, for any unanticipated or unscheduled emergency maintenance or unavailability as a result of (i) circumstances beyond Authentic8's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), or (ii) Internet third party service provider failures, delays, or denial of service attacks ("**Service Interruptions**").

**2.2 Remedies.** If the Authentic8 Service does not meet the Uptime Availability in any given calendar month (excluding any scheduled maintenance or Service Interruptions), then Authentic8 will credit Ordering Activity a percentage of the Subscription Fees for that month as follows:

Service Availability	Service Credit
99.5% - 99.9%	20%
99% - 99.5%	40%
<99%	100%

Service credits must be requested in writing within 10 business days after the month following such service level unavailability. This credit will be applied against future Subscription Fees. If the Authentic8 Service does not meet the Uptime Availability for two (2) consecutive months in any three (3) month period, or four (4) times in any twelve (12) month period, Ordering Activity may terminate the Agreement and Authentic8 will refund the unused portion of the Subscription Fees that Ordering Activity had paid for the Authentic8 Service for the remainder of the Subscription Term. This section states Ordering Activity's sole and exclusive remedy for the unavailability of the Authentic8 Service.

**AXELLIO**  
2375 TELSTAR DRIVE, SUITE 150  
COLORADO SPRINGS, CO 80920

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Axellio, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in

connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this



Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



**AXELLIO SOFTWARE END USER LICENSE AGREEMENT**

1. **AGREEMENT.** This Axellio Software End User License Agreement (“EULA” or “Agreement”) is a legal agreement between the Ordering Activity under GSA Schedule contracts identified in the Purchase Order (“you” or “Licensee”) and Axellio Inc. (“AXELLIO”) that describes the terms and conditions of your use of AXELLIO software (other than embedded firmware in AXELLIO hardware) provided to you by AXELLIO (“Software”) as specified in the associated quotation, order acknowledgement, or invoice from AXELLIO (“Order”). By executing a written purchase order for the Software accompanying this EULA, you indicate that you have read, understood and agree to be bound by all of the terms and conditions set forth herein. Axellio may include software supplied by third-parties in the Axellio Software. Axellio is providing such third-party software to you by permission of the respective licensors and/or copyright holders on the license terms provided by such parties.  
Nothing herein shall bind the Licensee to any third-party terms unless the terms are provided for review and agreed to in writing by all parties.
2. **LICENSE AND RESTRICTIONS.** Subject to the terms and conditions of this Agreement, AXELLIO grants to you a nonexclusive, nontransferable, nonsublicensable, limited license to install and use, without modification, the Software in object code form only for your internal business purposes. You are not licensed to and shall not (i) copy or reproduce the Software, other than to maintain for your own backup purposes; (ii) republish, upload, post, transmit, resell or distribute in any way the Software; (iii) permit any third party to benefit from the use or functionality of the Software via a rental, lease, timesharing, service bureau, or other arrangement; (iv) sublicense, assign, or otherwise transfer any of the rights granted to you under this Agreement; (v) decompile, disassemble, or otherwise reverse engineer the Software; or (vi) otherwise use the Software except as expressly allowed under this Section 2.
3. **RELATED DOCUMENTATION.** You agree to use the operating manuals, charts, tables, written descriptions and handbooks in any medium related to the Software (“Related Documentation”) only in conjunction with your use of the Software. Related Documentation may not be reproduced or redistributed without the written consent of AXELLIO.
4. **RESERVATION OF RIGHTS AND OWNERSHIP.** The Software is licensed not sold, and AXELLIO reserves all rights not expressly granted to you in this Agreement. The Software and Related Documentation are protected by copyright, trade secret and other intellectual property laws. AXELLIO and/or its licensors, as applicable, own the title, copyright, and other worldwide intellectual property rights in the Software and all copies of the Software. This Agreement does not grant you any rights to trademarks or service marks of AXELLIO. The Software and this Agreement are AXELLIO’s confidential information and you must keep them confidential, not share them with or otherwise allow access to them to third parties, and you shall use at least reasonable care to maintain the confidentiality of the Software and this Agreement.
5. **WARRANTY AND LIMITATIONS.** Except for Software that is branded by a third party, AXELLIO warrants that the Software will perform substantially in accordance with the Related Documentation for a period of ninety (90) calendar days from the date of delivery of the Software (“Limited Warranty”). EXCEPT AS EXPRESSLY PROVIDED HEREIN, AXELLIO DISCLAIMS ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SOFTWARE AND RELATED DOCUMENTATION, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, AND NON-INFRINGEMENT. AXELLIO does not warrant that Software is free from bugs, viruses, interruption or errors, or that the Software will meet your requirements. Any third party branded Software delivered by AXELLIO is supplied “AS IS,” and you agree in such case to look solely to the warranties and remedies, if any, and such additional terms and conditions provided by the applicable third party Software licensor. In the event that Software fails to comply with the Limited Warranty, your sole and exclusive remedy and AXELLIO’s sole obligation shall be, at AXELLIO’s discretion, the repair or replacement of Software or reimbursement of the license fee paid by you. This Limited Warranty is void if failure of Software has resulted from accident, misuse, abuse, neglect, unauthorized repair or maintenance, or failure to follow supplied user instructions.
6. **LIMITATION OF LIABILITY.** AXELLIO’S TOTAL LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE LICENSE TO THE SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AXELLIO, ITS SUPPLIERS, AND SERVICE PROVIDERS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS OF BUSINESS, TELECOMMUNICATION FAILURES, LOSS, CORRUPTION OR THEFT OF DATA, LOSS OF PROFITS OR INVESTMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF AXELLIO OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.
7. **TERMINATION.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, AXELLIO shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination you must immediately cease using the Software. Any termination of this Agreement shall not affect AXELLIO’s rights hereunder.

8. **EXPORT.** You acknowledge that the laws and regulations of the United States restrict the export and re-export of certain commodities and technical data of United States origin. You agree not to export or re-export the Software or any related technical documentation in any form in violation of the export or import laws of the United States or any foreign jurisdiction.
9. **LAW AND VENUE.** This Agreement will be governed by the Federal laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
10. **GENERAL.** This Agreement together with any associated Orders constitute the entire understanding and agreement between the parties regarding the subject matter hereof and supersede all prior or contemporaneous understandings, written or oral. In the event the terms of an Order contain additional or different terms than those herein, the terms of the Order will control. This Agreement may only be amended in a writing signed by both parties. No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of any other right. Neither this Agreement nor any rights hereunder shall be assigned or otherwise transferred by you (by operation of law or otherwise) without the prior written consent of AXELLIO and any unauthorized transfer or assignment shall be void. In the event that any of the terms of this Agreement are held to be illegal by any court of competent jurisdiction, all remaining terms of the Agreement shall remain in full force and effect.

### **Axellio Terms and Conditions of Sales**

1. **AGREEMENT.** All sales by Axellio Inc. ("AXELLIO") of any nonsoftware products ("Products") to the purchaser ("Customer"), and/or the sale or provision by AXELLIO to the Customer of any services ("Services") as specified in the associated quotation, order acknowledgement, or invoice from AXELLIO ("Order") shall be governed exclusively by these terms and conditions ("Terms").

**EXCEPT FOR THE UNDERLYING GSA SCHEDULE**

**CONTRACT, AND SCHEDULE PRICELIST, AXELLIO OBJECTS**

**TO AND HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY CUSTOMER, INCLUDING THOSE CONTAINED ON ANY PURCHASE ORDER OR**

**OTHER DOCUMENTATION PROVIDED BY CUSTOMER. Customer's right to the Products and/or Services is contingent upon Customer's acceptance of these Terms. Any changes to the Terms must specifically agreed to in writing executed by AXELLIO and Customer before becoming binding on either party. To the extent a conflict or inconsistency exists between these Terms and any document submitted to AXELLIO by Customer, these Terms will control.**

2. **WARRANTY FOR PRODUCTS.** If Customer has purchased Products, then this Section 2 shall apply. Unless otherwise provided on the associated Order or otherwise agreed to in writing by authorized AXELLIO personnel, AXELLIO warrants that AXELLIO branded Products sold by AXELLIO will be free from defects in material and workmanship for 3 years from the date AXELLIO ships the Product; provided, however, that with regard to third party branded Products sold by AXELLIO to Customer, AXELLIO shall pass through to Customer the original manufacturer's warranty to the extent permissible. AXELLIO's warranty shall not apply to any Products that are not installed or operated in conformity with AXELLIO's published instructions, or to any Products which have been subject to misuse, negligence, or accident, or altered or repaired by anyone other than AXELLIO or AXELLIO's duly authorized agent. In all cases, AXELLIO has sole responsibility and discretion for determining the cause and nature of a Product defect, and AXELLIO's determination with regard thereto shall be final. Customer must notify AXELLIO of any breach of warranty within the applicable warranty period. The exclusive remedy for any breach of warranty shall be, at AXELLIO's option, the repair of the Product or replacement of such Product with a Product of the same type, or the refund of a prorata amount of the purchase price for such Product based on a 3 year life. When notifying AXELLIO of or returning any Products that fail to meet an applicable warranty, Customer shall comply with AXELLIO's then-current Return Material Authorization procedure. Customer hereby assigns to AXELLIO ownership of, any part, component, or item removed from a Product by AXELLIO under these Terms for any reason. **CUSTOMER ACKNOWLEDGES THAT IN THE EVENT PRODUCTS ARE SPECIFIED AS USED OR RECONDITIONED, THE WARRANTIES OFFERED BY AXELLIO MAY BE LESS PROTECTIVE THAN THE WARRANTIES OFFERED FOR NEW PRODUCTS OF THE SAME KIND.**
3. **WARRANTY FOR SERVICES.** If Customer has purchased Services, then this Section 3 shall apply. AXELLIO warrants that the Services will be performed in a workmanlike manner. Customer's exclusive remedy for a breach of this warranty is for AXELLIO to reperform the Service at no extra charge. Customer must notify AXELLIO of any breach of this warranty within 30 days of the date of the provision of the non-compliant Services. Installation services do not include data migration services. AXELLIO will maintain industry standard commercial general liability insurance and will defend, indemnify and hold harmless Customer from any suit, claim or action and related costs and expenses arising from personal injury or property damage to the extent caused by AXELLIO in connection with performance of Services.
4. **DISCLAIMER OF WARRANTY. THE EXPRESS WARRANTIES IN SECTIONS 2 AND 3 ABOVE ARE MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. AXELLIO DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL WARRANTIES AND CONDITIONS INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 2, NO WARRANTIES ARE MADE BY ANY OF AXELLIO'S LICENSORS OR SUPPLIERS. No agent, representative or employee of AXELLIO has any authority to make any representations or warranties on behalf of AXELLIO.**
5. **LIMITATION OF LIABILITY. AXELLIO'S TOTAL LIABILITY ARISING FROM THE PRODUCTS AND/OR SERVICES, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, OR OTHERWISE, IS LIMITED TO THE AMOUNT CUSTOMER PAID FOR THE PRODUCTS AND/OR SERVICES FOR WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT SHALL AXELLIO BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL,**

INDIRECT OR PUNITIVE DAMAGES, OR LOST PROFITS, ARISING OUT OF OR RELATED TO THE PRODUCTS AND/OR SERVICES, REGARDLESS OF WHETHER AXELLIO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER ARISING OUT OF DESIGN OR MANUFACTURING DEFECT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, DEFAULT, INDEMNITY OR ANY OTHER REASON OR LEGAL THEORY ARISING OUT OF THE USE OR HANDLING OF ITS PRODUCTS OR ITS PERFORMANCE UNDER THESE TERMS. NO ACTION RELATING TO THE PRODUCTS AND/OR SERVICES MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER DELIVERY OF THE PRODUCTS OR COMPLETION OF THE SERVICES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

6. DELIVERY OF PRODUCTS; TITLE. Accepted orders for AXELLIO branded Products are non- cancellable except in accordance with the FAR and GSA Schedule Contract. Delivery and completion dates are estimates; AXELLIO will use commercially reasonable efforts to meet desired delivery and completion dates, but will not be liable to Customer in any way for any late shipment or completion. Delivery requests not conforming to AXELLIO's lead times are subject to expedite fees subject to the Anti-Deficiency Act. Excusable delays shall be governed by FAR 552.212-4(f). Where applicable, Customer will accept and pay for partial shipments of Products or performance of Services. Unless otherwise provided on the Order, the Products shall be delivered for domestic shipments in the continental U.S.A. FOB Destination and international shipments will be EXW shipping point (Incoterms 2010) and title to Products shall pass to Customer in accordance therewith.

7. USE OF PRODUCTS. Customer shall use Products only for its own business purpose and not for resale or distribution.

8. PURCHASE PRICE; PAYMENT TERMS. Quoted prices for Products or Services are binding on AXELLIO only if in writing submitted by AXELLIO. All Products are invoiced upon delivery and all Services are invoiced upon completion. Terms of payment are net 30 days from the date of invoice, unless otherwise expressly provided for and confirmed in writing by AXELLIO. Overdue payments shall be subject to finance charges computed at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. AXELLIO or its authorized reseller as applicable shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k).

9. PURCHASE MONEY SECURITY INTEREST. If Customer has purchased Products, then this Section 9 shall apply. AXELLIO hereby reserves, and Customer hereby grants to AXELLIO, a purchase money security interest ("PMSI") in the Products sold hereunder and all the proceeds thereof, including but not limited to, insurance proceeds, to secure performance of all of

Customer's obligations hereunder. Customer's failure to pay any amount when due shall give AXELLIO the right to repossess and remove the Products in accordance with the Federal Law of the United States.

10. PROPRIETARY INFORMATION; IP. AXELLIO may provide confidential or proprietary information to Customer in connection with the Products or Services ("CI"). Customer agrees that CI shall include all information which Customer knows or reasonably may know is confidential. CI shall remain the exclusive property of AXELLIO and Customer must not disclose CI to any third-party and will preserve and protect the confidentiality of CI by using at least reasonable care and Customer will take all other acts reasonably requested by AXELLIO with respect to CI. Upon AXELLIO's request, Customer will return to AXELLIO all documents containing AXELLIO's proprietary information. Customer agrees that its obligation to protect AXELLIO's proprietary information shall be ongoing and shall not cease upon completion or termination of these Terms. Nothing in this Agreement grants to Customer any right, title, or interest in any of AXELLIO's intellectual property including without limitation patents, trademarks, trade names, logos, inventions, copyrights, know-how, or trade secrets in any way relating to the design, manufacture, operation, use or service of the Products. AXELLIO recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

11. INDEMNIFICATION. AXELLIO will have the right to intervene to defend, indemnify and hold harmless Customer from any third-party claim made against Customer for infringement of any United States patent, copyright, or trademark by the Products, provided that Customer (i) promptly notifies AXELLIO of any such claim; and (ii) gives AXELLIO all information, authority and assistance reasonably necessary to settle and/or defend any such claim. AXELLIO will have control of any such claim, including, in its sole discretion and at its own expense, the right to settle the claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. AXELLIO has no liability for any claim arising or alleged to arise from use of a Product as part of any equipment, software, assembly, combination, method or process not supplied by AXELLIO, or for any claim, suit or proceeding arising or alleged to arise from: (i) any marking or branding applied to a Product at the request of Customer or by a party other than AXELLIO; or (ii) modification or servicing of all or part of a Product at Customer's request or by any party other than AXELLIO

(except as expressly authorized by AXELLIO in writing). This Section 11 states the entire liability and obligations of AXELLIO, and the exclusive remedy of Customer, with respect to any actual or alleged infringement of any United States patent, copyright, trademark and/or other intellectual property right by the Products, Services or any part thereof.

12. ADVICE; ENGINEERING CHANGE ORDERS. AXELLIO may provide Customer technical advice regarding the Products and Services, but X- IO does not warrant or guarantee such advice. AXELLIO reserves the right to make additional engineering changes as necessary, and to charge Customer for costs and expenses

incurred by AXELLIO associated with any servicing or repair of a Product or component for which there is no problem observed (NPO), regardless of whether the Product is returned to AXELLIO for repair or AXELLIO deploys resources to make the repair.

13. SPECIAL ORDERS. Customer acknowledges that if this purchase is a special order for custom goods, the provisions of this paragraph supersede any conflicting general terms of these Terms. Customer agrees to defend, protect, and hold harmless AXELLIO against all suits at law or in equity and from any and all damages, claims, and demands for personal injury or actual or alleged infringement of any United States or foreign intellectual property right and to defend any suit or actions which may be brought against AXELLIO for such injury and/or any alleged infringement because of the manufacture and/or sale of the custom good.

14. EXPORT; COMPLIANCE WITH LAW. Customer acknowledges that the laws and regulations of the United States restrict the export and re-export of certain commodities and technical data of United States origin. Customer will not export or re-export the Products or any related technical documentation in any form in violation of the export or import laws of the United States or any foreign jurisdiction. Customer shall not, without U.S. government authorization, export, reexport, or transfer any goods, software, or technology subject to these Terms, either directly or indirectly, to any country subject to a U.S. trade embargo or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury. Customer and its personnel, agents and representatives agree to abide by the obligations imposed by the laws of the countries in which Customer does business (including, without limitation, the Foreign Corrupt Practices Act) regarding payments or gifts to governments or related persons for the purpose of obtaining or retaining business. Customer will defend, indemnify, and hold harmless AXELLIO from and against any violation of such laws or regulations by Customer or its agents, officers, directors, or employees.

15. LAW; VENUE. These Terms will be governed by the Federal laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.

16. GENERAL. No waiver of rights under these Terms by either party shall constitute a subsequent waiver of this or any other right under these Terms, and all waivers must be in writing to be effective. Neither these Terms nor any rights under these Terms shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of AXELLIO and any unauthorized transfer or assignment shall be void. These Terms shall bind and inure to the benefit of the successors and permitted assigns of the parties hereto. In the event that any of the terms of these Terms are held to be illegal by any court of competent jurisdiction, all remaining terms of these Terms shall remain in full force and effect. These Terms together with AXELLIO's associated Orders (if applicable) constitute the entire understanding and agreement between the parties regarding the subject matter hereof and supersede all prior or contemporaneous understandings, written or oral. In the event the terms of a Order contain additional or different terms than these Terms, the terms of the Order will govern and control. These Terms may only be amended by a written document signed by both parties.

**AZUL SYSTEMS, INC.**  
**385 MOFFETT PARK DRIVE, SUITE 115**  
**SUNNYVALE, CA 94089**

All references to Azul in these Terms and Conditions should be read as "Contractor (EC America, Inc.), acting by and through its supplier, Azul Systems, Inc." Nothing herein shall establish privity of contract between Azul Systems, Inc. and the Ordering Activity.

## **TERMS AND CONDITIONS FOR AZUL PRODUCTS AND SERVICES AZUL SOFTWARE AGREEMENT**

### Definitions.

"Product" means the Azul software product available from the Download Site and detailed and further set forth in the applicable Exhibit A and an Order (and are incorporated herein by reference) in object code form.

"Download Site" means a password-protected, non-public online site managed and maintained by Azul where Customer is able to access and download the Product.

"Distribute" or a "Distribution" means delivering to, or making available to, a third-party end user (either directly or through indirect or other means including without limitation reseller channels, assignment, or sublicense).

"Software Services", "Supported Instances" and "Third-Party Software Licenses" have the meanings as detailed and further set forth in the applicable Exhibit A and an Order (as defined in Section 5.2).

Grant of Product License. Subject to Customer's compliance with all of the terms herein, Azul shall provide the Software Services for, and grants Customer the Product License to, the Product as set forth on each Order. Customer may only use the Product on the number of Supported Instances that have been purchased. Customer may make copies of the Product for back-up purposes, but Azul retains ownership of all copies. Customer acknowledges that the Product contains and uses certain third-party and/or open source software ("Third-Party Software"). THIRD-PARTY SOFTWARE MAY BE SUBJECT TO AND GOVERNED BY THE THIRD-PARTY SOFTWARE LICENSES AS DEFINED IN THE APPLICABLE EXHIBIT A (the "Third-Party Software Licenses"). Nothing herein shall bind the Ordering Activity to any Third-Party Software terms unless the terms are provided for review and agreed to in writing by all parties. Ordering Activity shall ensure it has reviewed the applicable Third-Party Software Licenses and has the proper licenses to use the Product. Notwithstanding anything to the contrary herein, this Agreement does not limit or supersede any rights or obligations Customer has as a result of Third-Party Software Licenses.

Customer Restrictions and Obligations. Customer will not (and will not allow any third party to): (i) unless so authorized in the applicable Exhibit A or an Order, externally Distribute the Product or any portion thereof (even though an applicable Third-Party Software License may give Customer the right to Distribute the Product) or the Documentation; or (ii) post or Distribute the Product (or any portion thereof) on any publicly accessible website or any other public means; or (iii) provide, lease, lend, disclose, use for timesharing or service bureau purposes, or otherwise use or allow others to use for the benefit of any third party, the Product (except as expressly and specifically authorized by Azul in writing); or (iv) disclose to any third party any benchmarking or comparative study involving the standalone Product (except as expressly and specifically authorized by Azul in writing); or (v) reverse engineer, disassemble, decompile, or modify or create derivative works of the Product (except to the extent such restriction is prohibited by applicable law or is allowed by a relevant Third-Party Software License); or (vi) export or re-export the Product in violation of any applicable laws or regulations; or (vii) Distribute, sell or offer for sale any Azul product (irrespective of how or where such Azul product is obtained) without paid and active Software Services for such Azul product; or (viii) remove or alter any copyright, trademark, or other proprietary notice from the Documentation or the Product or any portion thereof. Except for the rights expressly granted herein, Azul retains all right, title and interest in and to the Product. Prior to disposing of any media or apparatus containing any part of the Product or Documentation, Customer shall completely destroy any Product and Documentation contained therein. All the limitations and restrictions on Products in this Agreement also apply to Documentation and screens.

Support and Maintenance. While the Software Services for a Product have not expired or been terminated, and Customer is otherwise in compliance with its obligations under this Agreement, Azul will provide support and maintenance services for that Product as and to the extent described in Exhibit B ("Support Services"), the applicable Exhibit A, and an Order. Customer may not use Support Services: (i) to support installations or deployments of a Product on more Supported Instances than have been purchased; or (ii) in violation of any Support Services Restrictions described in the applicable Exhibit A or in an Order; or (iii) purchased with a given Support Tier to support installations or deployments of a Product that have purchased Software Services with a lower level of Support Tier (for example without limitation, Premium Support cannot be used to support installations that have purchased Standard Support only). For clarity and notwithstanding anything in this Agreement to the contrary, Azul has no obligation to provide Support Services to Customer's end users.

### Fees and Payment.

Customer agrees to pay to the GSA Schedule Contractor on behalf of Azul (or the Business Partner from whom Software Services or Professional Services are purchased) the fees as set forth in an applicable Order. Fees for Software Services and subsequent renewals are paid, in accordance with the GSA Schedule and GSA Schedule pricelist.

Reserved.

Compliance and Reporting. Upon written request from Azul and not to exceed once per calendar year, Customer shall provide a certificate to Azul executed by an authorized signatory of Customer stating that Customer is in compliance with the terms and conditions of this Agreement, including but not limited to



confirmation that all applicable fees have been paid. If any underpayments are revealed by any such certificate (or if Customer otherwise becomes aware of any underpayments), Customer shall promptly pay any underpayments. Customer agrees to comply with the reporting obligations if specified on an Order.

Term and Termination.

Termination of the Agreement. The term of this Agreement will begin on the Effective Date. Any termination of this Agreement will not operate to terminate any active Software Services, and the terms and conditions of this Agreement will continue in full force and effect (except no new or renewals of Software Services may be purchased) until the latest expiration of any Software Services covered under this Agreement.

Term of Software Services. Each Software Services hereunder shall begin as of the date set forth on the application Order and shall continue for the initial term set forth on such Order. Following such initial term, each Software Services hereunder may be renewed for successive terms equal in length to the initial term by executing a new Order for such successive term; For each Software Services, the initial term, together with any renewals thereof, is referred to as the "Software Services Term".

Effect of Termination. Upon the termination of this Agreement, all licenses granted hereunder (except for licenses granted on a perpetual basis and only if a material breach of this Agreement by Customer has not occurred) shall immediately terminate and Customer shall immediately cease all use of all affected Products and return or destroy all copies of all affected Products and all portions thereof and so certify to Azul. Any rights, obligations and duties herein which by their nature extend beyond the expiration or termination hereof shall survive any cancellation, expiration or termination hereof. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.

Reserved.

Limited Warranty and Disclaimer. Except in the case of an Evaluation License, Azul warrants for a period of ninety (90) days ("Warranty Period") from the beginning of the applicable Software Services Term that the Product will materially conform to Azul's then current Documentation for such Product. This warranty covers only problems reported to Azul during the warranty period. ANY LIABILITY OF AZUL WITH RESPECT TO A PRODUCT OR THE PERFORMANCE THEREOF UNDER ANY WARRANTY, STRICT LIABILITY OR OTHER THEORY WILL BE LIMITED EXCLUSIVELY TO PRODUCT REPLACEMENT OR, IF REPLACEMENT IS INADEQUATE AS A REMEDY OR, IN AZUL'S OPINION, IMPRACTICAL, TO A REFUND OF AN APPROPRIATE PORTION THE REMAINING UNAMORTIZED SOFTWARE SERVICES FEE PAID BY CUSTOMER FOR THE PRODUCT THAT IS THE SUBJECT OF THE CLAIM. EXCEPT FOR THE FOREGOING WARRANTY BY AZUL, ALL PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND FROM ANYONE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. FURTHER, AZUL DOES NOT WARRANT RESULTS OF USE OR THAT THE PRODUCTS ARE BUG FREE OR THAT THE PRODUCT'S USE WILL BE UNINTERRUPTED.

Reserved.

Reserved.

Business Partners. Azul has entered into agreements with other authorized organizations, including but not limited to resellers, distributors, and consultants, to promote, market, sell and support certain Azul products and services (such organizations are "Business Partners"). When Customer purchases Products, Software Services and/or Professional Services through a Business Partner, Azul confirms that it is responsible for providing the Product, associated Support Services, and/or Professional Services to Customer under the terms of this Agreement. Azul is not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to Customer, or (c) any products or services that Business Partners supply to Customer under any separate agreements between a Business Partner and Customer.

Reserved.

Miscellaneous. Each party represents and warrants that it shall comply with all applicable laws and regulations in connection with its performance hereunder. Azul may object to and reject any pre-printed or otherwise conflicting terms of any related purchase order, confirmation, or similar form which shall have no force or effect unless accepted by Azul. Neither this Agreement nor the licenses granted hereunder are assignable or transferable without the prior written consent of the other party (and any attempt to do so shall be void) except that either party may assign and transfer all of its rights and obligations hereunder without such written consent to a successor to (as applicable) substantially all of Azul's Product business or assets or Customer's business for which Products are



licensed and Support Services are provided. Assignments are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. The parties agree that they are each independent contractors and nothing in this Agreement will be deemed to establish a joint venture, partnership, agency or employment relationship between the parties. The provisions hereof are for the benefit of the parties only and not for any other person or entity. Any notice, report, approval, authorization, agreement or consent required or permitted hereunder shall be provided either in writing (and notices shall be sent to the address the applicable party has or may provide by written notice or, if there is no such address, the most recent address the party giving notice can locate using reasonable efforts) or via e-mail. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. Azul may use Customer's name in client listings to the extent permitted by GSAR 552.203-71. No right or license, express or implied, is granted in this Agreement for the use of any Azul or third-party trade names, service marks or trademarks, including, without limitation, the Distribution of the Products utilizing any Azul Trademarks. If any provision shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this arrangement shall otherwise remain in full force and effect and enforceable. This Agreement shall be governed by Federal law without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. This Agreement, with the Purchase Order, GSA Schedule and GSA Schedule pricelist, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof and any waivers or amendments shall be effective only if made in writing. In the event of a conflict between this Agreement and a Negotiated Purchase Order, the Purchase Order shall prevail. As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all Products and accompanying documentation provided by Azul are "commercial items," "commercial computer software" and/or "commercial computer software documentation." Consistent with FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by these terms and shall be prohibited except to the extent expressly permitted by these terms. Neither party is excused from taking reasonable steps to follow its normal disaster recovery procedures or its obligation to pay for Software Services or Professional Services delivered. Except as may be otherwise provided herein, this Agreement is subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). There are no third-party beneficiaries to this agreement.

EXHIBIT A-1

LICENSED PRODUCT: "ZING"

**Product:**

Zing Enterprise Bundle

Includes the Zing Virtual Machine (ZVM) for Java applications, Zing System Tools (ZST), and Zing Vision.

**Product License:**

Azul grants Customer a time-based (during the applicable Software Services Term), without rights to sublicense, worldwide, nontransferable (except in connection with a permitted assignment pursuant to Section 14 of the Agreement), nonexclusive right to use the Product in object code form only; provided that certain Third-Party Software is instead licensed pursuant to the relevant terms set forth below in the Third-Party Software Licenses. Customer may only use the Product on Systems for which Customer has purchased a Supported Instance and solely in connection with Customer's internal business operations.

CUSTOMER ACKNOWLEDGES THAT THE PRODUCT MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE SOFTWARE SERVICES TERM AND/OR USE INCONSISTENT HERewith.

**Software Services:** Time-based Product License (as described above) and associated Support Services for the Product during the term of the Product License.

**Support Services Additions:** In addition to the Support Services as described in Exhibit B of the Agreement, Azul will use commercially reasonable efforts to:

ensure that the Product delivered to Customer has passed the OpenJDK Technology Compatibility Kit (TCK) available for a given major release of Java

**Designated Support Contacts:** As further detailed in Section 8 of Exhibit B (Support Services) of the Agreement, Customer may only contact Azul through Customer's Designated Support Contacts and may designate up to the number of contacts as set forth in the table below based on the number of Supported Instances purchased and the Support Tier selected and paid for by Customer:

Number of Supported Instances	DESIGNATED NUMBER OF SUPPORT CONTACTS	
	Standard	Premium
1 to 50	2	2
51 to 100	2	4
101 to 250	2	6
251 to 500	2	8
501 to 1000	4	10
1001 and over	4	12

**Third-Party Software Licenses:** As listed at [http://www.azul.com/license/zing\\_third\\_party\\_licenses.html](http://www.azul.com/license/zing_third_party_licenses.html).

**PRODUCT-SPECIFIC DEFINITIONS:**

"System" means a physical hardware system capable of running the Product, including without limitation a computer, server, workstation, laptop, individual blade or other physical system, as applicable.

"Physical Node" means a System that includes up to two (2) processor sockets, where each processor socket may include an unlimited number of processing cores. For Systems with more than two (2) processor sockets, one Supported Instance is required for each two (2) processorsockets.

"Virtual Node" means a virtual machine that includes up to thirty-two (32) virtual processing cores. For virtual machines with more than thirty-two (32) virtual processing cores, one Supported Instance is required for each thirty-two (32) virtual processor cores.

"Supported Instance" means Software Services with (i) one or more instances of Zing System Tools and Zing Virtual Machine for Java applications running on either (a) one (1) Physical Node or (b) one (1) Virtual Node; and (ii) one or more instances of Zing Vision running on an unlimited number of Physical Nodes or Virtual Nodes.

EXHIBIT A-2

LICENSED PRODUCT: "ZULU ENTERPRISE"

**PRODUCT:**

Zulu Enterprise Bundle

Includes Zulu Enterprise (Azul's supported builds of OpenJDK) and Zulu Mission Control (Azul's builds of JDK Mission Control supported for use with Zulu Enterprise)

**PRODUCT LICENSE:**

Azul grants Customer a perpetual, worldwide, nonexclusive right to use the Product; provided that certain Third-Party Software is instead licensed pursuant to the relevant terms set forth below in the Third-Party Software Licenses.

**Software Services:** Time-based Support Services for the Product.

**Support Services Additions:** In addition to the Support Services as described in Exhibit B of the Agreement, Azul will use commercially reasonable efforts to:

update the JDK component of the Product for a given update release within the timeframe as specified below after the update is released for General Availability (GA) by the associated OpenJDK project as follows:

	Support Tier		
	Platinum	Premium	Standard
Security fixes that have an identified CVE	48 hours <sup>1</sup> / 15 days	7 days <sup>1</sup> / 15 days	15 days <sup>1</sup> / 30 days
Security fixes that have an identified CVE, bug fixes, and other updates	7 days <sup>1</sup> / 15 days	15 days	30 days

<sup>1</sup> Limited to builds of the Zulu JDK/JRE for 64-bit Java versions 7 onward running on x86 processors on Linux, Windows and macOS operating systems. Common Vulnerabilities and Exposures ("CVE") is as defined by the NIST National Vulnerability Database (reference <https://nvd.nist.gov/vuln/>); and update the non-JDK components of the Product for a given update release no later than thirty (30) days after the update is released for General Availability (GA) by the OpenJDK project; and backport security fixes that have an identified CVE from newer supported Java Major Releases to older supported Java Major Releases in accordance with the timeframes in the table above; and ensure that the Product delivered to Customer has passed the OpenJDK Technology Compatibility Kit (TCK) available for a given major release of Java; and for those Customers who have purchased Support Services with the Platinum or Premium Support Tiers (and except for those releases designated as "Not Verified" or "NV"), ensure and so certify with each release of the Product that no Accessible APIs in the Product carry licenses that require code that runs on the Product using those APIs to carry a specific license, and that use with other Software does not contaminate the code or intellectual property of such Software with any license requirements, and distribution of such Software can be governed by any license at the discretion of the owner of the Software. For purposes herein, (a) "Accessible APIs" means all Java classes accessible via the JDK/JRE class path or module path, as well as all native symbols accessible via .h files included in the JDK/JRE; and (b) "Software" refers to application or code of Customer or third parties, which runs on or accesses the Product via the Accessible APIs.

**Designated Support Contacts:** As further detailed in Section 8 of Exhibit B (Support Services) of the Agreement, Customer may only contact Azul through Customer's Designated Support Contacts and may designate up to the number of contacts as set forth in the table below based on the number of Supported Instances purchased and the Support Tier selected and paid for by Customer:

Number of Supported Instances	DESIGNATED NUMBER OF SUPPORT CONTACTS		
	Standard	Premium	Platinum
1 to 50	2	2	4
51 to 100	2	4	6
101 to 250	2	6	8
251 to 500	2	8	10
501 to 1000	4	10	12
1001 and over	4	12	15

**Third-Party Software Licenses:** As listed at [http://www.azul.com/license/zulu\\_third\\_party\\_licenses.html](http://www.azul.com/license/zulu_third_party_licenses.html).

**PRODUCT-SPECIFIC DEFINITIONS:**

"System" means a physical hardware system capable of running the Product, including without limitation a computer, server, workstation, laptop, individual blade or other physical system, as applicable.

“Physical Node” means a System that includes up to two (2) processor sockets, where each processor socket may include an unlimited number of processing cores. For Systems with more than two (2) processor sockets, one Supported Instance is required for each two (2) processor sockets.

“Virtual Node” means a virtual machine that includes up to thirty-two (32) virtual processing cores. For virtual machines with more than thirty-two (32) virtual processing cores, one Supported Instance is required for each thirty-two (32) virtual processor cores.

“Supported Instance” means Software Services with (i) one or more instances of the Zulu JDK/JRE running on either (a) one (1) Physical Node, or (b) one (1) Virtual Node; and (ii) one or more instances of Zulu Mission Control running on an unlimited number of Physical Nodes or Virtual Nodes.

**EXHIBIT A-3  
LICENSED PRODUCT: "ZULU EMBEDDED"**

**Product:**

Zulu Embedded, in the Product Configuration as specified in an Order

**Product License:**

Azul grants Customer a perpetual, worldwide, nonexclusive right to use the Product; provided that certain Third-Party Software is instead licensed pursuant to the relevant terms set forth below in the Third-Party Software Licenses. Customer may (a) use, copy and Distribute the Documentation for the Product in connection with the Distribution of Combination Products; and (b) use, market, demonstrate, Distribute, provide training with respect to, and otherwise commercialize Combination Products and/or related services. Customer may use contractors and channels to exercise the rights granted in this Section provided any such contractors and channels agree to be bound by the terms of this Agreement and Customer assumes responsibility therefor.

**Customer Restrictions and Obligations:** In addition to the Restrictions and Obligations as specified in Section 3 of the Agreement, Customer will ensure that Azul's rights (including, without limitation, rights with respect to license restrictions, limitations on liability and warranty disclaimers) are at least as protected in a written license agreement with Customer's end users as those rights of Customer. Customer shall not make any representations or warranties specifically with respect to the Product except as expressly authorized in writing by Azul. Customer will not (and will not allow any third party to): (i) sell or offer for sale the Product or Software Services on a standalone basis, or use the Software Services on a standalone basis for the benefit of a third party; or (ii) use, market, demonstrate, Distribute, provide training with respect to, or otherwise commercialize the Product or Software Services except as a part of a Combination Product; or (iii) use the Product or Software Services for Customer's internal business purposes or operations except as a part of a Combination Product; or (iv) market, Distribute, use, or otherwise commercialize the Product or Software Services in violation of any Support Services Restrictions described herein or in an Order. Customer will make information available to its end users regarding the Third-Party Software Licenses contained in the Product; for example, this requirement may be satisfied by providing notice in the installation process or user guide of the Combination Product. Customer agrees to use reasonable commercial efforts to enforce violations or infringements under any agreements for the Product with its customers and to inform Azul promptly of any known violation, infringement or breach.

**Software Services:** Time-based Support Services for the Product.

**Support Services Restrictions:** Support Services will not be provided for the Product: (a) for any use other than when used as part of Combination Products, or (b) for any Product Configurations not explicitly specified in an Order.

**Support Services Additions:** In addition to the Support Services as described in Exhibit B of the Agreement, Azul will use commercially reasonable efforts to:

update the JDK component of the Product for a given update release within the timeframe as specified below after the update is released for General Availability (GA) by the associated OpenJDK project as follows:

	Support Tier	
	Premium	Standard
Security fixes that have an identified CVE <sup>1</sup>	7 days	15 days
Security fixes that have an identified CVE, bug fixes, and other updates	15 days	30 days

<sup>1</sup> Limited to builds of the Zulu JDK/JRE for 64-bit Java versions 7 onward running on x86 processors on Linux, Windows and macOS operating systems  
Common Vulnerabilities and Exposures ("CVE") is as defined by the NIST National Vulnerability Database (reference <https://nvd.nist.gov/vuln/>); and update the non-JDK components of the Product for a given update release no later than thirty (30) days after the update is released for General Availability (GA) by the OpenJDK project; and ensure that the Product delivered to Customer has passed the OpenJDK Technology Compatibility Kit (TCK) available for a given major release of Java; and for those Customers who have purchased Support Services with the Premium Support Tier (and except for those releases designated as "Not Verified" or "NV"), ensure and so certify with each release of the Product that no Accessible APIs in the Product carry licenses that require code that runs on the Product using those APIs to carry a specific license, and that use with other Software does not contaminate the code or intellectual property of such Software with any license requirements, and distribution of such Software can be governed by any license at the discretion of the owner of the Software. For purposes herein, (a) "Accessible APIs" means all Java classes accessible via the JDK/JRE class path or module path, as well as all native symbols accessible via .h files included in the JDK/JRE; and (b) "Software" refers to application or code of Customer or third parties, which runs on or accesses the Product via the Accessible APIs.

**Designated Support Contacts:** As further detailed in Section 8 of Exhibit B (Support Services) of the Agreement, Customer may only contact Azul through Customer's Designated Support Contacts and may designate up to the number of contacts as set forth in the table below based on the number of unique Combination Products, the Supported Instances purchased and the Support Tier selected and paid for by Customer:

Total Number of Supported Instances	DESIGNATED NUMBER OF SUPPORT CONTACTS PER UNIQUE COMBINATION PRODUCT	
	Standard	Premium
Less than 2,500	2	2

2,501 to 10, 000	2	3
Greater than 10,000	2	4

**Third-Party Software Licenses:** As listed at [http://www.azul.com/license/zulu\\_third\\_party\\_licenses.html](http://www.azul.com/license/zulu_third_party_licenses.html).

**PRODUCT-SPECIFIC DEFINITIONS:**

“Customer Product” is a Customer product that is developed, manufactured, provided or Distributed by or for Customer, is licensed to Customer’s end users, and as further defined in an Order.

“Combination Product” means a Customer Product in or with which the Product (or any portion thereof) is included or provided or bundled or used with, and also includes Product (or any portion thereof) to the extent it is included in, used, provided or bundled with, or intended for use with, a Customer Product.

“Product Configuration” is the specific processor(s), operating system(s), and Java version(s) that are being licensed to Customer and are authorized for use, as specified in an Order.

“Supported Instance” means Software Services with one or more instances of the Product running on one (1) physical hardware system including without limitation a computer, server, workstation, laptop, individual blade or other physical system, as applicable; or one (1) virtual machine.



EXHIBIT A-4

LICENSED PRODUCT: "ZING EMBEDDED"

**Product:**

Zing Embedded, in the Product Configuration as specified in an Order

**Product License:**

Azul grants Customer a time-based (during the applicable Software Services term) worldwide, nontransferable (except in connection with a permitted assignment pursuant to Section 14 of the Agreement), nonexclusive right and license to use in object code only and copy the Product to create, produce, support and maintain Combination Products; provided that certain Third-Party Software is instead licensed pursuant to the relevant terms set forth below in the Third-Party Software Licenses. Customer may (a) use, copy and Distribute the Documentation for the Product in connection with the Distribution of Combination Products; and (b) use, market, demonstrate, Distribute, provide training with respect to, and otherwise commercialize Combination Products and/or related services. Customer may use contractors and channels to exercise the rights granted in this Section provided any such contractors and channels agree to be bound by the terms of this Agreement and Customer assumes responsibility therefor.

CUSTOMER ACKNOWLEDGES THAT THE PRODUCT MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE SOFTWARE SERVICES TERM AND/OR USE INCONSISTENT HERewith.

**Customer Restrictions and Obligations:** In addition to the Restrictions and Obligations as specified in Section 3 of the Agreement, Customer will ensure that Azul's rights (including, without limitation, rights with respect to license restrictions, limitations on liability and warranty disclaimers) are at least as protected in a written license agreement with Customer's end users as those rights of Customer. Customer shall not make any representations or warranties specifically with respect to the Product except as expressly authorized in writing by Azul. Customer will not (and will not allow any third party to): (i) sell or offer for sale the Product or Software Services on a standalone basis, or use the Software Services on a standalone basis for the benefit of a third party; or (ii) use, market, demonstrate, Distribute, provide training with respect to, or otherwise commercialize the Product or Software Services except as a part of a Combination Product; or (iii) use the Product or Software Services for Customer's internal business purposes or operations except as a part of a Combination Product; or (iv) market, Distribute, use, or otherwise commercialize the Product or Software Services in violation of any Support Services Restrictions described herein or in an Order. Customer will make information available to its end users regarding the Third-Party Software Licenses contained in the Product; for example, this requirement may be satisfied by providing notice in the installation process or user guide of the Combination Product. Customer agrees to use reasonable commercial efforts to enforce violations or infringements under any agreements for the Product with its customers and to inform Azul promptly of any known violation, infringement or breach.

**Software Services:** Time-based Product License (as described above) and associated Support Services for the Product during the term of the Product License.

**Support Services Restrictions:** Support Services will not be provided for the Product: (a) for any use other than when used as part of Combination Products, or (b) for any Product Configurations not explicitly specified in an Order.

**Support Services Additions:** In addition to the Support Services as described in Exhibit B of the Agreement, Azul will use commercially reasonable efforts to:

ensure that the Product delivered to Customer has passed the OpenJDK Technology Compatibility Kit (TCK) available for a given major release of Java

**Designated Support Contacts:** As further detailed in Section 8 of Exhibit B (Support Services) of the Agreement, Customer may only contact Azul through Customer's Designated Support Contacts and may designate up to the number of contacts as set forth in the table below based on the number of unique Combination Products and Supported Instances purchased and paid for by Customer:

Total Number of Supported Instances	DESIGNATED NUMBER OF SUPPORT CONTACTS PER UNIQUE COMBINATION PRODUCT	
	Standard	Premium
Less than 2,500	2	2
2,501 to 10,000	2	3
Greater than 10,000	2	4

**Third-Party Software Licenses:** As listed at [http://www.azul.com/license/zing\\_third\\_party\\_licenses.html](http://www.azul.com/license/zing_third_party_licenses.html).

**Product-specific definitions:**

"Customer Product" is a Customer product that is developed, manufactured, provided or Distributed by or for Customer, is licensed to Customer's end users, and as further defined in an Order.

“Combination Product” means a Customer Product in or with which the Product (or any portion thereof) is included or provided or bundled or used with, and also includes Product (or any portion thereof) to the extent it is included in, used, provided or bundled with, or intended for use with, a Customer Product.

“Product Configuration” is the specific processor(s), operating system(s), and Java version(s) that are being licensed to Customer and are authorized for use, as specified in an Order.

“Supported Instance” means Software Services with one or more instances of the Product running on one (1) physical hardware system including without limitation a computer, server, workstation, laptop, individual blade or other physical system, as applicable; or one (1) virtual machine.

EXHIBIT B

SUPPORT AND MAINTENANCE SERVICES (“SUPPORT SERVICES”) TERMS AND CONDITIONS

SUPPORT AND MAINTENANCE SERVICES. Support Services consist of (a) Error corrections provided to Customer’s Designated Support Contacts concerning the installation and use of supported versions of the Product, (b) Product updates that Azul in its discretion makes generally available to its support and maintenance customers without additional charge, (c) access to Azul’s support portal and Download Site, and (d) facilities for case and bug tracking, escalation of problems for priority attention, and assistance with troubleshooting to diagnose and fix errors in the Product. Certain benefits of Support Services depend on the support tier which has been selected and paid for by Customer (the “Support Tier”), as set forth in the table below:

Priority 4 Errors means a report of minimal impact and means a minor problem or error(s) in the Documentation, a desired change in the Product which can be easily circumvented or avoided, or a Product enhancement request. Azul may, at its sole option, include a Fix for the Error or the requested enhancement in a future release of the Product.

EXCLUSIONS. Azul shall have no obligation to provide any Support Services for: (i) altered or damaged Products; (ii) any version of a Product that

Benefit	SUPPORT TIER	
	Standard	Platinum or Premium
<b>Support Hours and First Response SLA</b>	Standard Business Hours Next Business Day SLA	24x7x365 hours 1 hour SLA
<b>Product Downloads and Fixes</b>	Regular quarterly releases	Regular quarterly releases, Early Access to upcoming releases, and Hot Fixes
<b>Number of Tickets</b>	6 Tickets per year	Unlimited Tickets
<b>Phone/Email/Web support</b>	Phone, Email and Web	Phone, Email, and Web
<b>Support Forum Access</b>	Read & Write	Read & Write

ERROR PRIORITY LEVELS. Azul shall exercise commercially reasonable efforts to correct any Error reported by Customer in the current unmodified release of the Product in accordance with the priority level reasonably assigned to such Error by Azul.

Priority 1 Errors means a report that the Product is failing to perform in accordance with the Documentation and that such failure is reproducible and makes one or more critical functions of the Product inoperable. To be classified as Priority 1, an Error must (i) prevent a Customer from conducting critical and primary business functions (that are consistent with the Product’s intended use and functions) in a production environment, and (ii) have no immediate fix or work-around. For Priority 1 Errors, Azul shall commence the following procedures: (i) assign Azul engineers to diagnose the Error; (ii) notify Azul management that such Errors have been reported and of steps being taken to correct such Error(s); (iii) provide Customer with periodic reports on the status of the corrections; and (iv) immediately initiate work on a prioritized basis to provide Customer with a Workaround or Fix as soon as commercially reasonable.

Priority 2 Errors means a report that the Product is functioning but in a significantly degraded or restricted capacity. To be classified as Priority 2, an Error must be reproducible and (i) cause a high impact on some portion of Customer’s primary business functions (that are consistent with the Product’s intended use and functions) in a production environment, and (ii) have no immediate fix or work-around. For Priority 2 Errors, Azul shall commence the following procedures: (i) assign Azul engineers to diagnose the Error; (ii) notify Azul management that such Errors have been reported and of steps being taken to correct such Error(s); (iii) provide Customer with periodic reports on the status of the corrections; and (iv) initiate work to provide Customer with a Workaround or Fix as soon as commercially reasonable.

Priority 3 Errors means a report of degraded operations of the Product and reproducible limited condition that causes a slight or non-critical failure of the Product to function according to the Documentation. Azul shall exercise commercially reasonable efforts to include a Fix for the Error in the next regular Product release.

is not currently supported per the Product Lifecycle Policy; (iii) any Product that is not obtained from the Download Site or a Business Partner, (iv) Product problems caused by Customer's negligence, abuse or misapplication use of Products other than as specified in the Documentation or other causes beyond the control of Azul; (v) Products installed on any hardware that is not listed as supported in the Documentation; or (vi) Product or Product component(s) or Product feature(s) specifically identified as "Community", "Feature Preview", "Early Access", "Not Supported", or "Experimental". Azul shall have no liability for any changes in Customer's hardware which may be necessary to use the Product.

**CUSTOMER RESPONSIBILITIES.** Customer shall exercise commercially reasonable efforts in cooperating with and providing information to Azul with regard to Support Services. Customer is required to assist Azul until problem resolution. Required Customer activities may include logging into Customer's systems for diagnosis of problems, downloading and installation of software updates, retrieval and transfer of system logs/files, re- installation of the Product, and participation in tests for fixes.

**CASE RESOLUTION PROCESS.** Using good faith and reasonable judgment, Customer will assign an initial Priority Level to each report prior to reporting it to Azul, and Azul will assign a unique tracking number to each report as it is reported. Using good faith and reasonable judgment, Azul may change the Priority Level of a report. Azul will assign technical support resources and provide progress reports for each report, using commercially reasonable efforts to do so, in accordance with Section 2 of this Exhibit B.

**TARGET RESPONSE TIME.** A response to a request for Support Services shall consist of receipt of and acknowledgement by Azul of Customer's request for Support Services (the "First Response"). Azul will use commercially reasonable efforts to provide a First Response within the target SLA response time set forth in the table below. Customer acknowledges that a First Response may not include resolution for all requests for Support Services. However, Customer acknowledges and understands that no software is perfect or error free and that, despite Azul's commercially reasonable efforts, Azul may not be able to provide answers to or resolve some or all requests for Support Services. Azul makes no promises, guarantees, or assurances of any kind that it will be able to resolve all of Customer's Support Services requests.

Error Type	TARGET RESPONSE TIME	
	Standard	Platinum or Premium
Priority 1	1 Business Day	1 hour
Priority 2	2 Business Days	4 hours
Priority 3	2 Business Days	1 Business Day
Priority 4	2 Business Days	2 Business Days

**PRODUCT LIFECYCLE POLICY.** For Customers who have purchased Support Services, Azul offers support beginning from the Java Major Release Date, divided into two distinct phases: Production Support and Extended Support.

The Production Support phase includes maintenance updates, Error corrections, and security vulnerability resolutions, and may include feature enhancements. Security vulnerability resolutions will be made to supported Major releases and the latest Minor Release only, while Maintenance updates and Error corrections will be made to supported Major and supported Minor Releases. Minor Releases will be supported a minimum of twelve (12) months from the general availability of the Minor Release.

The Extended Support phase supports Product releases that have gone beyond the Production Support phase of the product lifecycle. During Extended Support, support is delivered primarily in the form of identifying Workarounds, and Azul may direct Customer to upgrade to a more current Major, Minor, or Maintenance Release of the Product in order to resolve issues. During the Extended Support phase, no Minor or Maintenance Releases are expected to be delivered, the exception being certain security vulnerability resolutions that may, at Azul's sole discretion, be

made available. A Product is deemed end-of-life (EOL) at the end of the Extended Support phase.

Each Major Release for a given Product is designated as Long Term Support (LTS), Medium Term Support (MTS), or Short Term Support (STS) as

detailed at [https://www.azul.com/support/product\\_releases/](https://www.azul.com/support/product_releases/) with the following Production Support and Extended Support periods:

<b>Lifecycle</b>	<b>Production Support</b> (from the Java Major Release Date)	<b>Extended Support</b> (from the end of Production Support)
LTS	8 years	2 years
MTS	1.5 years (from general availability of next LTS release)	1 year
STS	1 year	6 months

**DESIGNATED SUPPORT CONTACTS** Customer may only contact Azul through Customer's Designated Support Contacts. Customer may designate up to the number of contacts as set forth in the applicable Exhibit A. Azul will provide Support Services to Customers solely by communicating during the hours of coverage with the individual Designated Support Contact(s) appointed by Customer. Customer may change the Designated Support Contacts by notifying Azul in writing.

#### DEFINITIONS.

"Business Day" means a day during Azul's Standard Business Hours

"Business Hour" means an hour during Azul's Standard Business Hours

"Documentation" means the official Product documentation made available by Azul with the Product, which may be modified from time to time.

"Early Access" means a version of the Product containing upcoming Fixes which is not yet subject to general release, which is released by Azul to Customers who have selected a Support Tier which includes Early Access.

"Error" means a reproducible failure of the Product to substantially conform to the functionality and specifications as described in the Documentation.

"Fix" means the repair or replacement of object or executable code versions of a Product or Documentation to remedy an Error.

"Hot Fixes" means a preliminary version of the Product containing upcoming Fixes which is not yet subject to general release or Early Access, which is released by Azul to Customers who have selected a Support Tier which includes Hot Fix access.

"Java Major Release Date" means the date of formal approval by the Java Community Process Executive Committee of the umbrella Java Specification Request (JSR) for a given major release of Java Standard Edition, as follows: (a) December 11, 2009 for JSR 270 for Java SE 6, (b) July 20, 2011 for JSR 336 for Java SE 7, (c) March 4, 2014 for JSR 337 for Java SE 8, (d) September 21, 2017 for JSR 379 for Java SE 9, etc.

"Major Release" means a Product release which may deliver significant new features, enhancements to existing features, or performance improvements, as well as Error corrections. Major Releases incorporate all applicable Fixes made in prior Major Releases, Minor Releases, and Maintenance Releases.

"Minor Release" means a Product release which may deliver new features, enhancements to existing features, or performance improvements, as well as Error corrections. Minor Releases incorporate all applicable Fixes made in prior Minor Releases and Maintenance Releases.

"Maintenance Release" means a Product release which may deliver Error corrections that are severely affecting a number of customers and cannot wait for the next Major or Minor Release. Maintenance Releases incorporate all applicable Error corrections made in prior Maintenance Releases. Maintenance Releases are released as needed based on customer feedback and outstanding Errors.

"Standard Business Hours" means between 7:00AM and 7:00PM Pacific Time on Azul's regular (non-holiday) business days

"Ticket" means a formal support case opened by or on behalf of Customer, where each case or trouble ticket documents a unique issue requiring investigation and resolution.

"Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of a Product.

THESE TERMS AND CONDITIONS CONSTITUTE A SERVICE CONTRACT AND NOT A PRODUCT WARRANTY. ALL PRODUCTS AND MATERIALS RELATED THERETO ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE AGREEMENT. THIS ATTACHMENT IS AN ADDITIONAL PART OF THE AGREEMENT AND

DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

EXHIBIT A-5 "AZUL PLATFORM PRIME"

This Exhibit A-5 is subject to, and governed by, the Azul Software Agreement.

**Product:**

Azul Platform Prime

- Includes the Azul Zulu Prime Builds of OpenJDK, Azul Zulu Prime System Tools (ZST), ZVision, and Azul Mission Control

**Product License:** Azul grants Customer a time-based subscription license (during the applicable Software Services Term), without rights to sublicense, worldwide, nontransferable (except in connection with a permitted assignment pursuant to Section 14 of the Agreement), nonexclusive right to use the Product in object code form only; provided that certain Third-Party Software is instead licensed pursuant to the relevant terms set forth below in the Third-Party Software Licenses. Customer may only use the Product on systems for which Customer has purchased a Unit and solely in connection with Customer's internal business operations. Customer may only use Support Services for the number of Units purchased.

CUSTOMER ACKNOWLEDGES THAT THE PRODUCT MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE SOFTWARE SERVICES TERM AND/OR USE INCONSISTENT HEREWITH.

**Software Services:** Time-based Product License (as described above) subscription and Support Services for the Product during the applicable Software Services Term.

**Support Services Additions:** In addition to the Support Services as described in Exhibit B of the Agreement, Azul will use commercially reasonable efforts to:

- update the Azul Zulu Prime Builds of OpenJDK for a given update release within the timeframe as specified below after the update is released for General Availability (GA) by the associated OpenJDK project as follows:

	Support Tier		
	Platinum	Premium	Standard
Security fixes that have an identified CVE	48 hours	7 days	15 days
Security fixes that have an identified CVE, bug fixes, and other updates	30 days	30 days	30 days

- Common Vulnerabilities and Exposures ("CVE") is as defined by the NIST

National Vulnerability Database (reference

<https://nvd.nist.gov/vuln>); and

- update Azul Mission Control and the non JDK components of the Product for a given update release no later than thirty (30) days after the update is released for General Availability (GA) by the OpenJDK project; and
- backport security fixes that have an identified CVE from newer supported Java Major Releases to older supported Java Major Releases in accordance with the timeframes in the table above; and
- ensure that the Product delivered to Customer has passed the OpenJDK Technology Compatibility Kit (TCK) that is available for a given major release of Java; and
- for those Customers who have purchased Support Services with the Platinum or Premium Support Tiers (and except for those releases designated as "Not Verified" or "NV"), ensure and so certify with each release of the Product that no Accessible APIs in the Product carry licenses that require code that runs on the Product using those APIs to carry a specific license, and that use with other Software does not contaminate the code or intellectual property of such Software with any license requirements, and distribution of such Software can be governed by any license at the discretion of the owner of the Software. For purposes herein, (a) "Accessible APIs" means all Java classes accessible via the JDK/JRE class path or module path, as well as all native symbols accessible via .h files included in the JDK/JRE; and (b) "Software" refers to application or code of Customer or third parties, which runs on or accesses the Product via the Accessible APIs.

**Designated Support Contacts:** As further detailed in Section 8 of Exhibit B (Support Services) of the Agreement, Customer may only contact Azul through Customer's Designated Support Contacts and may designate up to the number of contacts as set forth in the table below based on the number of Units purchased and the Support Tier selected and paid for by Customer:

Number of Units	DESIGNATED NUMBER OF SUPPORT CONTACTS		
	Standard	Premium	Platinum
1 to 1,000	2	2	4
1,001 to 2,000	2	4	6
2,001 to 5,000	2	6	8
5,001 to 10,000	2	8	10
10,001 to 20,000	4	10	12
20,001 and over	4	12	15

**Third-Party Software Licenses:** As listed at <https://docs.azul.com/prime/tpl.html>.

**Product-specific Definitions:** • "Virtual Core" or "vCore" means a virtual representation of processing power in a single hardware virtualization that can run its own operating system and execute applications like a physical machine. The number of Virtual Cores is calculated such that each Virtual Core maps to



a single hardware thread in the underlying processing core. If a Customer is only able to calculate its physical computer processing cores, then each physical computer processing core will be equal to two (2) Virtual Cores.

- "Unit" means Software Services with one or more instances of Azul Zulu Prime Builds of OpenJDK or Azul Zulu Builds of OpenJDK running on one (1) Virtual Core; and one or more instances of Azul Mission Control running on an unlimited number of Virtual Cores.

EXHIBIT A-6 "AZUL PLATFORM CORE"

This Exhibit A-5 is subject to, and governed by, the Azul Software Agreement.

**Product:**

Azul Platform Core

- Includes Azul Zulu Builds of OpenJDK and Azul Mission Control

**Product License:**

Azul grants Customer a perpetual, worldwide, nonexclusive right to use the Product; provided that certain Third-Party Software is instead licensed pursuant to the relevant terms set forth below in the Third-Party Software Licenses. Customer may only use Support Services for the number of Units purchased.

**Software Services:** Time-based Support Services for the Product during the applicable Software Services Term.

**Support Services Additions:** In addition to the Support Services as described in Exhibit B of the Agreement, Azul will use commercially reasonable efforts to:

- update the Azul Zulu Builds of OpenJDK for a given update release within the timeframe as specified below after the update is released for General Availability (GA) by the associated OpenJDK project as follows:

	Support Tier		
	Platinum	Premium	Standard
Security fixes that have an identified CVE	48 hours <sup>1</sup> / 15 days	7 days <sup>1</sup> / 15 days	15 days <sup>1</sup> / 30 days
Security fixes that have an identified CVE, bug fixes, and other updates	7 days <sup>1</sup> / 15 days	15 days	30 days

- <sup>1</sup> Limited to Azul Zulu Builds of OpenJDK for 64-bit Java versions 7 onward running on ARM64 processors and x86 processors on Linux, Windows and macOS operating systems
- Common Vulnerabilities and Exposures ("CVE") is as defined by the NIST National Vulnerability Database (reference <https://nvd.nist.gov/vuln>); and

- update Azul Mission Control and the non JDK components of the Product for a given update release no later than thirty (30) days after the update is released for General Availability (GA) by the OpenJDK project; and
- backport security fixes that have an identified CVE from newer supported Java Major Releases to older supported Java Major Releases in accordance with the timeframes in the table above; and
- ensure that the Product delivered to Customer has passed the OpenJDK Technology Compatibility Kit (TCK) that is available for a given major release of Java; and
- for those Customers who have purchased Support Services with the Platinum or Premium Support Tiers (and except for those releases designated as "Not Verified" or "NV"), ensure and so certify with each release of the Product that no Accessible APIs in the Product carry licenses that require code that runs on the Product using those APIs to carry a specific license, and that use with other Software does not contaminate the code or intellectual property of such Software with any license requirements, and distribution of such Software can be governed by any license at the discretion of the owner of the Software. For purposes herein, (a) "Accessible APIs" means all Java classes accessible via the JDK/JRE class path or module path, as well as all native symbols accessible via .h files included in the JDK/JRE; and (b) "Software" refers to application or code of Customer or third parties, which runs on or accesses the Product via the Accessible APIs.

**Designated Support Contacts:** As further detailed in Section 8 of Exhibit B (Support Services) of the Agreement, Customer may only contact Azul through Customer's Designated Support Contacts and may designate up to the number of contacts as set forth in the table below based on the number of Units purchased and the Support Tier selected and paid for by Customer:

Number of Units	DESIGNATED NUMBER OF SUPPORT CONTACTS		
	Standard	Premium	Platinum
1 to 1,000	2	2	4
1,001 to 2,000	2	4	6
2,001 to 5,000	2	6	8
5,001 to 10,000	2	8	10
10,001 to 20,000	4	10	12
20,001 and over	4	12	15

**Third-Party Software Licenses:** The Third-Party Software Licenses for Platform Core are listed at <https://docs.azul.com/core/tpl>.

**Product-specific Definitions:** • "Desktop" means a physical desktop or laptop computer.

- "Virtual Core" or "vCore" means a virtual representation of processing power in a single hardware virtualization that can run its own operating system and execute applications like a physical machine. The number of Virtual Cores is calculated such that each Virtual Core maps to a single hardware thread in the underlying processing core. If a Customer is only able to calculate its physical computer processing cores, then each physical computer processing core will be equal to two (2) Virtual Cores.
- "Unit" means Software Services with one or more instances of Azul Zulu Builds of OpenJDK running on one (1) Virtual Core; and one or more instances of Azul Mission Control running on an unlimited number of Virtual Cores. For Software Services purchased for Desktop-only use as reflected in an Order,

"Unit" means Software Services with one or more instances of Azul Zulu Builds of OpenJDK running on one (1) Desktop; and one or more instances of Azul Mission Control running on an unlimited number of Desktops.

**BARRACUDA NETWORKS, INC.**  
3175 S. WINCHESTER BLVD.  
CAMPBELL, CA 95008

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Barracuda Networks, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is

triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**BARRACUDA NETWORKS**

**BARRACUDA NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS**

**Limited Hardware Warranty**

Contractor warrants that commencing from the date of delivery to Ordering Activity, and continuing for a period of one (1) year: (a) its products (excluding any software) will be free from material defects in materials and workmanship under normal use; and (b) the software provided in connection with its products, including any software contained or embedded in such products will substantially conform to Contractor published specifications in effect as of the date of manufacture. Except for the foregoing, the software is provided as is. In no event does Contractor warrant that the software is error free or that Ordering Activity will be able to operate the software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the software or any equipment, system or network on which the software is used will be free of vulnerability to intrusion or attack. The limited warranty extends only to Ordering Activity the original buyer of the Barracuda Networks product and is non-transferable.

Remedy. Ordering Activity's remedy and the liability of Contractor under this limited warranty shall be, at Contractor or its service centers option and expense, the repair, replacement or refund of the purchase price of any products sold which do not comply with this warranty. Hardware replaced under the terms of this limited warranty may be refurbished or new equipment substituted at Contractor's option. Contractor obligations hereunder are conditioned upon the return of affected articles in accordance with Contractor then-current Return Material Authorization ("RMA") procedures. All parts will be new or refurbished, at Contractor's discretion, and shall be furnished on an exchange basis. All parts removed for replacement will become the property of Contractor. In connection with warranty services hereunder, Contractor may at its discretion modify the hardware of the product at no cost to Ordering Activity to improve its reliability or performance. The warranty period is not extended if Contractor repairs or replaces a warranted product or any parts. Contractor may change the availability of limited warranties, at its discretion, but any changes will not be retroactive.

Exclusions and Restrictions. This limited warranty does not apply to Barracuda Networks products that are or have been (a) marked or identified as "sample" or "beta," (b) loaned or provided to Ordering Activity at no cost, (c) sold "as is," (d) repaired, altered or modified except by Contractor, (e) not installed, operated or maintained in accordance with instructions supplied by Contractor, or (f) subjected to abnormal physical or electrical stress, misuse, negligence or to an accident.

EXCEPT FOR THE ABOVE WARRANTY, CONTRACTOR MAKES NO OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO BARRACUDA NETWORKS PRODUCTS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, AVAILABILITY, RELIABILITY, USEFULNESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. EXCEPT FOR THE ABOVE WARRANTY, BARRACUDA NETWORKS' PRODUCTS AND THE SOFTWARE ARE PROVIDED "AS-IS" AND CONTRACTOR DOES NOT WARRANT THAT ITS PRODUCTS WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, AVAILABLE, SECURE OR ERROR FREE, OR THAT ANY ERRORS IN ITS PRODUCTS OR THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, CONTRACTOR DOES NOT WARRANT THAT BARRACUDA NETWORKS PRODUCTS, THE SOFTWARE OR ANY EQUIPMENT, SYSTEM OR NETWORK ON WHICH BARRACUDA NETWORKS PRODUCTS WILL BE USED WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK.

**Barracuda Networks Software License Terms**

The software and documentation, whether on disk, in flash memory, in read only memory, or on any other media or in any other form (collectively "Barracuda Software") is licensed, not sold, to Ordering Activity by Contractor for use only under the terms of this Attachment A, and Contractor reserves all rights not expressly granted to Ordering Activity. The rights granted are limited to Contractor's intellectual property rights in the Barracuda Software and do not include any other patent or intellectual property rights. Ordering Activity owns the media on which the Software is recorded but Contractor retains ownership of the Software itself. If Ordering Activity has not completed a purchase of the Software and made payment for the purchase, the Software may only be used for evaluation purposes and may not be used in any production capacity. Furthermore the Software, when used for evaluation, may not be secure and may use publicly available passwords.

Permitted License Uses and Restrictions. If Ordering Activity has purchased a Barracuda Networks hardware product, this Attachment A allows Ordering Activity to use the Software only on the single Barracuda labeled hardware device on which the software was delivered. Ordering Activity may not make copies of the Software. Ordering Activity may not make a backup copy of the Software. If Ordering Activity has purchased a Barracuda Networks Virtual Machine Ordering Activity may use the software only in the licensed number of instances of the licensed sizes and Ordering Activity may not exceed the licensed capacities. Ordering Activity may make a reasonable number of backup copies of the Software. If Ordering Activity have purchased client software Ordering Activity may install the software only on the number of licensed clients. Ordering Activity may make a reasonable number of backup copies of the Software. For all purchases Ordering Activity may not modify or create derivative works of the Software. Ordering Activity may not make the Software available over a network where it could be utilized by multiple devices or copied. Unless otherwise expressly provided in the documentation, Ordering Activity's use of the Software shall be limited to use on a single hardware chassis, on a single central processing unit, as applicable, or use on such greater number of chassis or central processing units as Ordering Activity may have paid Contractor the required license fee; and Ordering Activity's use of the Software shall also be limited, as applicable and set forth in Ordering Activity's purchase order or in Contractor's GSA product catalog, user documentation, or web site, to a maximum number of (a) seats (i.e. users with access to install Software), (b) concurrent users, sessions, ports, and/or issued and outstanding IP addresses, and/or (c) central processing unit cycles or instructions per second. Ordering Activity's use of the Software shall also be limited by any other restrictions set forth in Ordering Activity's purchase order or in Contractor's GSA product catalog, user documentation or Web site for the Software. The BARRACUDA SOFTWARE IS NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, LIFE SUPPORT MACHINES, OR OTHER EQUIPMENT IN WHICH FAILURE COULD LEAD TO DEATH, PERSONAL INJURY, OR ENVIRONMENTAL DAMAGE. ORDERING ACTIVITY EXPRESSLY AGREES NOT TO USE IT IN ANY OF THESE OPERATIONS.



Ordering Activity may not transfer, rent, lease, lend, or sublicense the Software or allow a third party to do so. ORDERING ACTIVITY MAY NOT OTHERWISE TRANSFER THE SOFTWARE OR ANY OF ORDERING ACTIVITY'S RIGHTS AND OBLIGATIONS UNDER THIS ATTACHMENT A. Ordering Activity agrees that Ordering Activity will have no right and will not, nor will it assist others to: (i) make unauthorized copies of all or any portion of the Software; (ii) sell, sublicense, distribute, rent or lease the Software; (iii) use the Software on a service bureau, time sharing basis or other remote access system whereby third parties other than Ordering Activity can use or benefit from the use of the Software; (iv) disassemble, reverse engineer, modify, translate, alter, decompile or otherwise attempt to discern the source code of all or any portion of the Software; (v) utilize or run the Software on more computers than Ordering Activity has purchased license to; (vi) operate the Software in a fashion that exceeds the capacity or capabilities that were purchased by Ordering Activity.

ORDERING ACTIVITY EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE USE OF THE BARRACUDA SOFTWARE IS AT ORDERING ACTIVITY'S OWN RISK AND THAT THE ENTIRE RISK AS TO SATISFACTION, QUALITY, PERFORMANCE, AND ACCURACY IS WITH ORDERING ACTIVITY. THE BARRACUDA SOFTWARE IS PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE BARRACUDA SOFTWARE, EITHER EXPRESSED OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR ANY APPLICATION, OF ACCURACY, AND OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CONTRACTOR DOES NOT WARRANT THE CONTINUED OPERATION OF THE SOFTWARE, THAT THE PERFORMANCE WILL MEET ORDERING ACTIVITY'S EXPECTATIONS, THAT THE FUNCTIONS WILL MEET ORDERING ACTIVITY'S REQUIREMENTS, THAT THE OPERATION WILL BE ERROR FREE OR CONTINUOUS, THAT CURRENT OR FUTURE VERSIONS OF ANY OPERATING SYSTEM WILL BE SUPPORTED, OR THAT DEFECTS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION GIVEN BY CONTRACTOR OR AUTHORIZED CONTRACTOR REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE BARRACUDA SOFTWARE PROVE DEFECTIVE, ORDERING ACTIVITY ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. FURTHERMORE CONTRACTOR SHALL ASSUME NO WARRANTY FOR ERRORS/BUGS, FAILURES OR DAMAGE WHICH WERE CAUSED BY IMPROPER OPERATION, USE OF UNSUITABLE RESOURCES, ABNORMAL OPERATING CONDITIONS (IN PARTICULAR DEVIATIONS FROM THE INSTALLATION CONDITIONS) AS WELL AS BY TRANSPORTATION DAMAGE. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or ATTACK. ORDERING ACTIVITY EXPRESSLY ACKNOWLEDGE AND AGREE THAT ORDERING ACTIVITY WILL PROVIDE AN UNLIMITED PERPETUAL ZERO COST LICENSE TO CONTRACTOR FOR ANY PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS WHICH ORDERING ACTIVITY EITHER OWN OR CONTROL THAT ARE UTILIZED IN ANY BARRACUDA PRODUCT.

Content Restrictions. ORDERING ACTIVITY MAY NOT (AND MAY NOT ALLOW A THIRD PARTY TO) COPY, REPRODUCE, CAPTURE, STORE, RETRANSMIT, DISTRIBUTE, OR BURN TO CD (OR ANY OTHER MEDIUM) ANY COPYRIGHTED CONTENT THAT ORDERING ACTIVITY ACCESS OR RECEIVE THROUGH USE OF THE PRODUCT CONTAINING THE SOFTWARE. ORDERING ACTIVITY ASSUME ALL RISK AND LIABILITY FOR ANY SUCH PROHIBITED USE OF COPYRIGHTED CONTENT. Ordering Activity agrees not to publish any benchmarks, measurements, or reports on the product without Contractor's written express approval.

Trademarks. Certain portions of the product and names used in this Attachment A, the Software and the documentation may constitute trademarks of Barracuda Networks. Ordering Activity is not authorized to use any such trademarks for any purpose.

Collection of Data. Ordering Activity agrees to allow Contractor through Barracuda Networks to collect information ("Statistics") from the Software in order to fight spam, virus, and other threats as well as optimize and monitor the Software. Information will be collected electronically and automatically. Statistics include, but are not limited to, the number of messages processed, the number of messages that are categorized as spam, the number of virus and types, IP addresses of the largest spam senders, the number of emails classified for Bayesian analysis, capacity and usage, websites not categorized, fingerprints of emails, and other statistics. Ordering Activity's data will be kept private and will only be reported in aggregate by Barracuda Networks.

Subscriptions. Software updates and subscription information provided by Barracuda Networks Updates or other services may be necessary for the continued operation of the Software. Ordering Activity acknowledge that such a subscription may be necessary. Furthermore some functionality may only be available with additional subscription purchases. Obtaining Software updates on systems where no valid subscription has been purchased or obtaining functionality where subscription has not been purchased is strictly forbidden and in violation of this Attachment A. All initial subscriptions commence at the time of activation and all renewals commence at the expiration of the previous valid subscription. Unless otherwise expressly provided in the documentation, Ordering Activity shall use the Energize Updates Service and other subscriptions solely as embedded in, for execution on, or (where the applicable documentation permits installation on non-Barracuda Networks equipment) for communication with Barracuda Networks equipment owned or leased by Ordering Activity. All subscriptions are non-transferrable. Contractor makes no warranty that subscriptions will continue un-interrupted.

Time Base License. If Ordering Activity's Software purchase is a time based license Ordering Activity expressly acknowledge that the Software will stop functioning at the time the license expires.

Support. Telephone, email and other forms of support will be provided to Ordering Activity if you have purchased a product that includes support. The hours of support vary based on country and the type of support purchased. Barracuda Networks Energize Updates typically include Basic support.

Changes. Contractor through Barracuda Networks reserves the right at any time not to release or to discontinue release of any Software or Subscription and to alter features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of any future releases of the Software or Subscriptions.

Open Source Licensing. Barracuda Networks products may include programs that are covered by the GNU General Public License (GPL) or other Open Source license agreements, in particular the Linux operating system. It is expressly put on record that the Software does not constitute an edited version or further development of the operating system. These programs are copyrighted by their authors or other parties, and the authors and copyright holders disclaim any warranty for such programs. Other programs are copyright by Contractor. Contractor through Barracuda Networks makes available the source code used to build Barracuda products available at [source.barracuda.com](http://source.barracuda.com). This directory includes all the open source programs that are distributed on the Barracuda products. Obviously not all of these programs are utilized, but since they are distributed on the Barracuda product Contractor through Barracuda is required to make the source code available.

**Barracuda Instant Replacement Service**

Contractor through Barracuda Networks shall provide the instant replacement services described below commencing on the date of delivery of the Barracuda Networks, Inc. product for which the Instant Replacement Service is purchased (Product) to the Ordering Activity, and continuing for a period of one (1) year, three (3) years, or five (5) years depending on the Service purchased (Instant Replacement Service Period). During the Instant Replacement Service Period, Barracuda Networks will use commercially reasonable efforts to ship Ordering Activity a new Product within twenty-four (24) hours if Ordering Activity resides in the United States. For Ordering Activities residing outside the United States, Barracuda Networks will use commercially reasonable efforts to ship Ordering Activity a replacement Product via express mail within one business day.

Upon requesting a replacement Product, Ordering Activity must return the original Product to Contractor through Barracuda Networks. Ordering Activity must return the original Product to Barracuda Networks within 30 days after shipment of the replacement Product. Barracuda Networks will pay shipping costs to ship the replacement Product to Ordering Activity. The Ordering Activity is responsible for shipping costs back to Barracuda Networks of the covered unit.

This Instant Replacement Service Period is not extended if Contractor through Barracuda Networks replaces a Product. Barracuda Networks may change the availability of Instant Replacement Service programs, at its discretion, but any changes will not be retroactive.

This Instant Replacement Service extends only to the original Ordering Activity of the Product and is non-transferable. Instant Replacement must be purchased within 60 days of initial order of the system to be covered.

Ordering Activity's remedy and the liability of Contractor under this Instant Replacement Service and during the Instant Replacement Service Period will be shipment of a replacement Product within the time period and according to the replacement process set forth above and on the Barracuda Networks Web Site or literature accompanying the Product, or a refund of the purchase price if the Product is returned to Contractor through Barracuda Networks.

Restrictions. This Instant Replacement Service does not apply if (a) the Product has been altered, except by Contractor through Barracuda Networks, (b) the Product has not been installed, operated, repaired, or maintained in accordance with instructions, (c) the Product has been subjected to abnormal physical or electrical stress, misuse, or negligence (d) the Product has an altered or missing serial number; or (e) Contractor has not received payment for the Product or (f) the Product is physically damaged or (g) a Ordering Activity must have current EU to take advantage of IR.

Renewal. At the end of the Instant Replacement Service Period, Ordering Activity may have the option to renew the Instant Replacement Service at then-current GSA price, provided such Instant Replacement Service is available. All initial subscriptions commence at the time of sale of the unit and all renewals commence at the expiration of the previous valid subscription.

DISCLAIMER OF WARRANTY. EXCEPT AS SPECIFIED IN THIS INSTANT REPLACEMENT SERVICE, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY TO ORDERING ACTIVITY. THIS WARRANTY GIVES ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS, AND ORDERING ACTIVITY MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

### **Barracuda Energize Updates**

Barracuda Energize Updates provide Ordering Activity's Barracuda Networks product with protection from the latest Internet threats. The team at Contractor through Barracuda Central continuously monitors the Internet for new trends in network security threats and develops strategies to mitigate those threats. Energize Updates deliver the latest definitions most appropriate to Ordering Activity's product -- spam, virus, content categories, spyware filter, intrusion prevention, IM protocols, policies, security updates, attacks and document formats. These updates are sent out hourly or more frequently if needed, to ensure that Ordering Activity always have the latest and most comprehensive protection.

Barracuda Energize Updates subscriptions need to be purchased with any Barracuda Networks product to provide complete protection from the latest Internet threats. Subscriptions can be purchased or renewed for hardware appliances for up to 5 years from purchase of product. In addition to definition updates, Energize Updates subscriptions also provide: Basic Support, which includes email support 24x7 and phone support between the hours of 9 a.m. and 5 p.m. Monday through Friday in the US (Pacific Time). Note that Contractor through Barracuda Networks Technical Support will take and respond to support calls 24x7 from Basic Support customers if we are not helping other customers.

Firmware Maintenance which includes new firmware updates with feature enhancements and bug fixes for up to 4 years from purchase of product.

Security Updates to patch or repair any security vulnerabilities for up to 5 years from purchase of product.

Optional participation in the Barracuda Early Release Firmware program.

BLUECAT FEDERAL USA, INC.  
4101 YONGE STREET, SUITE 502  
TORONTO, ONTARIO, CANADA M2P 1N6

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

**1. Scope.** This Rider and the attached BlueCat Federal USA, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**2. Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated

June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**BLUECAT FEDERAL USA, INC.**

**BLUECAT FEDERAL USA, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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**MASTER AGREEMENT**

This Master Agreement is entered into by EC America, Inc. ("Contractor") and the Ordering Activity under GSA Schedule contracts ("Customer" or "Ordering Activity"). Contractor and the Ordering Activity placing an order under the GSA Schedule contract that includes this Agreement (any such order being the "Purchase Order") mutually agree to be bound to these terms.

All references to BlueCat in this Agreement should be read as "Contractor acting by and through its supplier, BlueCat." For avoidance of doubt, nothing herein shall establish privity of contract between BlueCat and the Ordering Activity.

**1. DEFINITIONS; PURCHASE ORDERS; SCHEDULES**

1.1. **Definitions.** Capitalized terms not expressly defined in this Agreement have the meaning given to them in Schedule "A".

1.2. **Purchase Orders.** All orders of BlueCat Offerings, Professional Services and other ancillary purchases by Customer shall be evidenced by a Purchase Order. The terms of all Purchase Orders, whether issued and accepted before or after the execution of this Agreement, must be consistent with this Agreement, unless specifically stated and agreed to by the Parties. No terms in any form of Customer Purchase Order, other than the identification, price, quantity and license model of the BlueCat Offerings, the Subscription Period, if applicable, the applicable pricing and Active Unique IPs tier, and the address for invoicing and delivery, if applicable, shall be binding on BlueCat, unless specifically stated and agreed to by the Parties. A negotiated purchase order would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needs.

1.3. **Schedules.** The following schedules are attached to and form a part of this Agreement:

Schedule "A" – Definitions  
 Schedule "B" – Additional E-Learning Terms and Conditions  
 Schedule "C" – Additional Professional Service Terms and Conditions  
 Schedule "D" – Additional Managed Services Terms and Conditions  
 Schedule "E" – Additional Hosted External DNS Service Terms and Conditions

**2. BLUECAT SOFTWARE PRODUCTS**

2.1. **Grant of License.** BlueCat grants to Customer a non-exclusive, non-transferable, non-assignable, non-sublicenseable license to use the Software components of the Software Products identified on any Purchase Order, subject at all times to the terms and conditions set forth in this Agreement.

2.2. **Duration of License.** Software Products licensed on a Subscription basis are temporary and expire when the Subscription Period for the relevant Software Product(s) expires or is terminated. For Software licensed on a perpetual basis, such licenses will become perpetual (unless terminated as provided herein or as otherwise set out in a Purchase Order) when all payments for such licenses have been received by BlueCat.

2.3. **Support; Duration.** BlueCat shall provide the standard Support for the applicable Software Product to the extent specified in a Purchase Order. Support shall be provided as a Subscription during the Subscription Period. Once paid, Support fees are non-refundable.

**3. BLUECAT CLOUD SERVICES AND DNS FLEX SERVICES**

3.1. **Access and Use.** Subject to the terms and condition of this Agreement, Customer may remotely access and use (i) the Cloud Services on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order; and (ii) the DNS Flex Services on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order.

3.2. **Service Levels, Sole Remedy.** BlueCat will make the Cloud Service and the cloud service portions of the DNS Flex Service, in each case as ordered by Customer, available to Customer in accordance with the applicable Service Level Schedule. BlueCat's obligations in the Service Level Schedule do not apply to the extent: (a) Customer's system does not meet the minimum requirements listed in the Documentation to support the applicable BlueCat Offering; (b) reserved; and (c) the Service Availability (as defined in the Service Level Schedule) is impacted by Customer's failure to incorporate or utilize any recommendations or data produced by the applicable BlueCat Offering (e.g. security recommendations emanating from the applicable BlueCat Offering). *The remedies listed in the Service Level Schedule are Customer's sole remedy and BlueCat's sole obligation for any failure of the Cloud Service or the cloud service portions of the DNS Flex Service. All other Cloud Services are provided "as is", per the disclaimer in Section 6.4.*

3.3. **Security.** BlueCat will maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of the Cloud Services and cloud service portions of the DNS Flex Services, and Customer Data.

3.4. **Access Methods, Authorized Users, Unauthorized Access or Use.** Customer agrees that it is responsible for protecting the security and integrity of the Access Methods. Customer shall be fully responsible for any Authorized Users' breach of this Agreement. Customer agrees that it is liable for any acts or omissions occurring under any Access Methods, whether by Authorized Users or otherwise. Each Party shall notify the other Party immediately of any suspected or known unauthorized access or use of the Cloud Services or DNS Flex Services, will use commercially reasonable efforts to prevent such unauthorized access or use, and will use commercially reasonable efforts to stop said unauthorized access or use.

**3.5. Customer Data.** Customer hereby grants to BlueCat a non-exclusive, worldwide right to use, process and transmit, the Customer Data via the Cloud Services and DNS Flex Services so that BlueCat may provide the applicable ordered Cloud Services and DNS Flex Services to Customer. Customer agrees that BlueCat does not review, edit, substantiate, determine or otherwise have any responsibility for the accuracy, quality, integrity, legality, reliability, or appropriateness of any Customer Data. *Customer has sole responsibility for, and BlueCat disclaims all liability for, the Customer Data transmitted by Customer to the Cloud Services or DNS Flex Services.*

**3.6. Updates and Modifications.** Customer acknowledges and agrees that from time to time BlueCat may apply updates to, or otherwise revise, the Cloud Services or DNS Flex Services and that such updates and/or revisions may result in additions, modifications or removal of functionality, features, content or the appearance of the Cloud Services or DNS Flex Services. Any material updates to the Cloud Services or DNS Flex Services that results in the removal of material functionality, considering the overall level of service, shall be considered a material change to this Agreement and shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms.

**3.7. Ancillary Services Software.** BlueCat grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable and limited license to use the Ancillary Cloud Service Software during the applicable Subscription Period solely for Customer's internal business purposes. In addition, BlueCat shall provide Support for the Ancillary Service Software during the applicable Subscription Period. Customer's right to use such software and to receive Support for such software ceases when the right to access and use Cloud Services or DNS Flex Services, as applicable, ends. At such time, each copy of the Ancillary Service Software must be promptly uninstalled or BlueCat may disable the Ancillary Service Software.

**3.8. APIs.** In the event that BlueCat makes available any APIs to Customer as part of the DNS Flex Services or Cloud Services, then Customer may access such APIs on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order, subject at all times to the terms and conditions of this Agreement. Customer is responsible for making and maintaining all necessary arrangements to access, use and interface with such APIs in accordance with such specifications, restrictions and guidances as BlueCat may stipulate from time to time. In addition, APIs regarding BlueCat Gateway are subject to the requirements detailed at the following address: <https://quay.io/repository/bluecat/gateway> and Customer agrees to comply with such requirements. BlueCat may from time to time on reasonable notice require Customer at Customer's own cost to take such steps as are required to integrate any modifications or updates BlueCat makes to APIs. BlueCat reserves the right to restrict Customer access the APIs if BlueCat reasonably determine, in BlueCat sole discretion, that the volume of queries originating from Customer use of the APIs is unduly burdening any API.

**3.9. Service Points.** Customer acknowledges and agrees that, in order to access and use the DNS Flex Services, Customer must use Service Points and that all Customer's devices must point directly to a Service Point ("**first hop**").

#### 4. ADDITIONAL TERMS & RESTRICTIONS

**4.1. License and Subscription Models.** The BlueCat Offerings are provided or made available based on the license or subscription model identified in the applicable Purchase Order. Usage of the BlueCat Offerings may not exceed the maximum allowable licenses, subscriptions or Unique Active IPs or any other usage or scope restrictions. Prior to renewal of any BlueCat Offerings and at BlueCat's discretion, acting reasonably, at any time during the Subscription Period where Customer's usage thereof has exceeded such restrictions, Customer will be invoiced for any over usage of the applicable product or service at the then-current list price in accordance with the GSA Schedule Pricelist. If the Ordering Activity exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the higher use amount.

**4.2. Active Unique IPs.** Usage of the DNS Flex Services may not exceed the maximum number of Unique Active IPs per month specified in the applicable Purchase Order for that pricing tier. Where Customer's usage of the DNS Flex Services has exceeded such restrictions, then Customer will be invoiced for any such over usage, at BlueCat's discretion, acting reasonably, at any time during the Subscription Period, at the then-current list price in accordance with the GSA Schedule Pricelist.

**4.3. Acceptable Use Policy.** Customer agrees to, and agrees to ensure that its Authorized Users will, comply with the Acceptable Use Policy. Neither this Agreement nor the Acceptable Use Policy requires that BlueCat take any action against Customer or any Authorized User or other third party for violating the Acceptable Use Policy or this Agreement, but BlueCat is free to take any such action it sees fit, in addition to any other remedies BlueCat may have.

**4.4. Suspension of Perpetual Licenses.** If Customer is transitioning from an existing BlueCat perpetual license model to the subscription license model of DNS Flex Services, upon delivery of the DNS Flex Services, all perpetual licenses being replaced are suspended during the Subscription Period. To reinstate such perpetual licenses, please contact BlueCat.

**4.5. Appliances.** Upon payment of additional fees, BlueCat shall provide the Appliances identified in a Purchase Order.

**4.6. E-Learning.** If Customer orders the E-Learning Cloud Service pursuant to a Purchase Order, the terms and conditions in Schedule "B" will apply in addition to the terms and conditions of this Agreement.

**4.7. Professional Services.** Upon payment of additional fees, BlueCat shall provide the Professional Services described in the SOW upon the terms and conditions set forth in this Agreement and in Schedule "C".

**4.8. Managed Services.** If Customer is a managed provider of DNS services, then the terms and conditions in Schedule "D" will apply in addition to the terms and conditions of this Agreement.

**4.9. Hosted Services.** If Customer purchases Hosted Services pursuant to a Purchase Order, the terms and conditions in Schedule "E" will apply in addition to the terms and conditions of this Agreement.

#### 5. INVOICES, DELIVERY, ACCESS AND PAYMENT



5.1. **Invoices.** Upon the delivery of any BlueCat Offering or any other BlueCat products or services, BlueCat shall issue Customer an invoice. BlueCat shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5.2. **Payment Terms, No Refund.** All invoices are due, and Customer agrees to pay each such invoice, in full thirty (30) days from the date of invoice receipt without deduction or set off. Except as otherwise permitted in this Agreement, once paid, fees are non-refundable. All applicable sales and use taxes shall be identified on the invoice and are the responsibility of the Customer. In the event of payment after the due date, interest shall be payable on the overdue amount at the rate of one and one half (1.5%) percent per month, calculated and compounded monthly, or the maximum rate permitted by law, whichever is less, calculated from the due date to the date of payment. All prepaid fees are non-refundable. Should Customer terminate (or not renew prior to contract end date) annual Support services and subsequently re-instates them, Customer may be subject to the then-current reinstatement fee. The reinstatement fee shall be computed as the sum of the following: (i) amount that would have been paid by the Customer for the past Agreement period(s) had coverage been maintained continuously.

5.3. **Delivery, Risk of Loss, Access.** (a) For Software Products or Ancillary Service Software provided via Appliances, BlueCat shall arrange for delivery of Appliances to the address indicated in the Purchase Order, provided that all costs related to shipping and insurance of the Appliances are paid by Customer. Delivery of Appliances and risk of loss will pass to Customer FOB shipping point. (b) For Software Products provided for download and installation on Customer equipment or environment or for any other Ancillary Service Software, BlueCat shall arrange for virtual delivery of such software by making it available for download, such as providing a license key, at which point delivery will be deemed to be complete. (c) For Cloud Services or the cloud services portions of the DNS Flex Services, BlueCat shall arrange for delivery by making such services available for use by providing login credentials to Customer, at which point delivery will be deemed complete.

## 6. LIMITED WARRANTIES FOR SOFTWARE AND APPLIANCES, DISCLAIMER

6.1. **Software Product Warranty; Ancillary Service Software Warranty.** For a period of sixty (60) days following delivery, all ordered Software Products and Ancillary Service Software shall be free from material defects, free from material errors, free from all known viruses (as identified using commercially reasonable steps and antivirus software) and will perform substantially in accordance with its Documentation. Such warranty does not apply: (a) to any change or service to such software made by any party other than BlueCat or its authorized agent; (b) to the operation of such software with software or hardware not approved by BlueCat, its authorized agent or as specified in the Documentation; (c) if such software was used in a manner other than as contemplated in this Agreement or the Documentation; or (d) to failure by Customer to report a warranty claim within the warranty period specified in this Section 6.1.

6.2. **Appliance Warranty.** Any applicable Appliance warranty is described in the BlueCat Customer Care Support Handbook.

6.3. **Sole Software and Appliance Remedy.** Upon a valid software warranty claim by Customer, BlueCat shall, in its sole discretion: (a) in the case of a defective Appliance, repair or replace the Appliance, (b) in the case of any other Software Product or any Ancillary Service Software, deliver a replacement copy of such Software, or (c) where (a) and (b) are not successful after a reasonable remedy period, refund all fees paid by Customer and attributable to the portion of the item giving rise to the warranty claim. *The foregoing remedies are BlueCat's sole obligation and Customer's sole remedy in the event of a valid warranty claim under this Section 6.*

6.4. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6 OR SCHEDULE "C", BLUECAT DOES NOT REPRESENT OR WARRANT THAT THE BLUECAT OFFERINGS, APPLIANCES, MANAGED SERVICES, HOSTED SERVICES OR PROFESSIONAL SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY OR ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF ANY OF THEM. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3.2, THIS SECTION 6, AND SCHEDULE "C", THE BLUECAT OFFERINGS, ANCILLARY SERVICE SOFTWARE, APPLIANCES, MANAGED SERVICES, HOSTED SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE". TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BLUECAT HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES, EXPRESS OR IMPLIED (WHETHER ARISING UNDER COMMON LAW, STATUTE, COURSE OF DEALING OR TRADE, OR OTHERWISE), INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF QUALITY, MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT, CURRENCY, RELIABILITY, SECURITY, OR UNINTERRUPTED USE. NO WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY BLUECAT WILL CREATE ANY REPRESENTATION, WARRANTY OR CONDITION. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, BLUECAT EXPRESSLY DISCLAIMS ANY REPRESENTATION, CONDITION OR WARRANTY THAT ANY DATA OR INFORMATION PROVIDED TO CUSTOMER IN CONNECTION WITH CUSTOMER'S USE OF ANY OF THE BLUECAT OFFERINGS, ANCILLARY SERVICE SOFTWARE, APPLIANCES, MANAGED SERVICES, HOSTED SERVICES OR PROFESSIONAL SERVICES IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY CUSTOMER FOR ANY PURPOSE WHATSOEVER.

## 7. CONFIDENTIALITY, NON-DISCLOSURE

7.1. **Non-Disclosure.** Each of the Parties agrees that it will not: (a) make use of the Confidential Information of the disclosing Party other than to perform its obligations under this Agreement; or (b) in any way disclose any Confidential Information of the disclosing Party to any person or entity, other than its own personnel to the extent necessary to give effect to this Agreement and only to those of its personnel who have agreed to be bound by confidentiality obligations no less protective than those set forth in this Agreement. Each receiving Party is responsible for any breach of this Agreement by any person to whom it provides, or provides access to, Confidential Information. Each receiving Party shall safeguard the disclosing Party's Confidential Information using the same standard it employs to safeguard its own confidential information of like kind, but in no event less than a commercially reasonable standard of care.

7.2. **Destruction of Confidential Information.** Upon the termination of this Agreement, or at any time at the disclosing Party's request, the recipient Party shall destroy Confidential Information of the disclosing Party in its possession or control except to the extent it would be unreasonably burdensome to destroy such information (such as archived computer records), and such information will continue to be treated as Confidential Information, notwithstanding any termination or expiration of this Agreement. Upon the request of the disclosing Party, the recipient Party shall certify in writing that all materials containing Confidential Information of the disclosing Party have been destroyed and no further Confidential Information of the disclosing Party is in the possession or control of the recipient Party.

**7.3. No Rights to Confidential Information.** All Confidential Information remains the sole property of the disclosing Party and no license or other rights to Confidential Information is granted or implied by this Agreement.

**7.4. Required Disclosure.** In the event that Confidential Information has been required to be disclosed in response to a valid order issued by a court, governmental or regulatory body with jurisdiction over the recipient, then such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, to the extent possible, provides the other Party with timely prior notice of such requirement and coordinates with the other Party in an effort to limit the nature and scope of such required disclosure. Vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

## 8. OWNERSHIP, INTELLECTUAL PROPERTY

**8.1. Ownership.** As between the parties, all ownership and Intellectual Property Rights in and to the BlueCat Offerings, Ancillary Service Software, Appliances, Managed Services, Hosted Services and Professional Services, belong to BlueCat, its Affiliates or its licensors. Customer receives no title or ownership in any of the foregoing. The Software Products and any Ancillary Service Software provided to Customer pursuant to this Agreement are licensed, and not sold, and Customer receives no title or ownership in any of the foregoing. BlueCat reserves all rights not expressly granted under this Agreement.

**8.2. Service Results.** All Intellectual Property Rights in and to the Service Results belong to BlueCat. Customer acknowledges and agrees that BlueCat may monitor and analyze, and that the Service Results may include, information based on the data of BlueCat's customers, including Customer Data. During and after the Subscription Period, BlueCat may use Customer Data and Service Results for its own internal purposes, such as to develop, test, increase service and product value, and optimize the BlueCat Offerings.

**8.3. Customer Data.** All ownership rights in and to Customer Data belong to Customer. Customer agrees that BlueCat may use, process and transmit Customer Data to provide the BlueCat Offerings, Ancillary Service Software, Appliances, Managed Services, Hosted Services and Professional Services, in each case in accordance with its Privacy Statement available at <https://www.bluecatnetworks.com/privacy/>. BlueCat acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203-71.

## 9. INDEMNIFICATION

**9.1. BlueCat's Indemnification Obligations.** BlueCat shall indemnify and defend Customer against any and all third party claims or demands that the BlueCat Offerings (or any portion thereof) violate a third party's Intellectual Property Rights in Canada, the United States or Japan and all amounts required to be paid in a settlement approved by BlueCat or awarded by a court in a final, non-appealable judgment; provided: (a) Customer has promptly notified BlueCat of such claim and BlueCat is not prejudiced by any delay by Customer; (b) BlueCat shall have control over the defense of the claim, provided that any settlement or resolution entered into by BlueCat shall not require any admission of liability or any payment by Customer; (c) Customer has not made any admission against BlueCat's interests and has not agreed to any settlement of any claim or demand without BlueCat's consent; and (d) Customer shall cooperate with BlueCat in the defense of the claim, at BlueCat's expense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

**9.2. Exceptions to BlueCat's Indemnification Obligations.** Notwithstanding Section 9.1, BlueCat shall be under no obligation to indemnify or defend Customer if any infringement claim or demand by a third party arises as a result of any: (a) access or use of the BlueCat Offerings in violation of or inconsistent with this Agreement or the Documentation; (b) modification to the BlueCat Offerings by a party other than BlueCat or its authorized agents, which modification has resulted in the claim or demand by the third party; (c) combination of the BlueCat Offerings with any computer program, software, hardware or equipment where such claim of infringement would not exist without such combination; (d) use of a superseded version of the Software or Ancillary Cloud Services Software where use of a then-current version would avoid any claim of infringement; or (e) access to or use of the BlueCat Offerings after BlueCat notifies Customer to discontinue such access or use.

**9.3. Additional Infringement Remedies.** At BlueCat's sole expense and discretion, in response to any pending or potential infringement claim, BlueCat may: (a) procure for Customer the right to continue using the offending BlueCat Offering or applicable portion thereof; (b) replace or modify the offending BlueCat Offering or applicable portion thereof so that it is non-infringing; or (c) terminate this Agreement either entirely or only as it relates to the offending BlueCat Offering in question or the applicable portion thereof and upon return of the BlueCat Offering in question or the applicable portion thereof or certification of destruction, refund to Customer the pro rata unused portion of any prepaid fees allocable to such part(s) of the BlueCat Offerings that is (are) terminated. For software licensed on a perpetual basis, such refund shall be based on the unamortized or un-expensed portion of the purchase price allocated to that portion of the Software, based on a three-year straight line amortization.

**9.4. Sole Remedy.** Sections 9.1 and 9.3 shall constitute Customer's sole remedy from BlueCat in respect of infringement claims and demands.

**9.5. Reserved.**

## 10. LIABILITY, LIMITATIONS AND EXCLUSIONS

**10.1. LIMITATIONS.** THE LIMITATION OF LIABILITY SET FORTH IN THE UNDERLYING GSA SCHEDULE CONTRACT BETWEEN ORDERING ACTIVITY AND EC AMERICA SHALL APPLY TO CUSTOMER.

## 11. SUBSCRIPTION PERIODS, AGREEMENT TERM, TERMINATION AND SUSPENSION

**11.1. Subscription Periods; Renewal.** The Subscription Periods may be renewed for additional successive one (1) year terms by executing a new Purchase Order at the then current GSA Schedule Pricelist fee for the applicable BlueCat Offerings and Professional Services and may not be cancelled with less than sixty (60) days' notice prior to the expiration of the then-current period. BlueCat will provide (a) Customer, if purchasing direct, or (b) Immix or other channel partner if Customer is purchasing through the channel, with ninety (90) days notice of any renewal of Subscription Period. Customer must

confirm renewal of the subscription period within the ninety (90) day period; otherwise, the subscription period is considered expired and Customer must immediately cease using the Software and Software Products and delete all virtual instances of the Software and all Services shall immediately cease.

**11.2. Term of Agreement.** This Agreement is effective during the period commencing as of the Effective Date and expires on the date that the last Purchase Order hereunder expires or is terminated, unless this Agreement is terminated earlier in accordance with this Agreement.

**11.3. Termination for Breach.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, BlueCat shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

**11.4. Suspension of Cloud Services or DNS Flex Services.** In the event that BlueCat, acting reasonably, suspects or learns of any of the following described circumstances, then BlueCat may immediately temporarily suspend Customer's access to and use of the Cloud Services and/or DNS Flex Services, in addition to any other remedies BlueCat may have: (a) breach of the Acceptable Use Policy; (b) Customer's failure to cooperate with BlueCat's reasonable investigation of any suspected violation of this Agreement; (c) access or manipulation of the Cloud Services or DNS Flex Services without BlueCat's consent; (d) any circumstance that requires suspension of the Cloud Services or DNS Flex Services in order to protect the BlueCat Offerings, BlueCat, or its customer's data; or (e) suspension required by law.

**11.5. Termination Obligations.** Upon the earlier of termination of this Agreement, or termination or expiration of any outstanding Purchase Order or Subscription Period, Customer shall (a) delete, return or destroy all instances of Software Products, Ancillary Service Software, Appliances and any Documentation and, upon request, certify to compliance with this Section 11.5(a); (b) cease to access and use the Cloud Services, DNS Flex Services and any Documentation; and (c) upon request, confirm in writing compliance with Section 7.2. With respect to Cloud Services and DNS Flex Services, BlueCat shall make Customer Data available to Customer for download for thirty (30) days following termination and BlueCat shall destroy all Customer Data (except for any aggregated anonymized information based on Customer Data) upon the expiry of such thirty (30) day period. Section 11.5(a) does not apply to Software Products licensed on a perpetual basis in the event that Customer terminates this Agreement pursuant to Section 11.3.

**11.6. Survival.** Notwithstanding the termination or expiry of this Agreement, all obligations which either expressly or by their nature are to continue after the termination of this Agreement shall survive and remain in effect, including, without limitation, Sections 4.3, 5.1, 5.2, 6.4, 7, 8, 9, 10, 11.5, 11.6 and 12.

## 12. MISCELLANEOUS PROVISIONS

**12.1. Audit; Monitoring. Subject to Government security requirements,** BlueCat reserves the right to audit and monitor Customer's use of the Cloud Services and compliance with this Agreement, including the Acceptable Use Policy.

**12.2. Orders through Resellers.** Section 5 shall not apply to orders placed through a reseller. All other terms and conditions in this Agreement shall apply to orders placed through a reseller.

**12.3. Assignment.** Without the prior written consent of BlueCat, Customer may not assign this Agreement or any of its rights or obligations hereunder, except to an Affiliate and provided such Affiliate agrees to be bound by the terms of this Agreement and Customer remains responsible for Affiliate's compliance with this Agreement, including payment of all fees. The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204.

**12.4. Press Releases, Marketing.** BlueCat may refer to Customer for the limited purpose of identifying it as a customer in sales and marketing materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

**12.5. Entire Agreement, Amendment and Headings.** This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), contains the entire understanding of the Parties hereto on the subject matter hereof and supersedes any previous agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof. A negotiated purchase order would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needs. No amendment or modification of this Agreement shall be effective or binding unless agreed to in writing by both Parties. Headings used in this Agreement are for convenience of reference only, and shall not be used to modify the meaning of or to interpret the terms and conditions of this Agreement.

**12.6. Waiver, Severability.** The waiver of any breach of this Agreement, or the failure of a Party to exercise or enforce any right under this Agreement, shall in no event constitute a waiver of any other breach, whether similar or dissimilar in nature, or prevent the exercise or enforcement of any right under this Agreement. If any provision of this Agreement is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the remaining terms and conditions of this Agreement shall be unimpaired and the Parties shall substitute a valid, legal and enforceable provision as close in legal and economic consequence as possible to the provision being struck or considered unenforceable. If the limitation of liability set forth in this Agreement is limited by law, then BlueCat's liability will be limited to the greatest extent permitted by law.

**12.7. No Third Party Beneficiaries.** Nothing in this Agreement is intended to confer on any party other than BlueCat, Customer and their permitted assigns any benefits, rights or remedies.

**12.8. Rights and Remedies.** Except as expressly set out in this Agreement regarding the Service Level Schedule remedies and in Section 6 and Section 9.4, in the event of any breach of this Agreement, the rights and remedies of the Parties provided for in this Agreement shall not be exclusive or exhaustive, and are in addition to any other rights and remedies available at law.

**12.9. Notices.** Any notice required or otherwise provided for in this Agreement shall be given to BlueCat or Customer, as the case may be, at the physical or e-mail address set forth on the signature page of this Agreement, or as updated from time to time pursuant to a notice provided pursuant to this Section, with a copy to any individuals with whom the Parties typically communicate.

**12.10. Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

12.11. **Export Controls.** Customer acknowledges and agrees that the BlueCat Offerings and any Software and Ancillary Service Software are subject to export controls under U.S., Canadian and other export control laws. Customer shall not directly or indirectly, whether to an Affiliate or a third party: (a) export, re-export, transfer, or release (herein referred to as "export") any component of the BlueCat Offering, including any Software and Ancillary Service Software, to any prohibited or restricted destination, person, or entity, or (b) access or use or allow any Authorized User, Affiliate or third party to access or use the BlueCat Offerings in a manner prohibited or restricted by export control laws. Customer shall comply with all applicable export controls laws at all times.

12.12. **US Federal and State Government Customers.** The BlueCat Offerings are each a "commercial item" as that term is defined in Federal Acquisition Regulation ("FAR") 2.101, consisting of "technical data", "commercial computer software", "commercial computer software documentation" and/or "commercial services" as such terms are defined in FAR 2.101 or used in FAR 12.211 and 12.212, and is provided to the U.S. Government only as a commercial end item. Government end users acquire only the rights set out in this Agreement for the BlueCat Offerings. Any further use, modification, reproduction, release, performance, display, disclosure, decompiling, or reverse engineering of any of the BlueCat Offerings is prohibited except to the extent expressly permitted by the terms of this Agreement. To the extent allowed by applicable law, this US Government end user provision is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in computer software or technical data. Terms and conditions herein that are prohibited by federal law or procurement regulation are not enforceable against the U.S. government.

12.13. **Governing Law.** This Agreement is governed by the Federal laws of the United States. The rights and obligations of the Parties under this Agreement shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods. The Uniform Computer Information Transactions Act, or any version adopted by any state, does not apply to this Agreement.

12.14. **Counterparts; Delivery by E-mail.** This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Delivery of an executed copy of this Agreement by e-mail transmission will constitute valid and effective delivery of an original executed copy.

#### SCHEDULE "A" DEFINITIONS

In the Agreement, except where the context or subject matter is inconsistent therewith, the following terms shall have the following meanings, and such meanings shall apply to both singular and plural forms of any such terms:

(a) "**Access Methods**" means the user identifiers and passwords for the Cloud Service or DNS Flex Services issued by Customer to Authorized Users pursuant to this Agreement;

(b) "**Acceptable Use Policy**" means BlueCat's acceptable use policy located at <https://www.bluecatnetworks.com/license-agreements/>, as may be updated by BlueCat from time to time;

(c) "**Affiliate**" means a Party's direct or indirect parent or subsidiary corporation (or other entity), or any corporation (or other entity) with which the Party is under common control;

(d) "**Agreement**" means this Master Agreement, all schedules annexed hereto, each Purchase Order, and any other document incorporated by reference herein;

(e) "**Ancillary Service Software**" means any software provided by BlueCat that is required to be installed and executed in order to facilitate Customer's use of the DNS Flex Services or Cloud Services, including the Service Points, any software applications made available for download, and any software resident or installed in any Appliance;

(f) "**API**" means BlueCat owned or licensed application programming interface made available by BlueCat as part of the DNS Flex Services or Cloud Services;

(g) "**Appliance**" means any physical computer hardware component sold by BlueCat where Software or any Ancillary Service Software is resident or installed;

(h) "**Authorized User**" means any employees, and agents of Customer, who Customer gives access to the Cloud Services or DNS Flex Services pursuant to this Agreement;

(i) "**BlueCat**" means:

BlueCat Networks (USA) Inc., located at 1000 Texan Trail, Suite 105, Grapevine, Texas 76051 USA, with respect to Customers located in the United States of America and Japan;

BlueCat Networks, Inc., located at 4100 Yonge Street, 3rd Floor, Toronto, Ontario, M2P 2B5 Canada, with respect to Customers located outside the United States of America and Japan; or

BlueCat Federal USA, Inc. located at 11710 Plaza America Drive, Suite 120, Reston, Virginia 20190 USA, with respect to Federal and State Government Customers located in the United States of America.

(j) "**BlueCat Customer Care Support Handbook**" means the support handbook available from BlueCat, as may be updated from time to time by BlueCat in its sole discretion. The current BlueCat Customer Care Support Handbook is attached hereto as Exhibit A;

(k) "**BlueCat Offerings**" means the following products and services provided or made available by BlueCat: Software Products, Cloud Services and DNS Flex Services and any other products or services made available by BlueCat;

(l) "**Cloud Services**" means the DNS Edge cloud services made available by BlueCat for subscription by Customer, as well as any Ancillary Service Software and any Support for the Cloud Services, and any  
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software made available for access and use as part of the Cloud Services. "Cloud Services" exclude DNS Flex Services;

(m) "**Confidential Information**" means any and all information disclosed by the disclosing Party to the recipient Party pursuant to this Agreement relating to its products, services, customers, marketing, research and development, business and finances, information technology networks, including all technical information, data, documentation, code, security measures and procedures and copies thereof, which is either explicitly marked or noted at the time of disclosure as confidential or which a reasonable party would deem to be non-public and confidential. Non-public features of the Cloud Services and DNS Flex Services shall be considered Confidential Information. In addition, Documentation shall be considered Confidential Information. Confidential Information shall not include information which a recipient Party can establish to have: (i) become publicly known through no action on the recipient's part; (ii) been lawfully known by the recipient prior to receipt; (iii) been independently developed by the recipient without reference to any information received from the disclosing Party; or (iv) been approved for public release by the written authorization of the disclosing Party. Specific information received shall not be deemed to fall within the exceptions to Confidential Information set forth above merely because it is embraced by general information within the exception;

(n) "**Customer Data**" means the IP addresses, hostnames and DNS query logs and any other information that is uploaded or transmitted by Customer to BlueCat through any Cloud Services or the cloud services portion of the DNS Flex Services;

(o) "**Documentation**" means all standard user guides, on-line user guides, operating manuals and release notes for the operation of the BlueCat Offerings, made available in electronic format from BlueCat, and any revisions, updates and supplements thereto, as such documentation may be amended by BlueCat from time to time or embedded in any BlueCat Offering;

(p) "**DNS Flex Services**" means the services made available from BlueCat for subscription by Customer, as well as any Ancillary Service Software (including Service Points) and any APIs, any Support for the DNS Flex Services, and any software made available of for access and use as part of the DNS Flex Services. DNS Flex Services exclude any Cloud Services;

(q) "**Effective Date**" is defined in the first paragraph of this Agreement;

(r) "**e-Learning**" means BlueCat's computer based training courses made available to Customer as a Cloud Service;

(s) "**first hop**" has the meaning given to it in Section 3.9;

(t) "**Hosted Services**" means the hosted external DNS services available from BlueCat from time to time;

(u) "**Intellectual Property Rights**" means all intellectual property and other proprietary rights, including all rights provided under trade secret law, patent law, copyright law, trade mark or service mark law, design patent or industrial design law, semi-conductor chip or mask work law, and any other statutory provision or common law principle which may provide a right in either ideas, formulae, algorithms, concepts, inventions or know-how, whether registered or not and including all applications therefor;

(v) "**Material Provisions**" means Sections 2, 3, 4, 5.1, 7, 8, 12.3, 12.11 and 12.12;

(w) "**Party**" means either BlueCat or Customer and "Parties" refers to both BlueCat and Customer;

(x) "**Professional Services**" means professional services provided by BlueCat to its customers in connection with the purchase, configuration and/or implementation of Software Products;

(y) "**Purchase Order**" means a written agreement signed by both parties, including an order schedule, a sales quote issued by BlueCat, a SOW, or any other document confirming any BlueCat Offerings to be purchased by Customer, any applicable Subscription Period(s), and any Professional Services to be purchased by Customer, in each case, as agreed to by BlueCat and Customer and consistent with the terms and conditions of this Agreement;

(z) "**Service Level Schedule**" means the service level schedule related to Cloud Service or the cloud services portion of the DNS Flex Services, as may be updated by BlueCat from time to time and published at <https://www.bluecatnetworks.com/license-agreements/>;

(aa) "**Service Point**" means the Software that the Customer deploys in their infrastructure that facilitates "first hop" capabilities in their DNS solution;

(bb) "**Service Results**" means any information, statistics, results, feeds, graphs, analysis and reports computed and generated by and from the DNS Flex Services or Cloud Services;

(cc) "**Software**" means the then current object code version of the computer program or application licensed by BlueCat to Customer pursuant to this Agreement, as evidenced either on an Appliance or available for download, in each case, as part of a Software Product;

(dd) "**Software Products**" means any and all software products offered by BlueCat for license, excluding DNS Flex Services. Software Products may include any Software, whether embedded on an Appliance or made available for download. BlueCat's current Software Product offerings are listed on BlueCat's website located at <https://www.bluecatnetworks.com/license-agreements/>, as such list may be updated by BlueCat from time to time;

(ee) "**SOW**" means a statement of work setting out the details of the Professional Services to be provided by BlueCat to Customer;

(ff) "**Subscription**" means a subscription for the Subscription Period to (i) with respect to Software Products, license and use Software Products, and, to the extent ordered, to receive Support, ordered and paid for by Customer pursuant to one or more Purchase Orders; (ii) with respect to Cloud Services, to access and use the Cloud Services, and to receive Support for such Cloud Services, ordered and paid for by Customer pursuant to one or more Purchase

Orders; and (iii) with respect to DNS Flex Services, to access and use the DNS Flex Services, and to receive Support for such DNS Flex Services, ordered and paid for by Customer pursuant to one or more Purchase Orders;

(gg) **"Subscription Period"** mean the time period of each Subscription set out in the applicable Purchase Order and commences upon earliest delivery of the applicable BlueCat Offering. If no time period is set out in a Purchase Order, the Subscription Period will be the twelve (12) month period commencing upon delivery of the applicable BlueCat Offering;

(hh) **"Support"** means (i) for Software Products, the maintenance services relating to updates, upgrades, patches, bug fixes and other improvements to the Software and the technical support services as described in the BlueCat Customer Care Support Handbook and (ii) for Cloud Services or DNS Flex Services, the support services set out in the Service Level Schedule and the BlueCat Customer Care Support Handbook; and

(ii) **"Unique Active IP"** means a unique IP address in a DNS query that is issued through a Service Point where (i) the number of Unique Active IPs is measured monthly and (ii) the Service Point is placed as the first hop in the Customer's DNS infrastructure.

#### SCHEDULE "B"

##### ADDITIONAL E-LEARNING TERMS AND CONDITIONS

1. **e-Learning Services.** All e-Learning Services to be provided by BlueCat are made available on a subscription basis per unique user pursuant to a Purchase Order. Each subscription commences on the date a user is provided access to the e-Learning Services and runs for a continuous period of time until the Subscription Period has expired.
2. **Unique Users.** Subscriptions to the e-Learning Services and instructor-led training courses are personal to each user and are non-transferable. Users may not share logons, passwords or licensed content. Customer is responsible for securing and protecting login and other access information from unauthorized disclosure or use.
3. **Content.** Licensed content is for internal training purposes only.

#### SCHEDULE "C"

##### ADDITIONAL PROFESSIONAL SERVICE TERMS AND CONDITIONS

In addition to the terms and conditions set forth in the BlueCat Master Agreement, which continue to apply to Professional Services to the extent not inconsistent herewith, the following terms and conditions apply specifically to Professional Services provided by BlueCat:

1. **Professional Services.** All Professional Services to be provided by BlueCat to Customer shall be described in a SOW signed by both parties and referencing the Agreement. Each SOW must be consistent with the terms in this Agreement (including this Schedule "C") unless explicitly stated in the SOW.
2. **Time and Materials.** Unless explicitly stated in the SOW, all Professional Services are performed on a "time and material" basis. If requested, (a) BlueCat will provide regular updates on the services being performed and (b) BlueCat will not exceed the estimate in the SOW without Customer's consent.
3. **Expenses.** Customer agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document.
4. **Change Orders.** If either Party wishes to make a change to the scope of work set out in a SOW, a change order must be submitted which describes the scope of the Professional Services to be performed, the revised time frame and a cost estimate. Each change order must be accepted by both parties to be binding.
5. **Scheduling.** Unless explicitly stated in the SOW, Professional Services will be provided between Monday and Friday, from 8:00 am to 5:00 pm local time. Weekend and overtime rates apply outside these days and hours.
6. **Delivery Dates.** Delivery dates in the SOW are estimates only and are not binding completion dates.
7. **Invoices.** Unless otherwise agreed, BlueCat will invoice Customer for services performed and expenses incurred on a monthly basis. Payment is due thirty (30) days from invoice receipt.
8. **Prepaid.** Prepaid service days expire unless used within twelve (12) months of the purchase date as specified in the Purchase Order. No credit or refund shall be due to Customer for expired or unused services.
9. **Limited License re. Deliverables.** BlueCat is not providing or licensing any software to Customer in connection with the Professional Services, except for specific deliverables identified in the SOW ("**Deliverables**"). The Deliverables are not "work made for hire" and any Intellectual Property Rights in the Deliverables remain with BlueCat. The Deliverables are licensed to Customer in connection with the Software upon the same terms and conditions as set forth in the Master Agreement.
10. **Warranty.** For a period of thirty (30) days from the performance of the Professional Services, BlueCat warrants that the Professional Services are performed in a professional manner using qualified and experienced personnel familiar with BlueCat Offerings. Any warranty claims must be reported to BlueCat within thirty (30) days of the related Professional Services.
11. **Exceptions to Warranty.** The warranty set forth in Section 10 does not apply upon any of the following: (a) any change, addition, deletion or other modification was made to the Deliverables, except as specifically authorized in writing by BlueCat; and (b) failure by Customer to report a deficiency within the specified warranty period.
12. **Warranty Remedy.** Upon a valid deficiency claim by Customer, BlueCat shall remedy the deficiency within a reasonable period of time and failing that, BlueCat shall refund all Professional Services fees paid by Customer and attributable to the deficiency giving rise to the warranty claim.
13. **Independent Contractor.** The manner and means used by BlueCat to perform the Professional Services are in the sole discretion and control of BlueCat. BlueCat may make use of subcontractors to perform the Professional Services provided BlueCat shall remain responsible for the performance of its subcontractors.



14. **Expiry.** Unless otherwise agreed, a SOW expires if the project is not commenced within six (6) months.  
 15. **Reserved.**

**SCHEDULE "D"**  
**ADDITIONAL MANAGED SERVICES TERMS AND CONDITIONS**

1. **Managed Services for End Customers.** The Parties acknowledge that the Customer is purchasing certain Software Products in order to manage or host DNS records ("**Managed Services**") for its end user customer ("**End Customer**"). Customer shall obtain in writing each End Customer's agreement and acknowledgement that the Software Products are for such End Customer's internal use only. Customer shall use the Software Products only for providing Managed Services to End Customers.
2. **Transfer of License for Managed Services.** In the event of any termination of the relationship between Customer and the End Customer, Customer may transfer to End Customer or if instructed to do so by End Customer, transfer to a replacement provider, this Agreement including the license(s) for the Software. Should Customer's transfer of the Software Products be to a replacement provider, such replacement provider's license to the Software Products and/or Services shall be solely and exclusively for use in that replacement provider's provision of Software and/or Services to End Customer. In order to effect such a transfer, Customer shall provide BlueCat with prior written notice of the transfer and shall execute, and arrange for End Customer to execute, an assignment agreement whereby End Customer and, if applicable, its replacement provider, agree to comply with the terms and conditions of this Agreement.
3. **Restrictions on Use for Managed Services.** If Customer is using any of the Software Products to provide Managed Services, then Customer shall ensure each of its End Customers using Software Products as part of Customer's Managed Service offering signs and returns the Simplified EUA which is attached hereto as Exhibit B.

**SCHEDULE "E"**  
**HOSTED EXTERNAL DNS SERVICE TERMS AND CONDITIONS**

1. **Hosted External DNS Services.** Subject to payment of Hosted Services fees, BlueCat shall provide the Hosted Services upon the terms and conditions set forth herein.
2. **Term.** Hosted Services may be renewed annually for additional successive one (1) year terms by executing a new Agreement in writing at the then current fee in accordance with the GSA Schedule pricelist.
3. **Monitor of Use.** BlueCat reserves the right to monitor Customer's use of the Hosted Services to ensure compliance with the terms herein. BlueCat shall invoice Customer for any over-usage of the Hosted Services at BlueCat's then-current price in accordance with the GSA Schedule pricelist.
4. **Customer Warranties.** Customer represents and warrants that it is the registrant or duly authorized representative with respect to any domain names submitted to BlueCat in connection with the Hosted Services and that it has all right, title and interest to use the data which Customer provides to BlueCat to perform the Hosted Services. Customer further acknowledges and warrants that (a) it is entirely responsible for all content and information directly or indirectly delivered to or passed through BlueCat by the Customer, its customers or end users, and (b) BlueCat exercises no control over and accepts no responsibility for such content or information.
5. **BlueCat Warranty.** BlueCat warrants that the Hosted Services will be delivered substantially as described in the Service Levels identified below. BlueCat does not warrant the Hosted Services against malfunction or cessation of internet services by internet providers or of any of the networks that form the internet which may make the Hosted Services temporarily or permanently unavailable.
6. **Warranty Remedy.** Upon a valid deficiency claim by Customer pursuant to Section 5 above, BlueCat shall provide a credit for future Hosted Services as set forth in Section 8 below.
7. **Reserved.**
8. **Service Level Agreement.**
- (a) During the term of the Master Agreement, BlueCat shall provide Customer with access to Resolution Services without any Service Outages each month (the "**Performance Objective**"). "**Resolution Services**" means the ability to receive and answer well-formed DNS queries along all IP addresses on standard ports with 100% availability.
- (b) "**Service Outages**" means that the Resolution Services were available less than 100% and shall specifically exclude (i) unavailability of the Resolution Services due to Customer's misuse of the services, negligent or unlawful acts committed by Customer or its agents, acts or omissions of Customer's domain name registrar, unavailability of the Customer's network, and force majeure events; and (ii) suspension of the services by BlueCat in accordance with the terms herein. BlueCat, in its sole and reasonable discretion, shall determine whether an event is considered a Service Outage.
- (c) Upon Service Outages lasting, in aggregate, less than four hours during a calendar month, Customer shall be entitled to a credit to be applied towards the next monthly invoice equal to the pro-rated charge for one day of Resolution Services. Upon Service Outages lasting, in aggregate, more than four hours during a calendar month, Customer shall be entitled to a credit to be applied towards the next monthly invoice equal to the pro-rated charge for one week of Resolution Services.
- (d) All Service Outages and all claims for credit must be reported by Customer to BlueCat within thirty days of the event giving rise to the claim. Customer shall provide to BlueCat all relevant details and documentation supporting its claim of a Service Outage to allow BlueCat to investigate the claim.
- (e) Upon failure by BlueCat to maintain 99.9% uptime (as measured on a monthly basis) of Resolution Services for three consecutive months, Customer may terminate the Hosted Services.
- (f) Credits may only be used towards Hosted Services fees. Customer's sole and exclusive remedy in the event BlueCat fails to meet the Performance Objectives is to receive credits as set forth herein and BlueCat shall have no further liability to Customer.

EXHIBIT A  
 CUSTOMER CARE HANDBOOK  
 (to be attached in final version)

EXHIBIT B

SIMPLIFIED EUA  
(to be attached in final version)

**BlueLight LLC 1876 Bureau  
drive  
Fayetteville, NC 28312**

## **EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)**

**Scope.** This Rider and the attached BlueLight LLC (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (*e.g.*, the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et. seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable, and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by

the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibits such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges, or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.



**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A – BLUE LIGHT

**Software License Agreement****Definitions.**

“Blue Light” means Blue Light, LLC, a Delaware limited liability company.

“IBM i2 Software” means International Business Machines Corporation’s i2 Products: Enterprise Insight Analysis Core, Enterprise Insight Analysis Premium and the Analyze applications.

“Internal Network” means a private, proprietary network resource accessible only by your employees and individual contractors (i.e., temporary employees). Internal Network does not include portions of the Internet or any other network community open to the public.

“Software” means (a) the object code version of Blue Light’s software known as the Blue Light Management Console software and related explanatory written materials and files (“Documentation”); and (b) any modified versions and copies of, and upgrades, updates and additions to, such software and Documentation, provided to you by Blue Light at any time, to the extent not provided under a separate agreement.

**Software License.** Blue Light grants you a non-transferable, non-exclusive license to use the Software for your internal purposes (and not for the benefit of any third party) solely in connection with your use of the IBM i2 Software. You may install and use one copy of the Software in support of one deployment of the IBM i2 Software. The deployment may include multiple instances of the IBM i2 software used as separate environments in support of the production IBM i2 software (e.g., production, development, training, disconnected operations). You may make a reasonable number of backup copies of the Software, provided your backup copies are not installed or used for other than archival purposes.

**RESERVED.**

**Intellectual Property Ownership.** The Software and any authorized copies that you make are the intellectual property of and are owned by Blue Light. The structure, organization and code of the Software are the valuable trade secrets and confidential information of Blue Light. The Software are protected by law, including but not limited to the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant you any intellectual property rights in the Software and all rights not expressly granted are reserved by Blue Light.

**Restrictions.** Any permitted copy of the Software that you make must contain the same copyright and other proprietary notices that appear on or in the Software. You shall not modify, adapt, or translate the Software. You shall not reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Software except to the extent you may be expressly permitted

under applicable law to decompile only in order to achieve interoperability with the Software. The Software is designed and provided to you as a single product to be used as a single product with the IBM i2 Software. You shall not use the Software on a stand-alone basis or with software or products other than the IBM Application Solution. YOU SHALL NOT RENT, LEASE, SELL, SUBLICENSE, ASSIGN, OR TRANSFER YOUR RIGHTS IN THE SOFTWARE, OR THIS AGREEMENT, OR AUTHORIZE ANY PORTION OF THE SOFTWARE TO BE COPIED ONTO ANOTHER INDIVIDUAL OR LEGAL ENTITY'S COMPUTER EXCEPT AS MAY BE EXPRESSLY PERMITTED HEREIN. You shall not use or offer the Software on a service bureau basis.

**DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7 BELOW, THE SOFTWARE ARE LICENSED TO YOU ON AN AS-IS BASIS, WITHOUT ANY WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO PERFORMANCE, SECURITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. The provisions of Section 6 will survive the termination of this Agreement, howsoever caused, but this shall not imply or create any continued right to use the Software after termination of this Agreement.

**Express Warranty:** The Blue Light Management Console and I2 Software provided herein is warranted by Blue Light to be free from defects in workmanship for a period of ninety (90) days under normal use from the date of actual delivery to buyer. Blue Light's liability hereunder is limited to remedying any defect or to replacing any of the software that are found defective.

**Export Rules.** You agree that the Software and shall not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as an export controlled item under the Export Laws, you represent and warrant that you are not a citizen of, or located within, an embargoed or otherwise restricted nation and that you are not otherwise prohibited under the Export Laws from receiving the Software.

RESERVED.

Reserved.

## **Software and Blue Fusion Appliance License Agreement**

### **Definitions.**

"Blue Light" means Blue Light, LLC, a Delaware limited liability company.

"Blue Fusion Appliance" means Blue Light LLC's hardware server appliance used as a delivery vehicle for the IBM i2 Software and the Blue Light Management Console.

"IBM i2 Software" means International Business Machines Corporation's i2 Products: Enterprise Insight Analysis Core, Enterprise Insight Analysis Premium and the Intelligence Analysis Portal applications.

"Internal Network" means a private, proprietary network resource accessible only by your employees and individual contractors (i.e., temporary employees). Internal Network does not include portions of the Internet or any other network community open to the public.

"Software" means (a) the object code version of Blue Light's software known as the Blue Light Management Console software and related explanatory written materials and files ("Documentation"); and (b) any modified versions and copies of, and upgrades, updates

and additions to, such software and Documentation, provided to you by Blue Light at any time, to the extent not provided under a separate agreement.

**Software License.** Blue Light grants you a non-transferable, non-exclusive license to use the Software for your internal purposes (and not for the benefit of any third party) solely in connection with your use of the IBM i2 Software. You may install and use one copy of the Software in support of one deployment of the IBM i2 Software. The deployment may include multiple instances of the IBM i2 software used as separate environments in support of the production IBM i2 software (e.g., production, development, training, disconnected operations). You may make a reasonable number of backup copies of the Software, provided your backup copies are not installed or used for other than archival purposes.

**Appliance License.** Blue Light grants you a non-transferable, non-exclusive license to use the Blue Fusion Appliance for your internal purposes and in the demonstration of the functionality of the associated i2 Software and Blue Light Management Console.

RESERVED.

**Intellectual Property Ownership.** The Software and Blue Fusion Appliance and any authorized copies that you make are the intellectual property of and are owned by Blue Light. The structure, organization, and code of the Software and Blue Fusion Appliance are the valuable trade secrets and confidential information of Blue Light. The Software and Blue Fusion Appliance are protected by law, including but not limited to the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant you any intellectual property rights in the Software and all rights not expressly granted are reserved by Blue Light.

**Restrictions.** Any permitted copy of the Software that you make must contain the same copyright and other proprietary notices that appear on or in the Software. You shall not modify, adapt, or translate the Software. You shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software except to the extent you may be expressly permitted under applicable law to decompile only in order to achieve interoperability with the Software. The Software is designed and provided to you as a single product to be used as a single product with the IBM i2 Software. You shall not use the Software on a stand-alone basis or with software or products other than the IBM Application Solution. YOU SHALL NOT RENT, LEASE, SELL, SUBLICENSE, ASSIGN, OR TRANSFER YOUR RIGHTS IN THE SOFTWARE, THE BLUE FUSION APPLIANCE OR THIS AGREEMENT, OR AUTHORIZE ANY PORTION OF THE SOFTWARE TO BE COPIED ONTO ANOTHER INDIVIDUAL OR LEGAL ENTITY'S COMPUTER EXCEPT AS MAY BE EXPRESSLY PERMITTED HEREIN. You shall not use or offer the Software on a service bureau basis.

**DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10 BELOW, THE SOFTWARE AND APPLIANCE ARE LICENSED TO YOU ON AN AS-IS BASIS, WITHOUT ANY WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO PERFORMANCE, SECURITY, NON- INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. The provisions of Sections 6 and Section 7 will survive the termination

of this Agreement, howsoever caused, but this shall not imply or create any continued right to use the Software after termination of this Agreement.

RESERVED.

**Export Rules.** You agree that the Software and/or Blue Fusion Appliance shall not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software or Blue Fusion Appliance is identified as an export controlled item under the Export Laws, you represent and warrant that you are not a citizen of, or located within, an embargoed or otherwise restricted nation and that you are not otherwise prohibited under the Export Laws from receiving the Software or Blue Fusion Appliance.

**Express Warranty:** The Blue Fusion Appliance provided herein is warranted by Blue Light to be free from defects in workmanship and in material for a period of ninety (90) days under normal use from the date of actual delivery to buyer. Blue Light's liability hereunder is limited to remedying any defect or to replacing any of the equipment, or the components thereof, that are found defective.

RESERVED.

## **Services Agreement Terms and Conditions**

### **Services.**

Subject to the terms and conditions set forth in this Agreement, the underlying GSA Schedule contract, and the purchase order, BL will provide the Services set forth in the Service Addendum. Defined terms used in this Agreement shall have the meanings ascribed to them in Section 8 hereof if not otherwise defined in this Agreement.

BL shall not be responsible for securing any intellectual property rights that may be owned or retained by third parties, unless specifically set forth in the Service Addendum.

BL's personnel will perform their work for Ordering Activity both remotely, and, as agreed by Ordering Activity and BL, on the Ordering Activity's premises. Ordering Activity agrees to provide necessary working space and facilities, and any other reasonable services and materials BL or its personnel may need in order to perform the work assigned to them. Subject to Government security requirements, Ordering Activity agrees to provide BL support personnel with access to Ordering Activity systems. This may include customer portal access, VPN access, or dialup out-of-band management access to each remote site, in addition to passwords, access codes, or security devices.

Ordering Activity acknowledges that BL may require documents, information and cooperation by Ordering Activity in order to properly perform the Services hereunder and that BL is not responsible for (i) errors, delays, or other consequences arising from the failure of Ordering Activity to provide such documents, information, or cooperation, or (ii) from the inaccuracy or incompleteness of any such documents or information.



**RESERVED.**

**Reserved.**

**Warranty Disclaimer.**

a. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE SERVICE ADDENDUM, BL DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. BL DOES NOT WARRANT THAT THE SERVICES (INCLUDING ANY HARDWARE OR SOFTWARE) PROVIDED OR LICENSED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

**RESERVED.**

**Reserved.**

**Reserved.**

**Definitions. The following defined terms shall apply to capitalized terms in this Agreement.**

**Affiliate:** As to a party, means any entity controlling, controlled by, or under common control with such party, where the term "control" and its correlative meanings, "controlling," "controlled by," and "under common control with," means the legal, beneficial, or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting equity interests in an entity. Without limiting the foregoing, but in addition thereto, any Affiliate of, or subsidiary of, BL Technologies, Inc. shall be deemed to be an Affiliate of BL.

**BL Parties:** BL, its Affiliates and their members, shareholders, managers, officers, directors, employees, contractors, and agents.

**Customer Parties:** Customer and the Affiliates, owners, officers, directors, employees, contractors, and agents of Customer or of the Affiliates of Customer.

**Services:** All services, equipment, software and other offerings of any kind set forth in the Service Addendum to be provided or licensed by BL to Ordering Activity pursuant to this Agreement.

**EXHIBIT A****Service Addendum**Services; Products Sales.

Services. BL shall perform the professional, support or application services (the “Services”) specified in the applicable purchase order.

Reserved.

Support Services.

With respect to Services identified as “support services” in the purchase order (“Support Services”), BL will neither be responsible for nor obligated to provide such Support Services in the event support or maintenance is necessitated by any of the following: (a) faulty electrical systems external to devices not furnished by BL; (b) accident, transportation, neglect, or misuse; (c) repair, damage, or increase in service time resulting from failure to provide a suitable installation environment (including but not limited to failure of or failure to provide adequate or proper electrical power, air conditioning, humidity control, or protection from dust or dirt from the outside or within the building), or from use of supplies or materials not meeting the network specifications set forth in any order accepted by BL for such installation unless such supplies or materials were recommended or used by BL; (d) damage or errors attributable to misuse or use not in accordance with applicable documentation; or (e) such service is necessitated by or the result of malfunctions or other problems of software or hardware other than software or hardware provided by BL.

Ordering Activity shall designate and provide BL with a primary contact for Support Services. Ordering Activity shall not permit persons other than authorized representatives of BL to perform support and maintenance services, adjustment, repairs or modifications to any Components for which Support Services are provided (the “Supported System”) without the prior written consent of BL. Ordering Activity will assist BL in maintaining a remote access connection via the Internet to the Supported Systems at Ordering Activity’s facilities seven (7) days a week, twenty-four (24) hours per day.

Lease. With respect to any hardware identified in the purchase order as “Leased Hardware”, BL hereby agrees to lease the Leased Hardware to Ordering Activity for the term. Following delivery of the Leased Hardware to Ordering Activity, Ordering Activity shall bear reasonable risks of loss, damage, theft, or destruction to the Leased Hardware, excluding reasonable wear and tear. Ordering Activity shall not repair or maintain the Leased Hardware without BL’s prior written consent. Ordering Activity shall notify BL of any known or threatened damage to, or loss of, the Leased Hardware. BL shall be solely responsible for all Leased Hardware repair and maintenance expenses pre-approved by it in writing. Notwithstanding the foregoing, in the event any damage to or loss of Leased Hardware arises out of the negligence or willful misconduct of Ordering Activity, Ordering Activity shall be solely responsible for all costs and expenses incurred in connection with repairing, maintaining, or replacing such Leased Hardware. Except as set forth below in this Section 1.4, nothing contained in this Agreement shall give or convey to Ordering Activity any right, title or interest in or to the Leased Hardware. Ordering Activity shall not: (i) not enter into any sublease, loan, or similar arrangement with respect to the Leased Hardware or (ii) transfer, assign, convey, encumber, pledge, or otherwise dispose of the Leased

Hardware or any interest therein, and any attempt by Ordering Activity to do any of the foregoing without BL's prior written consent shall be void. Upon the expiration or termination of this Service Addendum, Ordering Activity shall promptly either: (i) prepare, package, and ship the Leased Hardware in accordance with BL's reasonable instructions; (ii) provide BL with access to Ordering Activity's facilities so that BL may prepare, package, and ship the Leased Hardware for return to BL or (iii) purchase the Leased Hardware from BL by issuing a purchase order to BL within thirty (30) days of the date of termination. Any such sale of the Leased Hardware to Customer shall be on an "as-is" basis.

Acceptance. Within two business days of BL notifying Ordering Activity via email that Services identified in the purchase order as "Professional Services" are completed (the "Testing Notice"), Ordering Activity shall test the Component deliverables identified as work product ("Work Product") to determine whether they comply with the specifications set forth in the purchase order. Ordering Activity shall promptly either advise BL that the Work Product is accepted (an "Acceptance Notice") or deliver to BL a written statement describing in detail the reasons why the Work Product does not comply with such specifications (a "Non-Compliance Notice"). Upon receipt of a Non-Compliance Notice, BL shall correct the Work Product so that the Work Product complies with such specifications, and the foregoing testing procedure shall be repeated until Ordering Activity accepts the Work Product. The foregoing remedies shall be Ordering Activity's remedies with respect to Work Product for which a non-compliance is claimed. The provision of an Acceptance Notice or the failure to provide a Non-Compliance Notice within two (2) Business Days of the date of the Testing Notice shall constitute acceptance of the Work Product by Ordering Activity. Ordering Activity may not withhold its acceptance of the Work Product as a result of defects therein that do not materially affect the performance or functionality thereof.

#### Proprietary Rights.

BL Software. Any Software identified in the purchase order as "BL Software" and all associated documentation shall be the sole and exclusive property of BL (the "BL Software"). All rights in and related to the BL Software, including, without limitation, copyrights, trademarks, trade secrets, patents, and all other intellectual property rights or proprietary rights, are hereby exclusively reserved by BL. If the applicable purchase order includes BL Software, Ordering Activity's sole right to use the BL Software shall be set forth in the above Software License Agreement (the "EULA") and it is expressly understood that no right (other than pursuant to the EULA) or title to or ownership in or to the BL Software is transferred or granted to Ordering Activity under this Service Addendum.

Third Party Software. Software provided under this Agreement may include software owned by third parties ("Third Party Software").

Reserved.

Reserved.

Limited Warranty. BL shall provide the Services in a professional manner consistent with industry standards applicable to the nature of the Services. Any claim for a breach of the foregoing warranty must be made by Ordering Activity within five (5) days following the completion of the applicable Services. If Ordering Activity fails to provide notice of such claim within such five (5) day period, Ordering Activity shall be deemed to have waived its rights to make a claim for a breach of the foregoing warranty. Ordering Activity's remedy and BL's sole obligation for any breach of the foregoing warranty or any other claim regarding the Services or Work Product shall be for BL to re-perform the applicable Service or

repair the applicable Work Product. BL will pass through and assign to Customer any third party's warranty which BL receives in connection with a Component provided to Customer to the extent such pass through and assignment is permitted by such third party. BL does not and cannot warrant, guarantee, or make any representations regarding the performance, use or results of the use of the Components in terms of correctness, accuracy, reliability, currentness, or otherwise.

Reserved.

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## **TRAINING PROGRAM**

**License Grant:** Blue Light hereby grants to you a limited, non-exclusive, non-sub-licensable license to access one training module in the Training Program for educational purposes only. You may not, nor cause or permit any other person to, reproduce, download, disseminate, disassemble, decompile, reverse engineer, translate, sell, manufacture, sublicense, distribute, transfer, modify, adapt, creative derivative works from the Training Program.

**Ownership:** Blue Light is and remains the exclusive owner of all right, title, and interest (including copyright, patent, trade secret and other proprietary rights) in and to the Training Program. Nothing in this Agreement will be construed as granting you any title or interest in or to the Training Program. You agree not to contest the validity of Blue Light's rights or to perform any act adverse to Blue Light's rights.

**Online User and User Information / Passwords:** You will be asked to provide certain information to gain access to the Training Program. You agree that the information you provide is true, accurate, and complete and that you will not register under a name of, or attempt to enter or use the Training Program under a name or ID that is not your own. You agree that it is your responsibility to maintain your access to the Training Program and keep your password and other information you provide confidential. You agree to immediately notify Blue Light or the institution reselling your Training Program if there is any known or suspected unauthorized use of your credentials to the Training Program.

RESERVED.

**NO WARRANTY;** BL shall provide the Training in a professional manner consistent with industry standards applicable to the nature of the Services. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE TRAINING PROGRAM IS PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

RESERVED.

**Reserved.**

**BLUE PRISM SOFTWARE, INC.**  
**1688 MERIDIAN AVENUE, SUITE 700**  
**MIAMI BEACH, FL 33139**

## U.S. Federal Government License Addendum

We (Blue Prism Software, Inc., or “**Licensor**”) have set out here the terms and conditions that apply (“**Addendum**”), in addition to the End User License and Support Terms at Attachment A (“**EULA**”), to the Software and support we provide to U.S. Government agencies (“**Ordering Activity**”). Ordering Activity is defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. References to “you” or “your” in the EULA shall be deemed references to Ordering Activity.

This Addendum and the EULA, to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases) contain the whole agreement between the parties relating to the subject matter hereof and set out the terms on which Ordering Activity can use our Software and services (the “**Agreement**”). To the extent the terms and conditions in the EULA are inconsistent with the Federal Law (See FAR 12.212(a)), they shall be deemed deleted and unenforceable, as set forth below:

**Acquisition of Commercial Items.** The Software and support are commercial items as defined by the Federal Acquisition Regulation (“FAR”) at FAR 2.101 and are licensed to Ordering Activity under the applicable terms of FAR Part 12, “Acquisition of Commercial Items” and/or DoD Federal Acquisition Regulation Supplement (“DFARS”) 227.7202, “Commercial computer software and commercial computer software documentation”. Any use, modification, reproduction, release, performance, display, or disclosure by Ordering Activity shall be governed solely by, and prohibited, except as expressly permitted under, the terms of the Agreement.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alt I 2018) and (Alt II June 2016), and 52.212-4(f) Excusable delays (June 2010), the GSAR and the FAR provisions shall take precedence.

**Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, Ordering Activity’s Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind Ordering Activity must be included within the contract signed by Ordering Activity.

**Audit.** During the term of this Agreement: (a) If Ordering Activity’s security requirements included in the Order are met, Licensor or its designated agent may audit Ordering Activity’s facilities and records to verify Ordering Activity’s compliance with this Agreement. Any such audit will take place only during Ordering Activity’s normal business hours contingent upon prior written notice and adherence to any security measures Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Licensor will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or support (“Notice”); or (b) If Ordering Activity’s security requirements are not met and upon Licensor’s request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Licensor (“Self-Assessment”) to verify Ordering Activity’s compliance with this Agreement. Discrepancies found in an audit may result in a charge by the Licensor to the Ordering Activity. If disputed by the Ordering Activity, such charge shall be resolved through the Disputes clause at FAR 52.233-1.

**Termination.** Clauses in the EULA referencing termination or cancellation of the EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4(l) Termination for the Government’s Convenience, and (m) Termination for Cause, which do not provide for unilateral cancellation by the Licensor. If the Licensor believes the Ordering Activity to be in breach, it must file a claim with the Ordering Activity contracting officer and continue performance pending resolution of the claim as provided for in FAR 52.233-1.

**Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the Federal laws of the United States, specifically including applicable limitations periods. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as



if such law or regulation had not been enacted. In the absence of a statutory provision expressly authorizing an equitable remedy, clauses in the EULA referencing equitable remedies are deemed not applicable to Ordering Activity's Order and are therefore deemed to be deleted. The Ordering Agency shall not be required to pay attorneys' fees or other litigation costs except to the extent expressly authorized by statute.

**Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable Delays (JUN 2010), unilateral termination by Licensor does not apply to an Ordering Activity Order and all clauses in the EULA referencing unilateral termination rights of Licensor are hereby deemed to be deleted.

**Assignment.** All clauses regarding assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing

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GSA Approved 11-Aug-20

assignment in the EULA are hereby deemed to be deleted.

**Waiver of Jury Trial.** All clauses referencing waiver of jury trial are subject to FAR Clause 52.233-1, Disputes (JUL 2002), and all clauses governing waiver of jury trial in the EULA are hereby deemed to be deleted.

**Ordering Activity Indemnities.** All EULA clauses referencing indemnities by Ordering Activity are hereby deemed to be deleted.

**Licensor Indemnities.** All EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent Ordering Activity in any case and/or (2) require that Ordering Activity give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

**Renewals.** All EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

**Future Fees or Penalties.** All EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits Ordering Activity from paying any fees or penalties beyond the Agreement amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act, 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.

**Dispute Resolution and Venue.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes.

**Advertisements and Endorsements.** Unless specifically authorized by Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

**Public Access to Information.** Licensor agrees that the EULA and this Addendum contain no confidential or proprietary information and acknowledges the EULA and this Addendum will be available to the public.

**Confidentiality.** Any provisions that require Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. When the end user is an instrumentality of the US Government, neither this Addendum, the EULA nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. The Ordering Activity may retain confidential information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained confidential information will continue to be subject to the confidentiality obligations of this Addendum, the EULA and the Schedule Contract.

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# Attachment A

## End User License and Support Terms

We (Blue Prism Software, Inc.) have set out here the terms that apply to the digital workforce we provide to you. We draw your attention to the following key clauses: Clause 3 on warranties, Clause 4 on the use of our products, and Clause 6 on limitations on liability. This document, and its schedules and annexes as appendices to it, including the Order (where “**Order** or **order**” means an order on the Blue Prism Order Form or other document agreed with us that incorporates these terms), contain the whole agreement between the parties relating to the subject matter hereof and set out the terms on which you can use our products and services (our “**Agreement**”). The applicable End User License and Support Terms are those set out in the version signed between the parties at the time of your initial Order, unless agreed otherwise in writing between us. The order will set out the software to be made available to you (the “**Software**”) and the support that we will provide. The Agreement starts on the date set out in the order document between you and us, or between you and the Reseller, and lasts until the end of the license term also specified there, unless it is terminated earlier in accordance with these terms.

### PRODUCT LICENSE AND SUPPORT

Once we accept your Order we will generate your license keys for the Software in the quantities specified in the order, and provide the support specified in the order. When we issue a license key to you, we grant you a non-exclusive license to use the Software in the format it is provided to you. We will provide you with license keys which last for twelve (12) months unless otherwise stated in the order. If a license key expires before the Agreement does, and provided you are compliant with the Agreement, we will provide further license keys. We will do this to cover the whole term of the Agreement. Each license key permits you to deploy a single instance of the Software in a single live, production environment, to make copies as reasonably required for back-up, testing, development or archive and to use all the written materials we make available to you. The Software and these materials together form the “**Products**”.

Your license permits you and your Affiliates, through your Users, to use the Products for automating your (and your Affiliates’) business processes (which includes automation of your own business processes for the benefit of your clients). Your “**Affiliates**” are persons that control, are controlled by, or are under common control with you, where “**control**” means direct or indirect ownership of at least 50% of the voting interest. Your “**Users**” are any employee, individual contractor, or employee of a service provider to you, which you allow to use the Products provided to you. You will be responsible for all acts and omissions of your Affiliates and Users and, if you use third party hosting, those of the hosting provider as if they were your own. Except as described here, the Agreement does not permit you to assign, sub-license, copy or provide or make the Products available to any person, or use the Products for any person. The Agreement does not permit you to modify or adapt the Products, or render any Software human-readable. You may not reverse engineer, decompile or disassemble the Software, except and only to the extent that applicable law expressly permits, despite this limitation.

If there is any overuse of a Product, or use outside the scope of the license granted, whether identified by audit or otherwise, you agree to pay for any overuse of the Products or an extension to the license at our standard rates.

### SECURITY AND UPDATES

We will take reasonable steps to ensure that our Software does not contain viruses or other malicious code.

We may make changes to the Products from time-to-time, for example to improve them or address potential security concerns, and will make updated versions available to you.

### OUR WARRANTIES

We warrant that the Software will in all material respects have the functionality specified in its technical documentation when working

within an environment meeting the minimum technical requirements specified in that documentation. If we breach this warranty your sole remedy will be to require us to provide a corrected version of the Software. You agree that we are not required to try to remedy any error that cannot be replicated on the latest version of the Software.

We also warrant that we will provide support with reasonable skill and care. If this warranty is breached your sole remedy will be re-performance.

**TO THE EXTENT NOT PROHIBITED BY MANDATORY LAW: (I) WE EXCLUDE ALL TERMS AND OBLIGATIONS WHICH WOULD OTHERWISE BE IMPLIED INTO THE AGREEMENT; AND (II) WE EXCLUDE ANY STATEMENT NOT SET OUT IN THE AGREEMENT. WE WILL NOT BE HELD TO STATEMENTS MADE BY THIRD PARTIES. YOU ACKNOWLEDGE THAT THE PRODUCTS MAY NOT BE COMPLETELY ERROR-FREE, OR MEET YOUR PARTICULAR REQUIREMENT, AND THAT THE PRODUCTS ARE PRICED ON THAT BASIS.**

#### **Your Responsibilities**

You shall: (i) use the Products only in accordance with law (including export control laws and regulations), and not for any illegal purpose; (ii) ensure that you have all rights necessary to provide any materials that you provide to us, and to grant us the rights to use them for the purposes of the Agreement; (iii) not modify, remove, or obfuscate any copyright or other notice placed on or embedded in any Products; and (iv) not use the Software so as to subject any part of it to an open source license. You shall ensure that your Affiliates and Users will also comply with Clause 4.1.

You agree to defend us against any claim or proceedings brought by any person, and indemnify us against any loss, damage, or expense we suffer or incur, as a result of your breach of Clause 4.1.

#### **INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY**

You retain all right and title to the processes and procedures which you automate using the Software. All right and title to the Products (and any derivative works) and anything we create belongs to us or our licensors. Except for the license expressly granted under the Agreement, all our rights are reserved and no other license is granted.

You grant us a non-exclusive license during the term of the Agreement to use all materials you provide to us in connection with the Agreement for the purposes of performing our obligations and exercising our rights under it. You agree that we are free to use all general knowledge, skills, techniques, and ideas that we acquire or develop in performing the Agreement, subject to any obligation of confidentiality under Clause 8. By providing feedback to us you agree that we may use it to improve our products or otherwise.

Provided you comply with Clause 5.4, we shall: (i) defend you against any legal proceedings brought by a third party alleging that your use of the Products in accordance with the Agreement infringes the intellectual property rights of that third party (an "**IPR Claim**"); and (ii) indemnify you for any amount we agree in settlement of the IPR Claim, or which is finally awarded by a court of competent jurisdiction against you (with no further right of appeal) as a result of the IPR Claim. This indemnity will not apply to the extent the underlying allegation arises from: (i) your breach of the Agreement or negligence, or use of a Product outside the scope of the Agreement; (ii) modification of any Product (other than modifications we make), or use of a non-current version of a Product where you have already been advised by us to upgrade; (iii) combination of a Product with third party materials; or (iv) use of the Product after you become aware of the IPR Claim (unless we agree you can continue to use it). This Clause 5.3 sets out our entire obligation and liability in connection with any allegation that a person's intellectual property rights have been infringed.

To benefit from the indemnity you must: (i) notify us promptly upon becoming aware of the IPR Claim, and in any event within



thirty (30) days; (ii) procure that we have sole conduct of the investigation, defense, and settlement of the IPR Claim; (iii) provide such assistance as we reasonably request in relation to defense of an IPR Claim (at our cost); (iv) not take any step involving any payment or admission of liability in relation to an IPR Claim without our prior written consent; and (v) immediately cease using the Product subject to the IPR Claim (unless we agree otherwise).

If an IPR Claim is made (or we think one is likely to be made) we may, in our discretion: (i) procure the right for you to continue using the Product; (ii) replace or modify the Product to avoid the potential infringement; or (iii) terminate the Agreement immediately upon written notice to you and provide a pro-rata refund of any fees which have been paid to us in respect of the Software for the period following termination in lieu of damages and without admission of fault.

#### LIABILITY

Nothing in the Agreement limits or excludes liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation, for breach of Clause 8, under the indemnities in Clause 11.2, for infringement by you of our intellectual property rights or breach of any restrictions on use set out in the Agreement, or for any liability which cannot lawfully be so excluded or limited.

Subject to Clause 6.1, neither of us shall be liable for loss of profits, loss of goodwill, loss of anticipated savings, loss of revenue or business opportunity, loss of or damage to data, injury to reputation, or any indirect, special, or consequential loss, whether or not the parties were aware of the possibility of such loss, and in each case whether the loss arises from breach of contract, tort (including negligence), strict liability, statutory duty, or otherwise.

Subject to Clause 6.1, each party's total aggregate liability arising in connection with the Agreement, whether for breach of contract, tort (including negligence), strict liability, statutory duty, or otherwise, shall not, in each year, exceed an amount equal to the amount Ordering Activity paid for the licensed Software and Products.

#### AUDIT

We are regularly audited against ISO/IEC 27001 standards by independent third party auditors. If you request it, we will provide details of this. We may inspect and take copies of your records (either ourselves or using an external auditor) to verify your compliance with the Agreement, on reasonable notice. You agree to allow access to all relevant records and personnel, and provide all reasonable assistance for the completion of the audit, and we will comply with your standard health and safety policies provided to us a reasonable time in advance of the inspection. We will bear our own costs, except if an audit shows any overuse of a Product or use outside of the scope of the license granted in which case you will pay our reasonable demonstrable costs of the audit.

#### CONFIDENTIALITY

If information is marked as confidential, or is by its nature confidential, it shall be "**Confidential Information**". Each license key is our Confidential Information. Confidential Information shall not include information that: (i) was in the public domain other than due to a breach of the Agreement or other obligation of confidentiality; (ii) was lawfully received from a third party without obligation of confidentiality; or (iii) was developed independently without reference to Confidential Information.

Each of us shall keep the other's Confidential Information confidential, and not use it except for the purposes of the Agreement without consent. Confidential Information shall not be disclosed to any third party except for the purposes of the Agreement, in which case the disclosing party shall ensure the third party complies with these obligations of confidentiality. This shall not prevent a disclosure required by law, court order, or by any regulatory body in a competent jurisdiction (but then

only to the extent and for the purpose required).

This Clause 8 will survive expiry or earlier termination of the Agreement without limitation in time. If that is not permitted by

applicable law, then this Clause 8 will apply for five (5) years following expiry or earlier termination of the Agreement.

The parties may publicize their relationship throughout the Agreement term in accordance with this Clause 8.4. Neither party may issue a press release or other public announcement ("**Publicity**") without the prior written approval of the other party (which will not be unreasonably withheld or delayed). Blue Prism may use your name and logo in its public customer lists (among and with no greater prominence than other named customers). Any use by a party of any stylized logos of the other party for Publicity shall be in accordance with the other party's trademark and logo usage guidelines.

#### DATA PROTECTION

For the purposes of the Agreement, "**Data Protection Law**" means all privacy laws applicable to personal data processed under the Agreement and "Personal Data" means "personal data" or the equivalent term as defined by Data Protection Law.

We both agree to comply with the obligations that apply to us (respectively) under Data Protection Law. To provide support to you, we may need to receive limited Personal Data to enable us to communicate with you ("**Account Management Information**"). We do not wish to receive any Personal Data from you other than Account Management Information, and you agree not to disclose any such Personal Data to us. If a support issue requires the provision of additional information to us, you must anonymize, redact or otherwise alter the information such that it does not contain Personal Data ("**Cleansed Information**").

In the event that you provide us with Personal Data in breach of Clause 9.2, we shall be entitled to delete it and cease providing support in respect of the support issue in question until Cleansed Information is provided to us. In the event that you inadvertently provide Personal Data to us in breach of Clause 9.2, you appoint us as a "processor", or the equivalent term as defined by Data Protection Law, to process the Personal Data for the purposes of providing support or as otherwise agreed in writing (the "**Permitted Purpose**") and the remaining provisions of this Clause 9 shall apply.

You authorize our transfer of Personal Data to other countries and engagement of others to process the Personal Data for the Permitted Purpose. Our relevant third party processors are listed on <http://portal.blueprism.com/agreements>, and we remain primarily responsible for the performance of any subcontracted obligations. If we engage a new processor of Personal Data, we will update the list before permitting access to the Personal Data. We will also impose contractual terms to the standard required by law. You can object to the new processor on reasonable grounds within ten (10) business days of our update to the list, in which case we will look at whether we can support you without using them (or otherwise resolve your objection). If not, we will not allow the new processor to process the Personal Data, and we may suspend support.

We will implement technical and organizational measures to protect the Personal Data from accidental or unlawful destruction, loss, alteration, and from unauthorized disclosure (a "**Security Incident**"). If we become aware of a Security Incident we will tell you without undue delay and provide you with reasonable information to help you fulfil any reporting obligations you have. We will also take reasonable steps to remedy or mitigate the impact of the Security Incident. We will ensure all of our personnel who have access to Personal Data are bound by obligations of confidentiality.

If you need our reasonable assistance to respond to any request from a data subject of Personal Data, or any enquiry or complaint, we will provide it and bear the cost of this unless we consider it will require additional resource from us, in which case we will let you know before incurring additional costs. If we receive any communication ourselves in relation to Personal Data, we will let you know promptly. If we believe our processing of Personal Data poses a high risk to the data protection rights and freedoms of the data subjects, we will let you know and reasonably co-operate with any data privacy impact assessment as may be required by law.

Following termination or expiry of the Agreement, we will destroy or return any Personal Data we hold except as required to comply with law, or Personal Data which has been archived on back-up systems. This Clause 9 will continue to apply to any retained Personal Data for as long as we hold it.

We shall also contribute to audits and inspections by allowing you to review any written records which we maintain in respect of them, and will also respond to any written audit questions in respect of, our compliance with this Clause 9.

**TERMINATION**

Either of us can terminate the Agreement upon written notice if the other commits a material breach which is not remedied (if capable of remedy) within thirty (30) days after notice to remedy such breach.

Upon termination or expiry of the Agreement, you will remove all copies of the Products from your systems and return them (or destroy them if we agree), and confirm in writing that you have done so, and immediately pay any amounts you owe us. Termination or expiry shall not affect any rights, remedies, obligations or liabilities that have accrued up to the date of termination or expiry.

**DISPUTE RESOLUTION AND CONDUCT OF CLAIMS**

If one of us believes that the other has breached the Agreement, then that party shall notify the other in writing clearly explaining the nature of the alleged breach. Each of us will then co-operate to resolve the issue, including by taking steps to cure any breach. If it has not been resolved within a further twenty (20) business days, then either party can pursue its remedies at law, in equity, or otherwise. This shall not prevent a party from seeking interim relief through the courts.

We will only be liable to you in connection with the Agreement, not to third parties. If an Affiliate or User suffers a loss as a result of our breach, this will be deemed to have been suffered by you and you may seek to recover that loss (subject to the other terms of the Agreement). In exchange, you will defend and indemnify us against any claims brought directly against us by an Affiliate or User. If you use a third party hosting or other service provider, you will defend and indemnify us against any claims brought by that service provider.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York without giving effect to principles of conflict or choice of law thereof and the parties hereby accept the exclusive jurisdiction of the courts located in New York, New York. In no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods. To the maximum extent permitted by the governing law, no

transactions called for herein shall be governed or affected by any version of the Uniform Computer Information Transactions Act enacted in any jurisdiction. IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES, WHETHER IT RESULTS IN PROCEEDINGS IN ANY COURT IN ANY JURISDICTION OR IN ARBITRATION, THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE OR ARBITRATOR WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. If any

legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, the prevailing party shall be entitled to an award of attorneys' fees and costs. For this purpose, "expenses" include, without limitation, court or other proceeding costs, and experts' and attorneys' fees and their expenses. No action under this Agreement, whether in contract or in tort, may be commenced more than two (2) years after the date on which such action accrued.

#### **MISCELLANEOUS PROVISIONS**

Except for making payments, neither party will be liable for failure or delay in performing its obligations to the extent outside its reasonable control as long as it notifies the other party promptly of the cause and likely duration.

Except as otherwise expressly stated, nothing in the Agreement shall confer any right or benefit upon any person who is not a party to it. You may not dispose of or encumber the Agreement without our prior written consent (not to be unreasonably withheld).

During the Agreement and for six (6) months afterwards, neither of us may solicit any employee of the other who is or has been engaged in provision or receipt of the Software, provided that this shall not prevent offering employment if that individual responds to a general public advertisement for employment not specifically directed at employees of the other party.

Variations to the Agreement, and any waivers, must be in writing. Waiver on one occasion does not waive a right for future occasions. Rights and remedies under the Agreement are without prejudice to other rights. If a provision (or part of one) is invalid or unenforceable, the rest shall remain in full force.

The Agreement is the entire agreement and understanding between the parties and supersedes any other agreement relating to the same subject matter.

**BLUESCAPE (THOUGHTSTREAM DBA)**  
**303 TWIN DOLPHIN DR, 6<sup>TH</sup> FLOOR**  
**REDWOOD CITY, CA 94065**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Thought Stream LLC, dba Bluescape ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
  - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
  - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a

Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



## BLUESCAPE TERMS AND CONDITIONS

*Effective Date: Friday, May 6, 2022*

Thought Stream LLC, dba Bluescape ("Bluescape") has developed the Bluescape Service, a web-based service that provides certain features and functionalities designed to facilitate enterprise project teams working within a collaborative visual workspace in real time and manage associated collaborative workflows (the "Bluescape Service").

Bluescape has two different types of users depending on the Bluescape Service used: Customers who use the free version of the Bluescape Service are called "Freemium Users." While Freemium Users can access and use the Bluescape Service, they have access to a more limited set of Bluescape Service features and functionality than Subscribers.

Customers who use the Bluescape Service as part of a paid Bluescape subscription plan ("Subscription Plan" or "Additional Services") are called a "Subscriber." The two types of users are collectively referred to as "Customer" or "you" for purposes of these Terms and Conditions.

**The Terms and Conditions ("Terms" or "Agreement") are a legal agreement between Bluescape and you governing the right to access and/or use Bluescape Service whether directly from Bluescape or indirectly through one of its resellers (in either case, "Seller").**

By accepting the Terms in writing by executing a written purchase order, you represent and warrant that you are over the age of 16 have the authority to enter into this Agreement, and you are agreeing to be bound by all the Terms. By executing a written order for the Bluescape Service, the Ordering Activity under GSA Schedule contracts identified in the Purchase Order ("Customer") agrees to the Terms. If you do not agree, Customer will not access or use the Bluescape Service. Please note that if you have a separate written agreement with Bluescape for your access and use of the Bluescape Service, then to the extent that the terms and conditions of the prior written agreement directly contradict the Terms, the terms and conditions of the prior written agreement will govern.

### 1. SERVICES

1.1 Orders. The details of a Subscription Plan shall be as set forth in an ordering document offered by Seller and accepted by Subscriber ("Order") and will set forth the specific details and parameters of the Bluescape Service being ordered, including, as applicable, the License Type and License Term, Users, Training, Maintenance and Support, Uptime Commitment, and any other details, restrictions, or limitations. Orders may be in paper form or may be provided digitally, including through a Bluescape E-commerce platform, and upon mutual acceptance will be incorporated by reference into, and made a part of, this Agreement. In the event that Seller agrees to accept an Order submitted on Subscriber's form of ordering document (purchase orders, etc.), any additional or conflicting terms provided thereon will be expressly rejected unless Bluescape and Customer both agree expressly agree to additional terms in writing. Upon execution (through the mechanism provided in the applicable offer), Orders shall be deemed incorporated by reference into, and made a part of this Agreement.

1.2 Provision of Bluescape Service. Bluescape shall make the Subscription Plan available to Subscriber during the term identified in the Order ("License Term") pursuant to this Agreement. The Subscription Plan includes those components and features, including third-party software ("Third-Party Software"), set forth or referenced in the license package identified in each Order (a current list of which is available online at <https://www.bluescape.com/pricing/> (the "License Type"), along with all then-current user manuals or other documentation provided by Bluescape ("Documentation"). As applicable, all use of Third-Party Software shall be governed by the respective licenses for such Third-Party Software, a partial list of which may be found at <https://www.bluescape.com/third-party-terms-and-conditions/>. Nothing herein shall bind the Ordering Activity to any Third Party terms unless the terms are provided for review and agreed to in writing by all parties. Bluescape shall have the right to modify the Bluescape Service, including adding or subtracting Third-Party Software, components, features or functionality, at any time without notice to Customer. Any such modification shall not materially reduce the functionality of the components, or features that Ordering Activity has contracted for. Any license identified in the applicable package or Order as evaluation, beta, test, trial, or similar designation ("Eval Licenses") are provided on limited terms and are offered on an as-is, where-is basis without warranty, liability, or service commitment of any kind, and accordingly Sections 1.5, 1.6, 3.4, 7.1, and 8.1, nor any other commitment or obligation of Bluescape with respect thereto shall not apply. Unless otherwise specified in the applicable Order or expressly renewed by mutual agreement in writing, Eval Licenses expire after ninety (90) days. Unless otherwise specified in the applicable Order, all other License Types are granted to Subscribers for an initial License Term of one (1) year, which term may be renewed for subsequent one (1) year periods by executing a written order for the subsequent one (1) year period. The License Term commences upon execution of an Order.

1.3 Authorized Users. "Users" means individuals authorized by Customer to use the Bluescape Service who have been supplied user identifications and passwords by Customer (or by Bluescape at Customer's request), including Customer's employees, consultants, clients, and third-party collaborators. An Order may designate specific types of Users. The Bluescape Service provided under a Subscription Plan may be accessed and used only by Authorized Users (including a limit to any specific type of User); provided however, that Customer may add additional Users at the pricing set forth in the applicable Order in accordance with the GSA Schedule Pricelist, pro-rated for the remainder of the applicable annual period at the time such additional Users are added.

1.4 Training. Bluescape may provide training to Subscribers in the Bluescape Service's use if described in an Order ("Training").

1.5 Availability of Bluescape Service. Bluescape will use commercially reasonable efforts consistent with prevailing industry standards to maintain the Bluescape Service to be available 24 hours per day, 7 days per week, including holidays. The Bluescape Service may be temporarily unavailable for scheduled maintenance (conducted weekly, typically in connection with a new release or service pack, but not during Support Hours (as defined below)), for unscheduled emergency maintenance, or because of other causes beyond Bluescape's reasonable control. Notwithstanding the above, in no event will Bluescape be liable to a Freemium User or any third party

for any modification, suspension or discontinuance of any part of the Bluescape Service. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE BLUESCAPE SERVICE IS PROVIDED ON AN "AS AVAILABLE" BASIS.

1.6 Maintenance and Support. Bluescape shall provide Freemium Users and Subscriber with the maintenance and support for the Bluescape Service ("Maintenance and Support") found at [https://community.bluescape.com/support\\_policy](https://community.bluescape.com/support_policy) and attached hereto as Exhibit A which Bluescape may non-materially update from time to time.

- (a) Subscriber acknowledges that Bluescape shall provide Subscriber with access to bug fixes, updates and improvements to the Bluescape Service that are released by Bluescape for general availability to its other commercial customers ("Updates") on a continuous basis. All Updates will be deemed to be part of the Bluescape Service for purposes of this Subscription Agreement and subject to all of the terms, conditions and restrictions of this Subscription Agreement. In connection with such Updates, Subscriber may be required to implement upgrades or modifications to Subscriber's networks and other systems. Bluescape shall provide Subscriber with advance notice of all upcoming Updates which require modifications to Subscriber's systems and shall work with Subscriber's System Administrator (as defined below) to coordinate the release schedule and installation of such Updates. Subscriber shall implement all required modifications to Subscriber's systems in accordance with the timing and conditions specified by Bluescape, at Subscriber's sole expense.
- (b) Except as set forth above, no other support services are provided by Bluescape. Bluescape will have no obligation to provide maintenance or support services of any kind to any Freemium User or for problems in the operation or performance of the Bluescape Service to the extent caused by any of the following ("Customer-Generated Error"): (i) any data, files, database or non-Bluescape software used in conjunction with the Bluescape Service; (ii) Customer's use of the Bluescape Service other than as authorized in this Subscription Plan ; or (iii) Customer's use of an outdated Bluescape Service (ie. any Bluescape Service ninety (90) days or older from the current release or Updates). If Bluescape determines that it is necessary to perform services for a problem in the operation or performance of the Bluescape Service that is caused by a CustomerGenerated Error, then Bluescape will notify Customer as soon as Bluescape is aware of such CustomerGenerated Error. Bluescape will not commence any such services until approved by Customer. If such services are performed, Bluescape will have the right to invoice Customer at Bluescape's then-current professional services rates for such services performed by Bluescape.
- 1.7 Additional Services. Bluescape may provide implementation services to Subscribers with respect to the Bluescape Service and may provide other services to Subscribers as set forth in an Order ("Additional Services").
- 1.8 Additional Applications. To the extent that Customer uses any third-party applications ("Apps") in conjunction with Bluescape Service, such Apps are strictly governed by their respective terms and conditions. Customer is solely responsible for any use, service, or maintenance of Apps.

## 2. USE OF THE BLUESCAPE SERVICE

2.1 Use. The Bluescape Service is intended for business use only. Customer shall (a) use the Bluescape Service only for Customer's internal business purposes, which may include collaboration with outside agencies on Customer's projects and collaboration with Customer's clients; (b) be responsible for its Users' compliance with the applicable License Type and the terms and conditions of this Subscription Agreement and any additional requirements and limitations set forth in the applicable Order; and (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Bluescape Service and shall promptly notify Bluescape of any such unauthorized access or use of which it becomes aware.

2.2 Restrictions. Customer shall not use the Bluescape Service for consumer purposes, as the Bluescape Service is intended for businesses use only. Customer shall not use the Bluescape Service or any component thereof except as expressly authorized in the Terms, an applicable Order, and by applicable law. Customer shall not, and shall not instruct any person, directly or indirectly, to: (a) reverse engineer, decompile or disassemble the software contained in the Controller, or otherwise attempt to obtain, directly or indirectly, source code for such software or any portion of such software; (b) use the Bluescape Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (c) use the Bluescape Service in a managed services arrangement; (d) attempt to gain unauthorized access to or use of the Bluescape Service or damage, disrupt, or impede the operation of Bluescape's services or systems; (e) transmit any viruses, worms, defects, Trojan horses, or any programming of a destructive nature.; (f) use the Bluescape Service for illegal purposes or for promotion of dangerous activities (g) upload or display publicly any content that contains threatening, abusive, harassing, defamatory, libelous, invasive, hateful, or racially, ethnically or otherwise objectionable material; or (h) use the Services in any manner that may harm minors or that interacts with or targets people under the age of thirteen.

If you are a school, school district, or related person, entity or organization (such as an administrator or educator who accesses the Bluescape Service on their behalf) (each a "School"), then You agree (a) to only provide access to the Bluescape Service to those individuals employed by or enrolled as students in your School or classroom and (b) to be responsible for any Content, communications, and activity that occur under such accounts. To the extent a School offers or requires access to the Bluescape Service to Minors, the School will be responsible for those Users. You agree to uphold Your responsibilities under the FERPA, the Protection of Pupil Rights Amendment ("PPRA"), and the Children's Online Privacy and Protection Act ("COPPA"). COPPA requires that online service providers obtain clear and verifiable parental consent before collecting personal information from children under the age of 13. You represent and warrant that you have the authority to provide consent on behalf of parents in order for Bluescape to collect information from students before allowing children under the age of 13 to access the Bluescape Service. If you are located outside of the United States, you will obtain any required consent or approval from the parent or guardian of any student covered by similar laws and, as a condition to your students' use of the Services, you agree that you will be responsible for complying with such laws

You agree to only provide access to the Bluescape Service to those individuals who have signed either the Bluescape Rules of Behavior, Version 1.0, 2021-07, attached hereto as Exhibit B, or an equivalent Agency Rules of Behavior which is no less restrictive.

2.3 You acknowledge that the Bluescape Service, or a portion thereof, may be subject to the Export Administration Regulations, 15 C.F.R. Parts 730-774, of the United States and may be subject to other applicable country export control and trade sanctions laws ("Export Control and Sanctions Laws"). You and Your End Users may not access, use, export, re-export, divert, transfer or disclose any portion of the Bluescape Service or any related technical information or materials, directly or indirectly, in violation of Export Control and Sanctions Laws. You represent and warrant that: (i) You and Your End Users (a) are not citizens of, or located within, a country or territory that is subject to U.S. trade sanctions or other significant trade restrictions (including without limitation Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine) and that You and Your End Users will not access or use the Bluescape Service, or export, re-export, divert, or transfer the Bluescape Service, in or to such countries or territories; (b) are not persons, or owned 50% or more, individually or in the aggregate by persons, identified on the U.S. Department of the Treasury's Specially Designated Nationals and Blocked Persons List or Foreign Sanctions Evaders Lists; and (c) are not persons on the U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List, or U.S. Department of State proliferation-related lists; (ii) You and Your End Users located in China, Russia, or Venezuela are not Military End Users and will not put the Bluescape Service to a Military End Use, as defined in 15 C.F.R. 744.21; (iii) no Content created or submitted by You or Your End Users is subject to any restriction on disclosure, transfer, download, export or re-export under the Export Control and Sanctions Laws; and (iv) You and Your End Users will not take any action that would constitute a violation of, or be penalized under, U.S. antiboycott laws administered by the U.S. Department of Commerce or the U.S. Department of the Treasury. You are solely responsible for complying with the Export Control and Sanctions Laws and monitoring them for any modifications.

### 3. RESPONSIBILITIES

3.1 Feedback. If Customer provides Bluescape with information, feedback, suggestions and comments regarding the Bluescape Service's features and performance ("Feedback"), Bluescape has the right, but not the obligation, to use Feedback in any way without restriction or obligation to Customer. Bluescape shall be the exclusive owner of, and shall be free to use for any purpose, any ideas, concepts, know-how, or techniques resulting from Feedback, including, without limitation, any modifications or enhancements to the Bluescape Service. Bluescape acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

3.2 Subscriber Onsite Support. If Bluescape shall provide Training or Maintenance and Support on-site at a Subscriber Site, Subscriber agrees (a) Subscriber shall make the on-site components of the Bluescape Service available to Bluescape during normal business hours; (b) Subscriber shall provide Bluescape personnel storage, working space, electricity, a telephone line and any other assistance reasonably requested by Bluescape; (c) Subscriber shall provide Bluescape with sufficient space and sufficient resources to conduct Training; and (d) the premises where the Bluescape Service is located are in a safe condition and that Bluescape's personnel shall not be subject to undue risk or danger while on the premises.

3.3 Customer Data. All data that Customer either utilizes or uploads in connection with usage of any Bluescape Service is defined as ("Customer Data"). Customer will have sole discretion as to which Customer Data it will utilize in connection or use of the Bluescape Service. Customer Data is the sole property of Customer. Customer covenants, represents and warrants that it will comply with (a) its applicable privacy and security policy(ies) and (b) all applicable federal, state, local and international privacy, data protection, and security laws, rules and regulations, including without limitation, laws relating to the collection, use, reuse, processing, storage, security, protection, handling, cross-border transfer and disclosure of personal or regulated data. Customer covenants, represents and warrants that it has all rights and has obtained all necessary consents, permissions and authorization with respect to Customer Data, including without limitation the provision of Customer Data to Bluescape and the collection, use, reuse, processing, storage, security, protection, handling, cross-border transfer and disclosure of personal or regulated data of the Customer Data in connection with Bluescape's provision of the Services, including but not limited to, Statistical Data as set forth in Section 5.4 below. Customer authorizes Bluescape to access or process the Customer Data in an encrypted state and only with Customer's prior written consent in an unencrypted state, as required to provide the Bluescape Service and the Maintenance and Support to Customer.

3.4 Security. Bluescape shall use commercially reasonable efforts in accordance with industry accepted standards used or observed by comparable suppliers of similar services/applications, which standards shall in no event be less than reasonable standards of care in all circumstances, to protect the security and integrity of Customer Data. To the extent that Customer Data is subject to EU General Data Protection Regulation ("GDPR"), Bluescape shall process Customer Data in accordance with GDPR Processing Terms & Conditions, which such terms and conditions may be found at <https://bluescape.com/gdpr-processing-terms/> and attached hereto as Exhibit C. Unless prohibited by law, Bluescape shall promptly inform Customer of all security-related issues that threaten the security of Customer Data discovered or brought to Bluescape's attention ("Security Issue"). Bluescape shall use all commercially reasonable efforts consistent with sound software development practices, taking into account the severity of the risk, to resolve all Security Issues as quickly as possible.

### 4. FEES AND PAYMENT

4.1 Fees. Subscriber shall pay Seller the fees set forth in all Orders in accordance with the GSA Schedule Pricelist (the "Fees").

4.2 Additional Costs and Expenses.

- (a) Bluescape or its authorized reseller as applicable shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k).

- (b) Subscriber shall reimburse Bluescape for all reasonable travel and living expenses incurred by Bluescape in performing Training, Maintenance and Support or any Additional Services on-site, including transportation, lodging, meals, and other incidental expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, provided that Subscriber has first authorized such expenses, which authorization shall not be unreasonably withheld. Bluescape shall invoice Subscriber for any such expenses on a monthly basis.
- 4.3 Invoices and Payments. Bluescape or its authorized reseller on its behalf as applicable shall invoice Subscribers for the Fees according to the schedule set forth in the applicable Order. All Fees shall be due and payable within thirty (30) days after receipt of Bluescape's corresponding invoice unless otherwise stated in an applicable Order. Subscribers may elect to allow Bluescape to charge Fees to a credit card on an annual or monthly recurring basis. Bluescape may elect to utilize a PCI compliant third-party to process any such credit card charges. All payments shall be in U.S. Dollars.
- 4.4 Late Fees. If Subscriber fails to pay any Fees or other charges due by their applicable due date, at Bluescape's discretion, such charges may accrue late charges at the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

4.5 Reserved.

4.6 Audits. During the Term, Subscriber shall maintain accurate and complete records with respect to its use of the Bluescape Service. Bluescape shall have the right, at its own expense, not more than once per year, on reasonable notice to Subscriber, to perform an audit of such records in order to confirm Subscriber's compliance with the Terms, including the number of authorized Users. Any such audit shall be conducted subject to Government security requirements, during normal business hours and in a manner designed to not unreasonably interfere with Subscriber's ordinary business operations. If an audit discovers that Subscriber has exceeded the number of authorized Users set forth in the Orders, Subscriber shall promptly pay Bluescape the Fees due for such additional Users.

## 5. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

5.1 Limited License. Bluescape grants to Customer a nonexclusive, nontransferable, revocable, worldwide license, without right of sublicense, to access and use the Bluescape Service and any applicable Additional Services for Customer's internal use as set forth in this Agreement. The foregoing license and Customer's use of the Bluescape Service and any Additional Services are also subject to any and all Documentation.

5.2 Ownership by Bluescape. Bluescape owns and shall retain any and all proprietary rights to the Bluescape Service, Training, Maintenance and Support, Additional Services, all Feedback, all data relating to the Bluescape Service's and Additional Services' performance, and all intellectual property, work product, content, ideas, know-how, concepts, methods and techniques created or employed by Bluescape in the delivery of the Bluescape Service and Additional Services, whether pre-existing or developed in the course of providing the Bluescape Service and Additional Services (collectively, the "Bluescape IP"). In the event any right, title or interest arises or vests at any time in Customer to any Bluescape IP, Customer assigns to Bluescape all such right, title and interest. Customer shall execute, and cause its employees and other representatives to execute, all necessary documents to give legal effect to such assignment or otherwise secure Bluescape's ownership of the Bluescape IP.

5.3 Ownership of Customer Data. Customer owns and shall retain all right, title and interest, including all intellectual property rights, in and to the Customer Data.

5.4 Statistical Data. Notwithstanding Section 5.3, Bluescape may aggregate and use for Bluescape's internal business purposes those portions of the Customer Data that relate to how Customer uses the Bluescape Service and Additional Services ("Statistical Data").

5.5 Reservation of Rights. Other than the explicit rights granted in this Agreement, nothing in this Agreement shall be construed or interpreted as granting to Customer any rights or licenses, including any rights of ownership or any other proprietary rights in or to the Bluescape IP or any portion, including any intellectual property rights. Other than the explicit rights granted in this Agreement, nothing in this Agreement shall be construed or interpreted as granting to Bluescape any rights or licenses, including any rights of ownership or any other proprietary rights in or to the Customer Data or any portion, including any intellectual property rights.

## 6. CONFIDENTIALITY

6.1 Definition. "Confidential Information" means any information that is disclosed by or on behalf of a party (the "Disclosing Party") to the other party (the "Receiving Party") (whether disclosed in writing, orally, by electronic delivery, by inspection of tangible objects, on office or site visits, or otherwise) that relates to the Disclosing Party's business, finances, affiliates, licensees, licensors, customers, products, services, pricing (excluding GSA Schedule pricing), or intellectual property. Without limitation of the foregoing, all information relating to the Bluescape IP, including the Bluescape Service and Additional Services, shall be deemed Bluescape's Confidential Information and all Customer Data shall be deemed Customer's Confidential Information. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is generally known to the public when first disclosed by or on behalf of the Disclosing Party or thereafter becomes generally known to the public through no act or fault of the Receiving Party; (b) the Receiving Party already had obtained or obtains, without breaching any duty to the Disclosing Party, from a third party that was not under an obligation of nondisclosure; or (c) was or is independently developed by the Receiving Party without use or reference to any information obtained from the Disclosing or any party acting on behalf of the Disclosing Party, as demonstrated by the Disclosing Party's written records.

6.2 Obligations. The Receiving Party shall not: (a) reproduce the Disclosing Party's Confidential Information; (b) use the Disclosing Party's Confidential Information for any purpose other than to perform its obligations under and in accordance with this Agreement; or



(c) disclose the Disclosing Party's Confidential Information to any party other than an employee or independent contractor of the Receiving Party having a need to know such Confidential Information and who is under a binding obligation of confidentiality and limitation of use and disclosure consistent with the terms hereof. Neither party, nor any party affiliated with such party, shall remove any copyright or proprietary marking from the other party's Confidential Information.

6.3 Required Disclosure. Notwithstanding anything in this Agreement to the contrary, the Receiving Party may disclose the Disclosing Party's Confidential Information if required by law or court, or by a lawful subpoena issued by any state or Federal court, arbitral, or other governmental order or process, provided the Receiving Party: (a) gives the Disclosing Party immediate written notice as soon as it learns of such requirements in order to permit the Disclosing Party to seek a protective order or other appropriate relief; (b) assists the Disclosing Party in connection with such efforts; and (c) discloses only the Confidential Information required to be disclosed. The Receiving Party shall continue to treat any Confidential Information disclosed pursuant to this Section 6.3 as Confidential Information for all other purposes. Bluescape recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

## 7. WARRANTIES AND DISCLAIMERS

7.1 . Bluescape warrants that the Bluescape Service will achieve in all material respects the functionality described in the Documentation. Customer's sole and exclusive remedy for Bluescape's breach of this warranty shall be that Bluescape shall be required to use commercially reasonable efforts to modify the Bluescape Service to achieve in all material respects the functionality described in the Documentation and if

Bluescape is unable to so modify the Bluescape Service, Customer shall be entitled to terminate this Subscription Agreement and receive a pro-rata refund of the annual Fees pre-paid under this Subscription Agreement for the Bluescape Service for the terminated portion of the Subscription Agreement. Bluescape shall have no obligation with respect to a warranty claim unless notified of such claim within 60 days of Customer's being aware of the first instance of any material functionality problem. Any such notice must be sent to legal@Bluescape.com. The warranties set forth in this Section are made to and for the benefit of Customer only. Such warranties shall only apply if the applicable Bluescape Service has been utilized in accordance with this Subscription Agreement.

7.2 Customer Warranty. Customer warrants that it has the full right, power, and authority to allow its Users use the Bluescape Service, including to provide and make available all applicable data and information to Bluescape for the purpose of providing the Bluescape Service, and that Bluescape's use of such data and information in providing the Bluescape Service to Customer and its Users as provided herein does not and will not infringe, misappropriate, or otherwise violate any right (including intellectual property rights, privacy rights, publicity rights, trade secrets, or contractual rights), or any applicable law or regulation.

7.3 YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

(a) YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLUESCAPE EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT; (b) BLUESCAPE DOES NOT WARRANT THAT (i) THE SERVICES WILL MEET ALL OF YOUR REQUIREMENTS; (ii) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, OR ERROR-FREE; OR (iii) ERRORS IN THE SOFTWARE WILL BE CORRECTED; and (c) ANY TRANSMISSION OF CONTENTS THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM ANY SUCH TRANSMISSION.

7.4 CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.1, THE BLUESCAPE SERVICE, TRAINING, MAINTENANCE AND SUPPORT, ADDITIONAL SERVICES, THE BLUESCAPE IP AND ALL COMPONENTS OF ALL OF THE FOREGOING ARE PROVIDED "AS IS". BLUESCAPE DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO (A) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (B) RELATING TO THE PERFORMANCE OF THE BLUESCAPE SERVICE TRAINING, MAINTENANCE AND SUPPORT, OR ADDITIONAL SERVICES; (C) WITH RESPECT TO ANY RESULTS TO BE OBTAINED FROM THE BLUESCAPE SERVICE, TRAINING, MAINTENANCE AND SUPPORT, OR ADDITIONAL SERVICES; (D) THAT USE OF THE BLUESCAPE SERVICE AND ADDITIONAL SERVICES SHALL BE UNINTERRUPTED OR ERROR FREE; OR (E) WITH RESPECT TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, OR EFFECTIVENESS OF ANY DATA, RESULTS, CONTENT OR OTHER INFORMATION OBTAINED OR GENERATED BY CUSTOMER THROUGH ITS USE OF THE BLUESCAPE SERVICE AND ADDITIONAL SERVICES.

## 8. INDEMNIFICATION

8.1 Bluescape shall indemnify, have the right to intervene to defend and hold harmless Customer (and its officers, directors, employees, shareholders and agents) from and against any and all third party claims, actions, suits, proceedings, liabilities, losses, damages, fines, injuries, interest or expenses (including reasonable attorneys' fees and costs of investigation and defense) ("Losses") arising from or relating to any claim that the Bluescape Service, when used as permitted in this Subscription Agreement, violate or infringe any intellectual property rights of any third party. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

8.2 The obligation to indemnify under this Agreement is conditioned on the party receiving the benefit of the indemnity (the "Indemnified Party") providing the party with the obligation (the "Indemnifying Party") with (a) prompt written notice of covered claim, action, suit or proceeding ("Claim"); (b) proper and full information and reasonable assistance to defend and/or settle any such Claim. The Indemnifying Party may not settle any such Claim in any manner that binds the Indemnified Party without the Indemnified Party's prior written consent. Notwithstanding the foregoing, the Indemnified Party may, at its own expense, participate in the defense and settlement of any such Claim.

8.3 Infringement. In the event that a claim subject to Section 8.1 is made or threatened, or Bluescape reasonably believes that Customer's use of the Bluescape Service or any Additional Service is likely to be infringing, Bluescape, at its option and expense, may either (a) secure for Customer the rights necessary to continue to use the applicable Service; (b) modify such Service so that it becomes non-infringing, (c) replace the potentially infringing portion of such Service with a functionally equivalent non-infringing product or service; This Section 8 sets forth Bluescape's entire liability and obligation, and Customer sole and exclusive remedy with respect to any claims of infringement or misappropriation of any intellectual property rights of any other party.

8.4 Exceptions. Notwithstanding the provisions of Section 8, Bluescape shall have no obligation to indemnify Customer with respect to any Losses to the extent resulting from (a) the combination of the Bluescape Service or any Additional Service or portions thereof with products or services not provided by Bluescape or reasonably anticipated to be used in conjunction with the Bluescape Services or Additional Services; (b) the modification of the Bluescape Service or any Additional Service by any party other than Bluescape; or (c) the use of the Bluescape Service or Additional Services in a manner not expressly permitted by this Subscription Agreement.

## 9. LIMITATION OF LIABILITY

9.1 Limitation of Cumulative Liability. EXCEPT FOR BLUESCAPE'S LIABILITY UNDER SECTION 8.1, BLUESCAPE'S TOTAL CUMULATIVE LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE, WITH RESPECT TO THE BLUESCAPE IP, THE BLUESCAPE SERVICE AND THE ADDITIONAL SERVICES PROVIDED UNDER THIS SUBSCRIPTION AGREEMENT SHALL BE LIMITED TO THE FEES ACTUALLY PAID BY CUSTOMER TO BLUESCAPE UNDER THE APPLICABLE ORDER.

9.2 Waiver of Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SUBSCRIPTION AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS REVENUE, LOSS PROFITS, LOSS BUSINESS) WHETHER IN CONTRACT, IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT) OR OTHERWISE RESULTING FROM ITS PERFORMANCE OR ANY FAILURE TO PERFORM UNDER THIS SUBSCRIPTION AGREEMENT (INCLUDING LOSS OF DATA OR LOSS OF ANTICIPATED PROFITS OR BENEFITS) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

## 10. TERM AND TERMINATION

10.1 Term. The term of a Subscription Plan shall commence on the date of execution of the first applicable Order and lasts until the termination or expiration of all License Terms under all applicable Orders executed hereunder (the "Term"). Bluescape shall provide Customer with written notice of any increases in the Fees for any Renewal Term at least sixty (60) days prior to the end of the then-current License Term. Fees for any Renewal term shall be in accordance with the then current GSA Schedule Pricelist.

10.2 Termination for Cause. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Bluescape shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

10.3 Effect of Termination. Upon the expiration or termination of this Agreement for any reason,

- (a) Customer shall immediately cease all use of the Bluescape Service and the Additional Services and all licenses granted under this Subscription Agreement shall terminate. To the extent that Customer is using any solution except for a Bluescape hosted solution, Customer shall immediately delete any and all instances and related Bluescape code.
- (b) Except with respect to termination by Subscriber for Bluescape's breach, within thirty (30) days of the invoice receipt date following such expiration or termination, Customer shall pay all outstanding amounts then due.
- (c) In the event of termination, Bluescape shall refund to Subscriber any pre-paid Fees covering the remainder of the Term.
- (d) Upon written request, each party shall return to the other party or, pursuant to the other party's written instructions, destroy, all materials in its possession or control containing Confidential Information of the other party;
- (e) Unless specified otherwise, all Customer Data, as well as created or uploaded content, will be securely destroyed by Bluescape within 90 days of termination; and



- (f) The following provisions shall survive: 4.3, 4.4, 5.2-5.4, 6, 7.2, 8, 9, 10.4 and 12.

#### 11. FORCE MAJEURE

Excusable delays shall be governed by FAR 552.212-4(f).

#### 12. MISCELLANEOUS PROVISIONS

12.1 General. This Agreement shall be construed in accordance with the Federal law of the United States, without reference to its conflict of law principles. The parties are independent contractors and nothing in this Subscription Agreement shall be construed as establishing a joint venture, partnership, employment or agency relationship between the parties. In the event that any provision of the Agreement shall be determined to be illegal or unenforceable, a modified provision or written agreement shall be substituted which carries out as nearly as possible the original intent of the parties, and the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired thereby. With respect to its subject matter, this Agreement (together with its Exhibits and all Orders, all of which are incorporated into this Agreement by reference) represents the parties' entire agreement and supersedes all prior agreements, understandings and representations, written or oral, between the parties. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns and may not be amended except by a writing signed by the duly authorized representatives of both parties. The failure of a party to require performance of any provision of this Agreement shall in no manner affect its right to enforce the provision, and no delay or failure by either party to exercise any right or remedy shall operate as a waiver thereof. Bluescape may assign or transfer any and all rights or obligations under this Agreement Party to a successor who acquires substantially all of its relevant assets or business at any time in accordance with the provisions set forth at FAR 42.1204. Except as expressed herein, you may not assign or transfer (whether by operation of law, merger, consolidation, change of control or otherwise) any rights or obligations under this Agreement without the prior written consent of Bluescape. This Agreement may be executed in one or more counterparts and by facsimile or other electronic transmission (including via email in "portable document format" or, in the case of Customer click through), each of which shall be deemed an original, but all of which shall constitute the same instrument. Notwithstanding anything else in the Agreement, As Bluescape's business evolves, we may change the non-material Terms. You can review the most current version of the Terms at any time by visiting this website. Any material revisions to the Terms must be agreed to in writing by both parties. If you use the Bluescape Service after the effective date of any changes, that use will constitute your acceptance of the nonmaterially revised terms and conditions.

12.2 Notices. You agree that Bluescape may provide you with notices regarding the Bluescape Service by email, post or postings on the website(s) related to the affected Bluescape Service, in our discretion, and that we may rely upon the contact information you have provided as being accurate, complete and current. Except where this Agreement specifically provide for use of a different means or address for notice, any notice hereunder to Bluescape must be delivered by email to [legal@bluescape.com](mailto:legal@bluescape.com). This email address may be updated as part of any update to this Agreement.

12.3 Conflict. To the extent of any conflict or inconsistency between this Subscription Agreement and any Exhibit, Order, or any other document related to the parties' obligations under this Agreement, the terms of this body of this Agreement shall govern unless otherwise expressly agreed by the parties in writing. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Order) shall be incorporated into or form any part of this Subscription Agreement, and all such terms or conditions shall be null and void.

12.4 Interpretation. The words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation;" and the words "such as," "for example" "e.g." and any derivatives shall mean by way of example and the items that follow these words shall not be deemed an exhaustive list. The descriptive headings and labels of the articles, sections, and subsections of this Agreement are for convenience and reference only and shall not affect this Agreement's construction or interpretation.

**Exhibit A**

**BLUESCAPE GSA MAINTENANCE AND SUPPORT POLICY EFFECTIVE APRIL 1, 2022**

This Bluescape Maintenance and Support Policy (“Maintenance and Support”) is issued under and forms a component of the Bluescape Terms and Conditions which references this policy. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Bluescape Terms and Conditions. Bluescape may modify this Maintenance and Support Policy from time to time, however any modifications to the Maintenance and Support Policy will not materially decrease Bluescape’s support obligations.

Bluescape provides Maintenance and Support based on the Bluescape Service tier provisioned by the Customer.

<b>Bluescape Tier</b>	<b>Support Type</b>
Free/Go	Community
Whiteboard Edition	Community + Email Support
Agency Edition	Community + Email Support + Video Chat Support + SLA
Defense Edition	Community + Private Community + Email Support + Video Chat + SLA
Sovereign Edition	Community + Private Community + Email Support + Video Chat + SLA
Defense or Sovereign Edition - Enhanced	Community + Private Community + Email Support + Video Chat + SLA + Dedicated Technical Support Agent

**BLUESCAPE COMMUNITY**

The Bluescape Community is located at <https://community.bluescape.com/>. The Bluescape Community provides access to all product documentation and tutorials, as well as a Q&A section between Community members and Bluescape community and support personnel. The Bluescape Community is publicly available, so Bluescape advises all who have access the community to not post any private or confidential data to the Bluescape Community.

**BLUESCAPE PRIVATE COMMUNITY**

The Bluescape Private Community is a private community within the general community used to escalate support inquiries, product feedback, and account specific questions. The Bluescape community team and support team have access to the Bluescape Private Community, so Bluescape advises all who have access to a Private Community to not post any private or confidential data to the Bluescape Community.

**EMAIL SUPPORT**

Bluescape Email Support enables customers to submit a ticket (“Ticket”) to Bluescape support if they experience a problem with the Bluescape Service that they are not able to solve through the Bluescape Community. Tickets are submitted to [support@bluescape.com](mailto:support@bluescape.com). In connection with submitting a Ticket, Subscriber will: (i) notify Bluescape promptly of problems Subscriber has experienced with the Bluescape Service, and provide Bluescape with information regarding the problem sufficient to enable Bluescape to reproduce the problem; (ii) provide Bluescape with reasonable assistance, as requested, in addressing a resolution of the problem; and (iii) provide Bluescape with appropriate access consistent with Subscriber’s confidentiality, safety and security procedures to enable Bluescape to reproduce the problem (where any information obtained from such access shall be considered Confidential Information (as defined below of Subscriber). Bluescape will acknowledge receipt of a Request immediately via its automated response system, but in any event within a commercially reasonable time thereafter.

**VIDEO CHAT SUPPORT**

Bluescape Video Chat Support provides customers with the ability to speak to Bluescape support directly through a dedicated AV conferencing support room during Bluescape Standard Support Hours.

**DEDICATED TECHNICAL SUPPORT AGENT**

The Bluescape Enterprise Edition – Enhanced tier provides the Customer with a dedicated technical support agent. This direct access to a technical support agent will provide additional escalation of Ticket submissions and consistent communications with a technical support agent who is aware of the Customer history of accessing the Bluescape Service.

**BLUESCAPE SLA**

Severity Level	Priority	Support Hours Type	Acknowledge Receipt	Begin Investigation	Provide Updates to Customer
Level 1 <input type="checkbox"/> Service Crash <input type="checkbox"/> Security & Data Breach <input type="checkbox"/> 0-day Security Fix <input type="checkbox"/> User is unable to access service/is completely blocked <input type="checkbox"/> Any crash & compromise around a user profile / permission model	Critical	24 by 7 Support	< 1 hour	Immediately	Every hour
Level 2 <input type="checkbox"/> Group productivity impaired <input type="checkbox"/> Confidential information getting stored in the logs <input type="checkbox"/> Issue unable to be avoided on a temporary basis	High	Standard Support	< 4 hours	< 4 hours	Every hours
Level 3 <input type="checkbox"/> Individual productivity impaired <input type="checkbox"/> GDPR request to query / remove user personal information	Medium	Standard Support	< 24 hours (1 business day)	< 24 hours	Every hours
Level 4 <input type="checkbox"/> All other issues	Low	Standard Support	< 24 hours (1 business day)	< 5 business days	Every hours

**BLUESCAPE STANDARD SUPPORT HOURS**

Bluescape Standard Support (“Standard Support”) are Monday through Friday, US national holidays excluded, from 5:00 AM PST to 5:00 PM PST. For Level 1 Critical Tickets, Bluescape will provide support 24 hours a day, 7 days a week (“24 by 7 Support”).

**BLUESCAPE SUPPORT FOR CUSTOMER ON-PREM DEPLOYMENTS**

If Subscriber is hosting the Bluescape Service either on-premises or through a non-Bluescape managed captive cloud, Bluescape support service shall be limited to supporting a staging environment only and shall have no responsibility for Subscriber’s production or live environments. Bluescape will provide scripts and programmatic routines to perform upgrades to staging environment. These scripts can be modified by the Subscriber to perform production upgrades; the Subscriber is responsible for using the release scripts to perform upgrades and modifications of any kind to the production environments. Bluescape will require access to the staging environments through VPN or other mutually agreed upon means in order to perform upgrades and maintenance in keeping with the Bluescape development process and schedule.

If Subscriber utilizes the Bluescape Services on-premises or through a non-Bluescape managed captive cloud, rather than through a Bluescape hosted environment, and fails to upgrade within ninety (90) days of any release, Bluescape support and maintenance shall be limited to making the current version of Update available to Subscriber.

#### **BLUESCAPE SUPPORT EXCLUSIONS**

Except as set forth above, no other support services are provided by Bluescape. Bluescape will have no obligation to provide maintenance or support services of any kind for problems in the operation or performance of the Bluescape Service to the extent caused by any of the following ("Customer-Generated Error"): (i) any data, files, database or non-Bluescape software used in conjunction with the Bluescape Service; (ii) Customer's use of the Bluescape Service other than as authorized in this Subscription Plan ; or (iii) Customer's use of an outdated Bluescape Service (ie. any Bluescape Service ninety (90) days or older from the current release or Updates). If Bluescape determines that it is necessary to perform services for a problem in the operation or performance of the Bluescape Service that is caused by a Customer-Generated Error, then Bluescape will notify Customer as soon as Bluescape is aware of such Customer-Generated Error. Bluescape will not commence any such services until approved by Customer. If such services are performed, Bluescape will have the right to invoice Customer at Bluescape's then-current professional services rates for such services performed by Bluescape.

#### **Exhibit B**

#### **RULES OF BEHAVIOR FOR EXTERNAL USERS**

You must conduct only authorized business on the system.

Your level of access to systems and networks owned by Bluescape is limited to ensure your access is no more than necessary to perform your legitimate tasks or assigned duties. If you believe you are being granted access that you should not have, you must immediately notify the Bluescape Operations Center at [support@bluescape.com](mailto:support@bluescape.com) or login in to report an issue at <https://community.bluescape.com/s/contactsupport>.

You must maintain the confidentiality of your authentication credentials such as your password. Do not reveal your authentication credentials to anyone; a Bluescape employee should never ask you to reveal them.

You must follow proper logon/logoff procedures. You must manually logon to your session; do not store you password locally on your system or utilize any automated logon capabilities. You must promptly logoff when session access is no longer needed. If a logoff function is unavailable, you must close your browser. Never leave your computer unattended while logged into the system.

You must report all security incidents or suspected incidents (e.g., lost passwords, improper or suspicious acts) related to Bluescape systems and networks to the Bluescape Operations Center at [support@bluescape.com](mailto:support@bluescape.com) or login in to report an issue at <https://community.bluescape.com/s/contactsupport>.

You must not establish any unauthorized interfaces between systems, networks, and applications owned by Bluescape.

Your access to systems and networks owned by Bluescape is governed by, and subject to, all federal laws, including, but not limited to, the Privacy Act, 5 U.S.C. 552a, if the applicable Bluescape system maintains individual Privacy Act information. Your access to Bluescape systems constitutes your consent to the retrieval and disclosure of the information within the scope of your authorized access, subject to the Privacy Act, and applicable state and federal laws.

You must safeguard system resources against waste, loss, abuse, unauthorized use or disclosure, and misappropriation.

You must not process U.S. classified national security information on the system.

You must not browse, search or reveal information hosted by Bluescape except in accordance with that which is required to perform your legitimate tasks or assigned duties.

You must not retrieve information, or in any other way disclose information, for someone who does not have authority to access that information.

You must ensure that Web browsers use Secure Socket Layer (SSL) version 3.0 (or higher) and Transport Layer Security (TLS) 1.2 (or higher). SSL and TLS must use a minimum of 128-bit, encryption.

You must ensure that your web browser is configured to warn about invalid site certificates.

You must ensure that web browsers warn if the user is changing between secure and non-secure mode.

You must ensure that your web browser window used to access systems owned by Bluescape is closed before navigating to other sites/domains.

You must ensure that your web browser checks for a publisher's certificate revocation.

You must ensure that your web browser checks for server certificate revocation.

You must ensure that web browser checks for signatures on downloaded files.

You must ensure that web browser empties/deletes temporary Internet files when the browser is closed.

By your signature or electronic acceptance (such as by clicking an acceptance button on the screen) you must agree to these rules.

You understand that any person who obtains information from a computer connected to the Internet in violation of her employer's computer-use restrictions is in violation of the Computer Fraud and Abuse Act.

You agree to contact the Bluescape Chief Information Security Officer or the Bluescape Operations Center at [support@bluescape.com](mailto:support@bluescape.com) if you do not understand any of these rules.

**ACCEPTANCE AND SIGNATURE**

I have read the above Rules of Behavior for External Users for Bluescape systems and networks. By my electronic acceptance and/or signature below, I acknowledge and agree that my access to all Bluescape systems and networks is covered by, and subject to, such Rules. Further, I acknowledge and accept that any violation by me of these Rules may subject me to civil and/or criminal actions and that Bluescape retains the right, at its sole discretion, to terminate, cancel or suspend my access rights to the Bluescape systems at any time, without notice.

User's Legal Name: \_\_\_\_\_ (printed)

(signature)

User's Signature: \_\_\_\_\_

Date: [Click here to enter a date.](#)

Comments: [Click here to enter text.](#)

**Exhibit C**

## GDPR Processing Terms and Conditions

Bluescape as data importer shall comply with all requirements that the General Data Protection Regulation 2016/679 (GDPR) imposes on data processors and is collectively referred to as "processor" in this Addendum. You, as our Customer and the "controller" is the data exporter. All terms herein shall take on the meaning as defined in the General Data Protection Regulation 2016/679 (GDPR). Without limiting the generality of the foregoing, processor agrees, warrants and represents that it:

- a) processes the personal data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest; also, the processor shall immediately inform the controller if, in its opinion, an instruction infringes the GDPR, national data protection laws in the EU or other applicable law;
- b) ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- c) takes all measures required pursuant to Article 32 of the GDPR (security of processing);
- d) respects the conditions referred to in paragraphs 2 and 4 of Article 28 of the GDPR for engaging another processor;
- e) taking into account the nature of the processing, assists the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR, including, without limitation, right to access, rectification, erasure and portability of the data subject's personal data; (for the avoidance of doubt, processor shall only assist and enable controller to meet controllers obligations to satisfy data subjects' rights, but processor shall not respond directly to data subjects);
- f) assists the controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR (Security of personal data) taking into account the nature of processing and the information available to the processor;
- g) at the choice of the controller, deletes or returns all the personal data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data;
- h) makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller;
- i) provides notification as required by the GDPR and any other applicable law regarding any loss or breach of security of the personal data;
- j) complies with this Addendum, the GDPR and applicable law until termination of services and upon termination, at controller's choice: (1) destroy all personal data processed and any copies thereof and certify to controller on request having done so; or (2) return all data and copies thereof to controller; and
- k) monitors and self-audits its own compliance with its obligations under applicable national data protection law and the GDPR and provide controller with periodic reports, at least annually.



**BRAVOSOLUTION**  
**101 LINDENWOOD DRIVE**  
**SUITE 420**  
**MALVERN PA 19355**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **BravoSolution** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**BRAVOSOLUTION**

**BRAVOSOLUTION LICENSE, WARRANTY AND SUPPORT TERMS**

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Following the BravoSolution General Terms and Conditions are specific terms for BravoSolution Subscription Software, Support, Professional Services, Hosting Services and Hosting Service Levels.

**GENERAL TERMS AND CONDITIONS.**

RESERVED.

**PROPRIETARY RIGHTS.**

Proprietary Rights. Contractor owns all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names and trade secrets and other proprietary rights) in and to the Licensed Software and Documentation, but excluding Content. Ordering Activity agrees to reproduce and not to remove the copyright, trademark and other proprietary notices contained on or in the Licensed Software and Documentation as delivered to Ordering Activity on all copies of such Licensed Software. Ordering Activity shall not take any action to jeopardize, limit or interfere with such ownership of and rights with respect to the Licensed Software and Documentation. Contractor reserves all rights not explicitly granted in the Agreement. Ordering Activity shall not sublicense, sell or otherwise transfer the Licensed Software without the express written permission of Contractor.

Ownership of Inventions. The parties do not anticipate that they will undertake any development work under this Agreement, and any such development work shall be the subject of a separate written agreement between the parties. Notwithstanding the foregoing, and except as expressly set forth in an applicable written agreement, Contractor owns all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names and trade secrets and other proprietary rights) in and to all Inventions and all components or any reproductions thereof, in whole and in part. No Intellectual Property Rights in or to any Inventions is conveyed to Ordering Activity under this Agreement other than any limited grants of access rights or licenses specifically granted herein. Ordering Activity agrees not to remove any copyright, trademark or other proprietary notice contained on or in the Inventions as delivered to Ordering Activity. Contractor shall own all modifications to the Licensed Software and Documentation made by Contractor pursuant to any Services provided hereunder. Subject to the foregoing, and except as set forth in a Statement of Work, Ordering Activity shall be the sole owner of, and shall have the sole and exclusive right, title and interest in the deliverables, specifications, programs, records or other data or materials specifically developed by Contractor, its employees, agents or subcontractors in the course of Contractor's performance of this Agreement (hereinafter and hereinbefore, "Work Product").

Other Property of the Parties. Subject to Schedule I, Section 0, each party acknowledges and agrees that all software, information and related materials (including all Intellectual Property Rights thereto) owned by a party prior to this Agreement shall remain the sole and exclusive property of such party. Each party further agrees and acknowledges that such party or its employees, representatives or agents, have not acquired or will not acquire any proprietary interest in or right to, such materials. Notwithstanding the foregoing, Ordering Activity acknowledges and agrees that Contractor may use (including, without limitation, in future products) without restriction all ideas, suggestions, feedback, improvements, data, reports or the like concerning the Licensed Software or Services that may be communicated to Contractor or BravoSolution by Ordering Activity, as defined in GSA Order ADM4800.2H and revised from time to time.

RESERVED.

RESERVED.

RESERVED.

RESERVED.

RESERVED.

RESERVED.

**GENERAL**

Survival. Section 0 ("Proprietary Rights"), Section 0 ("General") and Section 0 ("Definitions") shall survive the termination or expiration of this Agreement.

Reserved.

Reserved.

Reserved.

Reserved.

Compliance with Applicable Laws. Ordering Activity, at its own expense, will comply with all applicable laws and regulations regarding its activities and obligations related to this Agreement.

Compliance with U.S. Export Laws. Ordering Activity acknowledges that the laws and regulations of the United States, including, without limitation, the United States Export Administration Act of 1979, as amended, may restrict the export and re-export of commodities and technical data of United States origin, including the Licensed Software in any medium. Ordering Activity agrees that it will not export or re-export the Licensed Software in any form without the appropriate United States and foreign government licenses. Additionally, use of the Licensed Software may include the routing of Content to one or more countries other than the United States; therefore Ordering Activity must ensure that the Content does not contain any data that is subject to export restrictions by the U.S. or other applicable governments.

Notice that there are third party licensors of software products embedded in, deployed or bundled with the Licensed Software.

Reserved.

Reserved.

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Reserved.  
Reserved.

#### DEFINITIONS.

"Agreement" means the terms and conditions herein.

"Content" means any all Ordering Activity sourcing materials and proposal components, data, files, and information collected, received, transmitted, interpreted or created by or through the Licensed Software, including, but not limited to, Ordering Activity designs, trademarks, logos, text, images, graphics, clips, and other material.

"Commencement Date" means the date on which the Licensed Software is first accessible by the Ordering Activity.

"Confidential Information" means any and all proprietary or non-public information disclosed by one party (the "Discloser") to the other party (the "Recipient") pursuant to this Agreement, which is in written, graphic, machine readable or other tangible forms, or oral, perceived or intangible information, which the Discloser designates as being confidential or proprietary or which, under the circumstances surrounding disclosure, the Recipient knows or has reason to know should be treated as confidential, including without limitation, the terms and conditions of this Agreement.

"Documentation" means standard manuals, data models, flow charts and other materials regarding the use of the Licensed Software and generally supplied by Contractor to Ordering Activity, whether in printed or electronic format, as well as complete or partial copies of the foregoing.

"Error" means a reproducible programming error or bug in the Licensed Software that results in the failure of the Licensed Software to comply substantially with the Documentation, including any known computer viruses, Trojan horses, worms, trap doors, time bombs, or other code designed to be harmful.

"Hosting Services" shall have the meaning set forth under the section with the heading Hosting Services.

"Hosting Term" means the period of time that Contractor through BravoSolution shall provide Hosting Services to Ordering Activity, which shall commence upon the Commencement Date and continue for the period set forth on the applicable Order Form.

"Intellectual Property" means any and all trade secrets, patents, copyrights, trademarks, service marks, trade names, domain names, trade dress, URLs, brand features, know-how and similar rights of any type under the laws of any applicable governmental authority, including, without limitation, all applications and registrations relating to any of the foregoing.

"Intellectual Property Rights" means all rights in and to Intellectual Property.

"Inventions" means, collectively and without limitation, any and all inventions (of any type), ideas, discoveries, software, methods, developments, concepts, processes, improvements, and all other works of authorship, in whole or in part, whether or not patentable or copyrightable, conceived or made by BravoSolution or BravoSolution personnel pursuant to any this Agreement, any SOW or in the course of BravoSolution's performance of any Services provided hereunder regardless of any participation, assistance or cooperation by Ordering Activity or its personnel in connection therewith; provided, however, that Inventions shall exclude (i) the Licensed Software and other pre-existing BravoSolution Intellectual Property, (ii) any pre-existing intellectual property owned by Ordering Activity, and (iii) Ordering Activity's Confidential Information.

"Licensed Software" means (i) the proprietary software product which is developed and owned or licensed by Contractor (including any Third Party Software incorporated therein) identified on an applicable Order Form (ii) any Documentation for the Licensed Software, and (iii) any Updates delivered to Ordering Activity pursuant to this Agreement.

"License Term" means the period of time the license of the Licensed Software granted hereby shall be in effect which shall commence upon the Commencement Date and continue for the period set forth on an applicable Order Form.

"Maintenance Services" shall have the meaning set forth in Section 0 hereof under the heading Support Terms below.

"Maintenance Term" shall mean the period of time Contractor shall render the Maintenance Services to Ordering Activity, which shall commence upon the Commencement Date and continue for the period set forth on the applicable Order Form.

"Order Form" means one or more documents that are executed by the parties in connection with this Agreement.

"Services" means the software implementation, consulting and other professional services that may be provided by Contractor to Ordering Activity under this Agreement as described in one or more SOWs.

"Source Code" means the source code version of the Licensed Software.

"SOW" means a Statement of Work that is executed by the parties in connection with this Agreement. Each fully executed SOW shall be deemed an attachment to the Agreement and incorporated by reference hereto.

"Term" shall mean the period of time this Agreement shall be in effect, which shall commence upon the Effective Date and continue until the end date listed on the Order Form.

"Third Party Software" means certain software licensed by Contractor and included or embedded in the Licensed Software.

"Update" means (a) subsequent releases of the Licensed Software (not including any Third Party Software) that (i) add new features, functionality, and/or improved performance or, (ii) operate on new or other databases, operating systems, or client or server platforms; and (b) Error fixes, patches, workarounds, and maintenance releases; provided, however that Updates shall not include new or separate products. Contractor shall not provide any Updates to Third Party Software.

## SUBSCRIPTION SOFTWARE LICENSE TERMS AND CONDITIONS

### LICENSE.

**Grant of Rights.** Subject to all of these terms and conditions, Contractor grants to Ordering Activity a limited term, worldwide, non-exclusive, non-transferable, license (i) to access, use, display and perform the Licensed Software in object code form solely in accordance with the Documentation; (ii) for any web based functionality provided within the Licensed Software, to allow authorized participants to use the Licensed Software for the purpose of accessing and using the Licensed Software via a standard Internet Explorer web browser in the manner and to the extent provided for by the Documentation; and (iii) to use the Documentation solely for the purposes of supporting Ordering Activity's use of the Licensed Software in accordance with the terms of the Documentation. All rights not specifically granted shall be reserved to Contractor.

**Restrictions.** Ordering Activity shall not directly or indirectly (i) download, use or otherwise copy all or any portion of the Licensed Software or Documentation, except as stated in these terms; (ii) cause or permit the reverse engineering, modification, disassembly or decompilation of the Licensed Software or any portion thereof; (iii) modify or change the Licensed Software (except to configure the Licensed Software by means of the user-enabled features of the Licensed Software); (iv) create any derivative works of the Licensed Software or Documentation; (v) sublicense, rent, loan, lease, transfer, grant access to or otherwise distribute the Licensed Software to any other person or entity, except as stated otherwise in these terms; or (vi) use the Licensed Software or Documentation to provide services to third parties in a time-sharing, service bureau or application service provider arrangement.

### LICENSED SOFTWARE WARRANTY.

**Scope of Warranty.** Contractor warrants that during the License Term the Licensed Software will be substantially free from Errors. In the event that the Ordering Activity discovers that the Licensed Software contains Errors during any such period, then Ordering Activity shall promptly report such Errors to Contractor in writing. Ordering activity shall report such Errors in the form reasonably requested by Contractor so as to enable Contractor to reproduce, verify, diagnose and correct each Error. Contractor's sole obligation and Ordering Activity's sole and exclusive remedy for Errors will be that Contractor will use commercially reasonable efforts to provide a correction or workaround for each Error in the Licensed Software reported by Ordering Activity to Contractor during the License Term.

**Exclusion.** Contractor will have no obligation under this Agreement with respect to Errors caused by (i) a malfunction of computer hardware or software other than the Licensed Software, (ii) any modification of or change to the Licensed Software that is made by Ordering Activity, or (iii) any combination, operation or



use of the Licensed Software with systems or other software other than those described herein or the Documentation, or that may otherwise be approved by Contractor.

**MAINTENANCE SERVICES.**

Subject to Ordering Activity's payment of any Maintenance Fees set forth on the Order Form, during a Maintenance Term Contractor will provide the following Maintenance Services:

Updates for the Licensed Software as such Updates are made generally available by Contractor to Ordering Activity

Commercially reasonable efforts to effectuate prompt resolution of Errors in the Licensed Software in accordance with generally accepted industry standards ("Software Support") see the specific terms in the section below entitled Software Support. Contractor will communicate the problem status regularly to Ordering Activity. Similarly, Ordering Activity will communicate with Contractor regarding any change in problem status, and will be available to Contractor for ongoing clarifications.

Reserved.

Excluded Services. Except as otherwise provided herein, the Maintenance Services do not apply to or include: (i) Software Support required as a result of use or maintenance of Licensed Software other than in accordance with these terms herein; (ii) Software Support required as a result of database errors, content or other inputs; (iii) user education and training, except as described herein; (iv) correction of or assistance regarding problems caused by operator errors, including but not limited to the entry of incorrect data and improper procedures; (v) hardware problems experienced by Ordering Activity; or (vi) correction of errors attributable to software other than the Licensed Software (collectively "Excluded Services").

Reserved.

Contact Person(s). Ordering Activity shall appoint one (1) person as the principal point of contact for the communication of Errors to Contractor and for the receipt of Error fixes, work-arounds, patches and Updates, if any. Additionally, Ordering Activity may appoint another person as a back up for the principal contact. Contractor will provide an account manager who will service Ordering Activity and will monitor Ordering Activity's support needs.

**DISCLAIMER.**

WITH THE EXCEPTION OF THE EXPRESS WARRANTY PROVIDED IN SECTION 0 ("SCOPE OF WARRANTY"), AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LICENSED SOFTWARE IS LICENSED TO ORDERING ACTIVITY "AS IS," AND CONTRACTOR AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO THE LICENSED SOFTWARE AND ANY SERVICES FURNISHED OR OTHERWISE PROVIDED HEREUNDER, IF ANY. IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

**LIMITED WARRANTY FOR MAINTENANCE SERVICES.**

CONTRACTOR WARRANTS THAT THE MAINTENANCE SERVICES WILL BE (I) PERFORMED IN COMPLIANCE WITH ALL APPLICABLE LAWS, REGULATIONS AND RULES; (II) PROVIDED IN A PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH GENERALLY ACCEPTED INDUSTRY STANDARDS AND (III) PERFORMED BY PERSONNEL QUALIFIED TO PERFORM THE TASKS NECESSARY FOR PROVIDING THE MAINTENANCE SERVICES. . CONTRACTOR'S SOLE OBLIGATION, AND ORDERING ACTIVITY'S SOLE AND EXCLUSIVE REMEDY IN THE CASE OF A BREACH OF SUCH WARRANTIES WILL BE FOR CONTRACTOR TO RE-PERFORM SUCH MAINTENANCE SERVICES IN CONFORMANCE WITH SUCH APPLICABLE LAWS, GENERALLY ACCEPTED INDUSTRY STANDARDS OR USING QUALIFIED PERSONNEL, AS APPLICABLE. EXCEPT AS SET FORTH HEREIN, CONTRACTOR EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO THE MAINTENANCE SERVICES FURNISHED OR OTHERWISE PROVIDED HEREUNDER.

**SOFTWARE SUPPORT TERMS**

Contractor provides thorough 24x7x365 global Software Support, capable of handling all functional and technical problems.

Software Support is available to all users, buyers and suppliers.

Software Support contact information:

Domestic / Toll Free Phone: 1-877-528-2947  
 International / Toll Free Phone: +00-800-2255-4626  
 Email: support@bravosolution.com

Software Support Hours of Operation (Staffed):

24x5 staffed support: Sundays 2100 hours thru Fridays 2000 hours Eastern Prevailing Time

After Hours Support:

For urgent assistance after staffed support hours, support specialists carry cellular phones and will return calls within one hour of receipt.

**Severity**

Priority	Severity	Description
Urgent	1	Time Critical system problem. BravoSolution production environment is inoperative and business is being impacted and no work can be done. No work around exists and use of Licensed Software functionality is materially compromised.
High	2	Time Critical system problem. BravoSolution production environment is adversely affected or is inoperative. Productivity is being compromised; work can be done but not at full capacity. The problem is time critical and affecting more than 1 user.
Medium	3	Non-time critical system problem. BravoSolution production environment has encountered a non-critical problem or defect and / or questions have arisen on the use of the system. Affects at least 1 user. (Issues involving a single user where they are not able to use whole or part of the system).
Low	4	Non-time critical system problem. Low priority request with no system impact, such as enhancements, feature request or other non-critical problem. Non-time critical system problem affecting only one user.

Escalation

Severity Level	Initial Response	Follow-up Response	Service Level/Resolution
Urgent Incident (Severity 1)	30 Minutes	1 Hour	The Error will be routed to BravoSolution development resources within 30 minutes of Ordering Activity support notification and resolution efforts will be on going until the Error is resolved. The target time-to-resolution is 24 hours from the time Ordering Activity support notifies development of the Error.
High Incident (Severity 2)	1 Hour	1 Hour	The Error will be routed to BravoSolution development resources within 1 hour of Ordering Activity support notification and resolution efforts will be scheduled according to priorities set by Ordering Activity Support, Product Management and Development. The target time-to-resolution is 1 business day from the time Ordering Activity support and development is notified of the Error.
Medium Incident (Severity 3)	1 Hour	24 Hours	The Error will be routed to development within 24 hours of Ordering Activity support notification and resolution efforts will be scheduled according to priorities set by Ordering Activity Support, Product Management and Development. The repair may be scheduled for the next product release and is determined by Ordering Activity Support, Product Management and Development collectively.
Low Incident (Severity 4)	N/A		Used for Documentation Errors, Enhancement Requests, and other minor issues or concerns.

**PROFESSIONAL SERVICES TERMS AND CONDITIONS**

**SERVICES.**

Subject to these terms and conditions, Ordering Activity hereby engages Contractor to provide the Services. Unless otherwise specified in a SOW, the Services shall be performed at the facilities and location designated by Contractor. The parties shall each designate an account director or project manager who shall work together to manage the timely and successful implementation of the Services. Subject to these terms and the applicable SOW Contractor may subcontract some or all of the Services to be performed hereunder. In performing the Services, Contractor shall use commercially reasonable efforts to adhere to any timetables set forth in an SOW.

Reserved.

Ordering activity shall assist Contractor in the performance of the Services by making available to Contractor on a timely basis all equipment, software, documentation, information, office and working space, Internet connectivity and personnel reasonably requested by Contractor from time to time. Ordering Activity shall also ensure that the Ordering Activity personnel so made available to Contractor are familiar with Ordering Activity requirements and have the expertise and capabilities necessary to so assist Contractor.

Performance Generally. Ordering Activity acknowledges and agrees that Contractor's obligations and commitments, and in particular any timetables or prices, are subject to Ordering Activity's performance of its obligations and the performance by third parties of their respective obligations, as well as the realization of any assumptions that are stated in the applicable SOW or in another document executed by Contractor and Ordering Activity.

RESERVED.

RESERVED.

**SERVICES WARRANTY.**

Contractor warrants that the Services to be provided hereunder will be provided when and as required by this Agreement and shall be performed in a professional and workmanlike manner, in accordance with prevailing standards in the industry. BRAVOSOLUTION MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(o). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

**HOSTING TERMS AND CONDITIONS**

**HOSTING SERVICES.**

In consideration for Ordering Activity's payment of the Hosting Fee(s) set forth in the Order Form and commencing as of the date Contractor begins hosting the Licensed Software on BravoSolution controlled servers, Contractor shall provide the Hosting Services to Ordering Activity as specified herein.

Hosting on BravoSolution Servers. BravoSolution shall make available one or more BravoSolution controlled servers for purposes of hosting the Licensed Software and the Content in accordance with the details set forth on an applicable Order Form. Contractor shall be responsible for installing the Licensed



Software on such servers. At all times, BravoSolution or its subcontractor shall retain ownership of the BravoSolution servers, together with any associated equipment, hardware, software and other infrastructure components utilized by BravoSolution in providing services to Ordering Activity hereunder.

#### DISCLAIMER.

By performing the Hosting Services, Contractor through BravoSolution is providing Ordering Activity with access to the Licensed Software via the Internet. Ordering Activity hereby acknowledges that (i) the Internet is not owned, operated, managed by or in any way affiliated with Contractor or BravoSolution or any of its Affiliates; (ii) the Internet is a separate network of computers independent of Contractor and BravoSolution; (iii) Ordering Activity's use of the Internet is solely at Ordering Activity's own risk and is subject to all applicable laws, rules and regulations; and (iv) access to the Internet and the Licensed Software may be dependent on numerous factors, technologies and systems, many of which are beyond Contractor's authority and control and for which Contractor and BravoSolution shall not be liable hereunder. Ordering Activity agrees that Contractor shall not be held responsible in any way for outages or downtime resulting from causes beyond the control of Contractor or BravoSolution (e.g., telecommunications disturbances, packet loss un-attributable to a specific cause, or other internet outages of any kind).

2.2 THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 USC 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75—PRICE REDUCTIONS, CLAUSE 52.212-4(H)—PATENT INDEMNIFICATION, AND GSAR 552.215-72—PRICE ADJUSTMENT—FAILURE TO PROVIDE ACCURATE INFORMATION).

#### USAGE OF THE LICENSED SOFTWARE.

Contractor reserves the right to, from time to time, monitor the Licensed Software hosted on its servers only for the purposes of providing the services. Ordering Activity hereby acknowledges and agrees that Contractor and BravoSolution exercises no control whatsoever over the material transmitted or received on or through the Licensed Software by Ordering Activity. Ordering Activity shall ensure that all materials that transmitted or received on or through the Licensed Software comply with all applicable laws, rules and regulations. Without limiting the foregoing sentence, Ordering Activity hereby acknowledges that it will not violate any of the following policies respecting usage of the Licensed Software:

The transmission of spam (unsolicited commercial messages or communications in any form) on or through the Licensed Software is prohibited;

The transmission of any material on or through the Licensed Software in violation of any applicable laws or regulations is prohibited. This includes, but is not limited to, unauthorized transmission of copyrighted material, material protected by trade secret, or material that is otherwise deemed to be proprietary, as well as transmission of material that is legally judged to be threatening or obscene or that, in Contractor's reasonable business discretion, is deemed inappropriate or improper;

Intentionally omitting, deleting, forging or misrepresenting transmission information (including, without limitation, headers, return addressing information and Internet Protocol addresses) or taking any other actions intended to misrepresent or hide Ordering Activity's or any user's identity or contact information is prohibited.

Reserved.

#### SECURITY.

Contractor represents and warrants that BravoSolution has implemented and maintains the Hosting Services at reputable third party Internet service providers and hosting facilities and that it shall use commercially reasonable technical, physical and procedural controls at least as rigorous as accepted industry practices to protect Ordering Activity's Content and Confidential Information against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors to Ordering Activity's systems and Content, whether by accident or otherwise. The parties acknowledge, however, that Contractor and BravoSolution cannot, given the nature of current computer systems and networks, guarantee absolute security of the Licensed Software, or any activity occurring on or through it.

#### PERFORMANCE

Manner of Performance. Contractor may subcontract with third parties for the purpose of performance of the Hosting Services; provided, however, that Contractor shall remain responsible for ensuring its subcontractors comply with the terms and conditions of this Agreement. BravoSolution shall have the right to relocate the Licensed Software, the BravoSolution controlled servers or any of BravoSolution's operations at any time.

Cooperation and Assistance. Ordering Activity shall provide Contractor with reasonable cooperation and assistance in connection with performance of its obligations hereunder.

#### ORDERING ACTIVITY CONTENT.

Ownership. Contractor acknowledges and agrees that the Content and any intellectual property rights in or relating thereto are and shall continue to be the sole and exclusive property of Ordering Activity or its third-party licensors. Contractor acknowledges that it shall not, by virtue of this Agreement, acquire any ownership interest in the Content or any intellectual property rights in or relating thereto. Ordering Activity reserves all rights to the Content not expressly granted to Contractor hereunder. Ordering Activity represents and warrants that the Content shall not include any personally identifiable information.

License Grant. During the Hosting Services term, Ordering Activity hereby grants to BravoSolution through Contractor a non-exclusive, royalty-free, worldwide right and license to use, reproduce, display, perform and transmit the Content solely on or in conjunction with the Licensed Software, as contemplated hereunder, subject to and in accordance with the terms, conditions and provisions of this Agreement. Backups. Contractor shall make daily, incremental backups five times a week and one complete weekly backup of the Content. Should the need arise, Contractor shall use commercially reasonable efforts to reconstruct the Content from its backup.

#### HOSTING SERVICE LEVELS

Availability and Maintenance. Contractor shall make the Licensed Software available for access twenty-four (24) hours per day, seven (7) days per week, excluding times for scheduled maintenance to be performed by or on behalf of Contractor ("Scheduled Maintenance"). Scheduled Maintenance shall take place between 2200 hours Friday and 1600 hours Sunday, Eastern Prevailing Time, or such other time as required.

##### Service Levels.

Availability. Contractor will provide no less than 98% Total Time of Availability, which will be calculated on a monthly basis, as follows:

*Scheduled Maintenance will not be included as downtime in calculation of monthly availability. When the application is unavailable due to causes beyond Contractor's reasonable control, such as Internet outages, weather, acts of God, Ordering Activity system issues, or utility system outages, such unavailability will not be included as downtime. Unscheduled and emergency maintenance will be included as downtime in monthly availability calculation.*

*The availability of the system is calculated in the following way:*

*Total Time of Availability = Total Time (24/7) – Scheduled Maintenance – Uncontrollable Outages*

*% Availability = (Total Time of Availability – Unscheduled/Emergency Maintenance) \* 100 / Total Time of Availability*

Maintenance Notifications. Contractor will communicate with the Ordering Activity's Designated Company Administrator(s) in the event that unscheduled maintenance or emergency maintenance is required. An email or phone call (including voice mail) will constitute sufficient notification of impending

maintenance of any type. Unscheduled and Emergency maintenance windows may involve maintenance/repairs for which advance notification is not possible. Contractor will employ best efforts to notify client of Unscheduled and Emergency maintenance windows at the earliest time possible. Maintenance Scheduling and duration. Total Scheduled Maintenance will not exceed 72 hours in any given month.

Backups/Recovery Actions.

redundant RAID for all data storage of Ordering Activity data.

incremental file system backups nightly and shall perform full file system backups weekly.

maintain journaling of database transactions.

perform database exports nightly, prior to scheduled file system backups.

perform cold database backups at regular intervals.

transport tapes of file systems and data backups off-site to a secure storage location on a weekly basis.

Monitoring.

Application monitoring. BravoSolution shall employ a transaction monitoring system in order to verify application functionality for uptime reporting purposes and for the purpose of providing notification in the event of failures. BravoSolution shall check the application at least four times per hour for functionality.

System Level monitoring. BravoSolution shall employ a monitoring system in order to gather system level metrics that relate to utilization and performance.

**BROCADE COMMUNICATIONS SYSTEMS, INC.**  
**1745 TECHNOLOGY DRIVE**  
**SAN JOSE, CA 95110**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Brocade Communications Systems, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**BROCADE COMMUNICATIONS SYSTEMS, INC.**

**BROCADE COMMUNICATIONS LICENSE, WARRANTY AND SUPPORT TERMS**

DEFINITIONS.

- a) "Hardware" which includes any Brocade hardware products, and any related documentation and manuals.
- b) "Software" which includes any Brocade software licensed by Contractor to Ordering Activity in the form of any bundled firmware, or standalone software products, or other software, any backup copies of such software, and any related documentation and manuals provided therewith; and shall include any Upgrades (as defined below) or modified versions of such software provided to Ordering Activity by Contractor.
- c) "Products" which includes, either an individual component of Brocade Hardware and/or Software or any combination thereof.
- d) "Support" which includes maintenance and/or support services for the chosen Products.

SOFTWARE SPECIFIC TERMS.

**LICENSE GRANT.** EACH SOFTWARE PRODUCT MAY HAVE DIFFERENT LICENSING GRANTS AND RESTRICTIONS DEPENDING ON THE NATURE OF THE SOFTWARE. THE SPECIFIC LICENSING TERMS, MODEL AND RESTRICTIONS RELATED THERETO FOR EACH SOFTWARE PRODUCT SHALL BE SET FORTH IN THE RELEVANT CONTRACTOR QUOTATION. TO THE EXTENT THAT NO SUCH LICENSING TERMS EXIST, THE FOLLOWING LICENSE GRANT SHALL BE APPLICABLE: SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND PAYMENT OF THE APPLICABLE LICENSE FEES, BROCADE AND ITS SUPPLIERS GRANT TO CUSTOMER A NON-EXCLUSIVE, NON-TRANSFERABLE LICENSE TO USE THE APPLICABLE SOFTWARE IN OBJECT CODE FORM SOLELY FOR INTERNAL PURPOSES AND SOLELY FOR THE PURPOSES SET FORTH IN THE BROCADE PRODUCT DOCUMENTATION.

**ADDITIONAL SOFTWARE TERMS.** THE FOLLOWING TERMS SHALL APPLY TO ALL SOFTWARE PROVIDED PURSUANT TO THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, ANY AND ALL SOFTWARE DELIVERED HEREUNDER IS LICENSED, NOT SOLD. ORDERING ACTIVITY SHALL HAVE NO RIGHT, AND ORDERING ACTIVITY SPECIFICALLY AGREES NOT TO, AND NOT TO PERMIT THIRD PARTIES TO: (I) MODIFY, ADAPT, CHANGE, ENHANCE OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE; (II) COPY, OR OTHERWISE REPRODUCE THE SOFTWARE IN WHOLE OR IN PART; (III) DECOMPILE, TRANSLATE, REVERSE ENGINEER, DISASSEMBLE OR OTHERWISE REDUCE THE SOFTWARE TO HUMAN-READABLE FORM; (IV) USE THE SOFTWARE ON ANY APPLIANCES/HARDWARE IN EXCESS OF THE NUMBER OF APPLIANCES/HARDWARE FOR WHICH IT IS LICENSED; (V) REMOVE, MODIFY OR OTHERWISE TAMPER WITH ANY NOTICE OR LEGEND ON ANY LABELING ON ANY PHYSICAL MEDIA CONTAINING THE SOFTWARE OR (VI) USE THE SOFTWARE FOR PROVIDING SERVICE BUREAU OR OTHER RELATED SERVICES TO THIRD PARTIES. ORDERING ACTIVITY'S RIGHTS IN THE SOFTWARE WILL BE LIMITED TO THOSE EXPRESSLY GRANTED HEREIN, AND ORDERING ACTIVITY SHALL HAVE NO RIGHT TO SUBLICENSE THE SOFTWARE. BEFORE DECOMPILING THE SOFTWARE FOR THE PURPOSES OF OBTAINING THE INTERFACE INFORMATION, ORDERING ACTIVITY WILL REQUEST CONTRACTOR THROUGH BROCADE TO PROVIDE IT WITH THIS INFORMATION. CONTRACTOR WILL CHARGE ORDERING ACTIVITY FOR ITS CORRESPONDING SERVICES AT THE APPLICABLE GSA RATES.

**NUCLEAR, AVIATION OR LIFE SUPPORT APPLICATION.** CONTRACTOR SPECIFICALLY DISCLAIMS LIABILITY FOR USE OF THE PRODUCTS IN CONNECTION WITH THE DESIGN, CONSTRUCTION, MAINTENANCE AND/OR OPERATION OF ANY (I) NUCLEAR FACILITY, (II) AIRCRAFT, AIRCRAFT COMMUNICATION OR AIRCRAFT GROUND SUPPORT SYSTEM, OR (III) SAFETY OR HEALTH CARE CONTROL SYSTEM, INCLUDING WITHOUT LIMITATION, LIFE SUPPORT SYSTEM.

**OPEN SOURCE SOFTWARE.** CERTAIN COMPONENTS OF THE SOFTWARE, INCLUDING SOFTWARE DESIGNED TO INTEROPERATE WITH THE SOFTWARE, MAY INCORPORATE OR BE BASED ON "OPEN SOURCE" SOFTWARE. SUCH SOFTWARE IS SUBJECT TO THE APPLICABLE OPEN SOURCE LICENSE (E.G., GNU GENERAL PUBLIC LICENSE) AND IS NOT SUBJECT TO THIS AGREEMENT. TO OBTAIN A COPY OF THE SOURCE CODE AND APPLICABLE LICENSING TERMS FOR THE OPEN SOURCE SOFTWARE USED BY BROCADE, PLEASE SEE [HTTP://WWW.BROCADE.COM/SUPPORT/OSCD.JSP](http://www.brocade.com/support/oscd.jsp), AS MAY BE AMENDED FROM TIME TO TIME. CONTRACTOR DISCLAIMS ANY AND ALL LIABILITY AND WARRANTIES WITH RESPECT TO SUCH OPEN SOURCE SOFTWARE.

**RESTRICTED RIGHTS.** THE SOFTWARE AND ANY ACCOMPANYING DOCUMENTATION PROVIDED UNDER THIS AGREEMENT INCORPORATE COMMERCIAL COMPUTER SOFTWARE AND COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION DEVELOPED EXCLUSIVELY AT PRIVATE EXPENSE, AND IS IN ALL RESPECTS PROPRIETARY PROPERTY BELONGING SOLELY TO CONTRACTOR OR ITS LICENSORS. IF ORDERING ACTIVITY IS ACQUIRING THE SOFTWARE ON BEHALF OF ANY PART OF THE UNITED STATES GOVERNMENT, THE FOLLOWING PROVISIONS APPLY. THE OBJECT CODE AND ACCOMPANYING DOCUMENTATION ARE DEEMED TO BE "COMMERCIAL COMPUTER SOFTWARE" AND "COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION", RESPECTIVELY, PURSUANT TO DFAR SECTION 227.7202 AND FAR 12.212(B), AS APPLICABLE. ANY USE, MODIFICATION, REPRODUCTION, RELEASE, PERFORMANCE, DISPLAY OR DISCLOSURE OF THE OBJECT CODE AND/OR THE ACCOMPANYING DOCUMENTATION BY THE U.S. GOVERNMENT OR ANY OF ITS AGENCIES SHALL BE GOVERNED SOLELY BY THE TERMS OF THIS AGREEMENT AND SHALL BE PROHIBITED EXCEPT TO THE EXTENT EXPRESSLY PERMITTED BY THE TERMS OF THIS AGREEMENT. ANY TECHNICAL DATA PROVIDED THAT IS NOT COVERED BY THE ABOVE PROVISIONS IS DEEMED TO BE "TECHNICAL DATA COMMERCIAL ITEMS" PURSUANT TO DFAR SECTION 252.227.7015(A). ANY USE, MODIFICATION, REPRODUCTION, RELEASE, PERFORMANCE, DISPLAY OR DISCLOSURE OF SUCH TECHNICAL DATA SHALL BE GOVERNED BY THE TERMS OF DFAR SECTION 252.227.7015(B).



**AUTHORIZED LICENSES FOR USERS.** ORDERING ACTIVITY'S USE OF THE SOFTWARE AND THE APPLICABLE FEES RELATED THERETO ARE BASED UPON A SPECIFIC LICENSING MODEL, E.G., CONCURRENT USERS, NAMED USERS, PER TERABYTE USED, OR RIGHTS LIMITED TO SPECIFIC NETWORKING SWITCHES, SERVERS OR PLATFORMS ("AUTHORIZED LICENSES"). THE APPLICABLE LICENSING MODEL AND THE NUMBER OF AUTHORIZED LICENSES WILL BE SET FORTH IN CONTRACTOR'S QUOTATION OR IN THE BROCADE DOCUMENTATION FOR SUCH SOFTWARE. FOR CERTAIN SOFTWARE, ORDERING ACTIVITY MAY HAVE THE RIGHT TO INCREASE THE NUMBER OF AUTHORIZED LICENSES FOR THE APPLICABLE SOFTWARE PROVIDED THAT ORDERING ACTIVITY PAYS CONTRACTOR THE ADDITIONAL LICENSE AND SUPPORT FEES, AND SUCH FEES SHALL BE PAID TO CONTRACTOR PRIOR TO INITIATING SUCH INCREASES. ORDERING ACTIVITY AGREES TO WORK IN GOOD FAITH WITH CONTRACTOR TO ACCURATELY COUNT THE AUTHORIZED LICENSES. ORDERING ACTIVITY CONSENTS TO AND SHALL TAKE ALL ACTIONS NECESSARY FOR THE INSTALLATION AND USE OF CERTAIN USER AUTHORIZATION SOFTWARE TO VERIFY THE LOCATION AND NUMBER OF ORDERING ACTIVITY'S AUTHORIZED LICENSES.

SUPPORT OBLIGATIONS.

**GENERAL SUPPORT OBLIGATIONS.**

**TECHNICAL SUPPORT.** PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE SUPPORT FEES AND SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW, CONTRACTOR, THROUGH BROCADE, WILL PROVIDE REMEDIAL TELEPHONE, EMAIL, ONLINE AND/OR ONSITE ASSISTANCE FOR THE PRODUCTS LISTED ON A CONTRACTOR SUPPORT QUOTATION ("COVERED HARDWARE" AND "COVERED SOFTWARE", RESPECTIVELY OR "COVERED PRODUCT(S)" COLLECTIVELY) BASED ON THE APPLICABLE SUPPORT PLAN SELECTED BY ORDERING ACTIVITY. WHENEVER ORDERING ACTIVITY SUBMITS A SUPPORT ISSUE TO CONTRACTOR, THROUGH BROCADE RELATED TO THE COVERED PRODUCTS ("PROBLEM"), CONTRACTOR, THROUGH BROCADE, WILL CLASSIFY THE PROBLEM ACCORDING TO THE ORDERING ACTIVITY "SEVERITY" LEVEL THAT DEFINES THE PROBLEM, BASED ON THE ORDERING ACTIVITY SEVERITY LEVEL DESCRIPTIONS LOCATED IN THE SUPPORT PLAN POLICIES DOCUMENT AT BROCADE'S WEBSITE, WHICH DOCUMENT MAY BE UPDATED FROM TIME TO TIME IN BROCADE'S DISCRETION. ADDITIONAL CHARGES MAY APPLY IF ORDERING ACTIVITY CONTACTS BROCADE WHEN IT IS LATER DETERMINED THAT THE CAUSE WAS NOT RELATED TO THE COVERED PRODUCTS. CONTRACTOR, THROUGH BROCADE, WILL ONLY PROVIDE SUPPORT FOR THE BASELINE LICENSED SOFTWARE, AND WILL NOT SUPPORT ANY CUSTOMIZATIONS OR UNIQUE IMPLEMENTATIONS OF THE SOFTWARE UNDER ITS GENERAL SUPPORT OBLIGATIONS, AND ANY SUCH ASSISTANCE WILL BE PROVIDED ON A TIME AND MATERIAL BASIS.

**SUPPORT TERM AND RENEWAL.** THE INITIAL TERM APPLICABLE TO EACH SUPPORT QUOTATION WILL BEGIN (I) IN THE CASE OF NEWLY ACQUIRED PRODUCTS, ON THE DATE OF SHIPMENT; OR (II) IN THE CASE OF PREVIOUSLY SHIPPED PRODUCTS, ON THE EFFECTIVE DATE SPECIFIED ON CONTRACTOR'S QUOTATION, AND SUCH SERVICES SHALL CONTINUE THROUGH THE TERM STATED ON THE QUOTATION. THEREAFTER, SUCH SUPPORT WILL ONLY BE RENEWED BASED ON CONTRACTOR'S RENEWAL QUOTATION TO ORDERING ACTIVITY AND RECEIPT OF ORDERING ACTIVITY'S CORRESPONDING PURCHASE ORDER. FOR THE FIRST RENEWAL PERIOD, SUPPORT MAY BE RENEWED FOR THE NEXT TERM AT THE SAME RATE AS THE INITIAL SUPPORT TERM.

**COVERED PRODUCTS.** PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE FEES, CONTRACTOR, THROUGH BROCADE, WILL PROVIDE SUPPORT FOR THE COVERED PRODUCTS, AS DESCRIBED IN A CONTRACTOR QUOTATION. ANY CHANGES TO THE COVERED PRODUCTS SHOULD BE REPORTED TO CONTRACTOR, THROUGH BROCADE, PRIOR TO MAKING ANY SUCH CHANGES, AND SUCH CHANGES COULD RESULT IN MODIFICATIONS TO CONTRACTOR'S OBLIGATIONS AND THE APPLICABLE SUPPORT FEES. ORDERING ACTIVITY IS RESPONSIBLE FOR ACTIVATING THE SUPPORT PLAN FOR ALL COVERED PRODUCTS, INCLUDING CHANGES MADE TO THE COVERED PRODUCT LIST, VIA BROCADE'S WEBSITE UNDER "SUPPORT".

**RECERTIFICATION OF PRODUCTS.** FOR ANY PRODUCTS WHERE ORDERING ACTIVITY REQUESTS SUPPORT ON PRODUCTS PREVIOUSLY SUPPORTED BY ANOTHER PARTY OR FOR WHICH SUPPORT SERVICES HAVE LAPSED, CONTRACTOR MAY REQUIRE THAT THE PRODUCT BE RECERTIFIED. UPON RECEIPT OF PURCHASE ORDER, CONTRACTOR, THROUGH BROCADE, WILL COMMENCE MAINTENANCE IN ACCORDANCE WITH THE START DATE ON THE QUOTATION AND WILL SCHEDULE THE RECERTIFICATION ACTIVITY. SHOULD A REQUEST FOR REMEDIAL MAINTENANCE BE RECEIVED PRIOR TO THE COMPLETION OF THE RECERTIFICATION, SUCH SERVICE MAY BE DELAYED (INCLUDING RELATED RESPONSE TIME COMMITMENTS) UNTIL SUCH TIME AS THE RECERTIFICATION IS COMPLETED. SHOULD CONTRACTOR, THROUGH BROCADE DEEM THAT THE PRODUCTS ARE UNSUPPORTABLE, ORDERING ACTIVITY WILL BE NOTIFIED ACCORDINGLY AND A CREDIT OR REFUND PROVIDED FOR ANY APPLICABLE PREPAID SUPPORT FEES.

**THIRD PARTY PRODUCT INTEROPERABILITY.** DUE TO INTEROPERABILITY REQUIREMENTS, ORDERING ACTIVITY AGREES THAT THE USE OF ANY THIRD PARTY PRODUCTS, INCLUDING BUT NOT LIMITED TO, OPTICAL TRANSCEIVER COMPONENTS, WHICH HAVE NOT BEEN RECOMMENDED OR CERTIFIED BY BROCADE MAY CAUSE ERRORS IN THE OPERATION OF THE PRODUCTS OR MAY CAUSE ADDITIONAL RESOLUTION TIME FOR CONTRACTOR, THROUGH BROCADE UNDER ITS SUPPORT OBLIGATIONS HEREUNDER. ORDERING ACTIVITY ACKNOWLEDGES THAT USE OF ANY SUCH THIRD PARTY PRODUCTS SHALL RELEASE CONTRACTOR FROM THE PERFORMANCE OF CONTRACTOR'S SUPPORT OBLIGATIONS RELATED THERETO, AND ORDERING ACTIVITY AGREES TO PAY CONTRACTOR FOR ANY TIME SPENT DIAGNOSING SUCH PROBLEMS WHICH SHALL BE BILLED AT CONTRACTOR'S HOURLY GSA RATE. CONTRACTOR MAY BE PREPARED IN ITS DISCRETION TO PROVIDE ADDITIONAL PROFESSIONAL SERVICES TO RESOLVE ANY SUCH PROBLEMS IN SUCH CIRCUMSTANCES, BUT SHALL NOT BE OBLIGED TO DO SO.

**CANCELLATION.** ORDERING ACTIVITY MAY CANCEL SUPPORT SERVICES AT ANY TIME ON THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO CONTRACTOR. IN SUCH EVENT, CONTRACTOR, THROUGH BROCADE, SHALL REFUND ANY SUPPORT FEES PREPAID FOR THE PERIOD AFTER SUCH TERMINATION, LESS ANY PREPAYMENT OR MULTI-YEAR DISCOUNT TO WHICH ORDERING ACTIVITY IS NO LONGER ENTITLED. NOTWITHSTANDING THE FOREGOING, WITH RESPECT TO PREMIER AND PREMIER PLUS SUPPORT SERVICES, CHARGES APPLICABLE TO THE SUPPORT ACCOUNT MANAGER ("SAM") AND ONSITE ENGINEER ("OSE") ARE NON-REFUNDABLE IN THE EVENT THAT SUPPORT SERVICES ARE CANCELLED BY ORDERING ACTIVITY.

**SOFTWARE SPECIFIC SUPPORT TERMS.**



**UPGRADES.** SUBJECT TO PAYMENT OF THE APPLICABLE FEES, CONTRACTOR, THROUGH BROCADE, WILL USE REASONABLE EFFORTS TO PROVIDE A PATCH FOR ANY MATERIAL DEVIATION BETWEEN THE CURRENT RELEASE OF THE COVERED SOFTWARE AND ITS SPECIFICATIONS WHICH IS REPORTED BY ORDERING ACTIVITY TO BROCADE AND IS REPRODUCIBLE BY BROCADE. ADDITIONALLY, CONTRACTOR, THROUGH BROCADE, MAY PROVIDE ORDERING ACTIVITY WITH MAINTENANCE RELEASES, FEATURE RELEASES AND PLATFORM RELEASES OF THE COVERED SOFTWARE, ON AN "IF AND WHEN AVAILABLE" BASIS, THAT BROCADE GENERALLY MAKES AVAILABLE TO OTHER BROCADE CUSTOMERS AT NO CHARGE BEYOND THE FEES FOR SUPPORT. AS USED HEREIN: (I) "PLATFORM RELEASE" MEANS A PLATFORM, OPERATING SYSTEM OR SOFTWARE ARCHITECTURE CHANGE AND/OR THE ADDITION OF A MAJOR NEW APPLICATION OR FUNCTION; (II) "FEATURE RELEASE" MEANS A MAJOR NEW FEATURE OR AN ENHANCEMENT IN OPERATING PERFORMANCE THAT DOES NOT ALTER THE BASIC FUNCTIONALITY; (III) "MAINTENANCE RELEASE" MEANS A REGULARLY SCHEDULED UPDATE WHICH MAY INCLUDE DEFECT FIXES AND LIMITED PLATFORM-SPECIFIC IMPROVEMENTS; AND (IV) "PATCH" MEANS A TEMPORARY SOLUTION TO A ORDERING ACTIVITY-REPORTED CRITICAL DEFECT (ALL COLLECTIVELY REFERRED TO AS "UPGRADES").

**LICENSING TERMS.** ALL UPGRADES ARE SUBJECT TO THE ORIGINAL LICENSE TERMS AND CONDITIONS FOR THE BASELINE SOFTWARE. SUPPORT RELATED TO SUCH BASELINE SOFTWARE AND ALL UPGRADES WILL BE SUBJECT TO THE ADDITIONAL TERMS AND CONDITIONS CONTAINED IN THIS ATTACHMENT A.

**SOFTWARE SUPPORT POLICY.** CONTRACTOR, THROUGH BROCADE, WILL PROVIDE SOFTWARE SUPPORT FOR THE THEN CURRENT FEATURE RELEASE AND THE GREATER OF (I) THE TWO IMMEDIATELY PRECEDING FEATURE RELEASES, OR (II) ALL FEATURE RELEASES MADE AVAILABLE WITHIN THE PRECEDING 12 MONTHS. AS A GENERAL RULE, UPGRADES MUST BE INSTALLED SEQUENTIALLY THROUGH ALL FEATURE RELEASES AND PLATFORM RELEASES (E.G., TO UPGRADE FROM RELEASE 5.1 TO 6.0, ALL FEATURE RELEASES AND PLATFORM RELEASES AFTER 5.1 WILL BE ADDED AS PART OF THE UPGRADE PROCESS).

**CONDITIONS AND LIMITATIONS OF SOFTWARE SUPPORT.** SUPPORT SERVICES DOES NOT COVER AND CONTRACTOR DISCLAIMS ANY RESPONSIBILITY FOR PROBLEMS ARISING OUT OF ORDERING ACTIVITY'S FAILURE TO IMPLEMENT ALL UPGRADES ISSUED HEREUNDER, CHANGES TO THE COMPUTING ENVIRONMENT, ALTERATIONS OR MODIFICATIONS OF THE SOFTWARE PERFORMED BY PARTIES OTHER THAN BROCADE, ACCIDENT, NEGLIGENCE, OR MISUSE OF THE SOFTWARE. ADDITIONAL INFORMATION RELATED TO THE VARIOUS SOFTWARE PRODUCTS, INCLUDING WITHOUT LIMITATION ADDITIONAL SUPPORT SERVICE DESCRIPTIONS, ESCALATION PROCEDURES, PRODUCT DEVELOPMENT GUIDELINES, AND OTHER GENERAL PROCEDURES MAY BE INCLUDED ON THE BROCADE SITE, AS MAY BE AMENDED FROM TIME TO TIME.

#### HARDWARE SPECIFIC SUPPORT TERMS.

**GENERAL DESCRIPTION.** FOR ALL PROBLEMS IDENTIFIED BY BROCADE RELATED TO COVERED HARDWARE AND PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE SUPPORT FEES, CONTRACTOR, THROUGH BROCADE, WILL PROVIDE HARDWARE SUPPORT IN ACCORDANCE WITH THE TERMS HEREIN AND IN ACCORDANCE WITH THE SUPPORT PLANS AT BROCADE'S WEBSITE, WHICH MAY BE UPDATED FROM TIME TO TIME IN BROCADE'S DISCRETION. CONTRACTOR MAY REQUIRE UP TO THIRTY (30) DAYS FROM RECEIPT OF ORDER TO PROVISION THE SPARES AND ONSITE LABOR REQUIRED TO FULFILL THE SUPPORT PLAN SELECTED.

**MALFUNCTIONING COVERED HARDWARE.** IF ANY COVERED HARDWARE MALFUNCTIONS, CONTRACTOR, THROUGH BROCADE, WILL REPAIR OR REPLACE SUCH COVERED HARDWARE, OR ANY PARTS OF THE COVERED HARDWARE AS PROVIDED IN THE APPLICABLE SUPPORT PLAN. ANY ITEM CONTRACTOR REPLACES WILL BECOME BROCADE'S PROPERTY, AND THE REPLACEMENT ITEM WILL BECOME ORDERING ACTIVITY'S PROPERTY. THE REPLACEMENT ITEMS MAY NOT BE NEW, BUT WILL BE IN GOOD WORKING ORDER AND AT LEAST FUNCTIONALLY EQUIVALENT TO THE ITEM REPLACED. BEFORE CONTRACTOR EXCHANGES ANY HARDWARE, ORDERING ACTIVITY MUST REMOVE ALL FEATURES, PARTS, OPTIONS, ALTERATIONS, ENCUMBRANCES, AND ATTACHMENTS NOT PROVIDED BY BROCADE. ORDERING ACTIVITY ALSO AGREES TO ENSURE THAT THE ITEM IS FREE OF ANY LEGAL OBLIGATIONS, ENCUMBRANCES, OR RESTRICTIONS THAT COULD PREVENT ITS EXCHANGE. BASED ON THE SUPPORT PLAN SELECTED BY ORDERING ACTIVITY, ORDERING ACTIVITY MAY BE RESPONSIBLE FOR ONE-WAY SHIPPING COSTS RELATED TO ANY SUCH RETURNS.

**ORDERING ACTIVITY RESPONSIBILITIES.** FOR USDX AND EDGE PRODUCTS, ORDERING ACTIVITY IS RESPONSIBLE FOR PROVISIONING REMOTE ACCESS VIA BROCADE-PROVIDED DIAL-IN MODEM TO ENABLE REMOTE DIAGNOSTICS, TROUBLESHOOTING AND SOFTWARE UPGRADES.

**EXCLUSIONS.** SUPPORT DOES NOT COVER SERVICING OF COVERED HARDWARE DAMAGED BY MISUSE, ACCIDENT, ACT OF GOD, IMPROPER INSTALLATION, MISAPPLICATION, MODIFICATION, UNSUITABLE PHYSICAL OR OPERATING ENVIRONMENT, ABNORMAL PHYSICAL OR ELECTRICAL STRESS, IMPROPER MAINTENANCE (UNLESS BY BROCADE), REMOVAL OR ALTERATION OF SWITCH OR PART IDENTIFICATION LABELS, OR FAILURE CAUSED BY A PRODUCT FOR WHICH CONTRACTOR IS NOT RESPONSIBLE. CONTRACTOR MAY CHARGE ORDERING ACTIVITY SEPARATELY FOR ANY SERVICES PROVIDED BY BROCADE RELATED TO SUCH DAMAGED HARDWARE.

#### HARDWARE SPECIFIC TERMS.

**RMA PROCEDURE.** ORDERING ACTIVITY SHALL NOT RETURN ANY PRODUCT, WHICH ORDERING ACTIVITY DETERMINES TO BE DEFECTIVE, WITHOUT A RETURN MATERIAL AUTHORIZATION NUMBER ("RMA") ISSUED BY BROCADE. FOR EVERY PRODUCT RETURNED BY ORDERING ACTIVITY SUBJECT TO THIS AGREEMENT: (A) ORDERING ACTIVITY MUST PROVIDE CONTRACTOR WITH THE SERIAL NUMBER OF THE PRODUCT; (B) CONTRACTOR, THROUGH BROCADE, SHALL VERIFY WHETHER OR NOT PRODUCT IS WITHIN THE APPLICABLE WARRANTY PERIOD OR ORDERING ACTIVITY IS OTHERWISE ENTITLED TO REPAIR OR REPLACEMENT OF PRODUCT WITHOUT CHARGE; (C) (I) IF ORDERING ACTIVITY IS ENTITLED TO RETURN PRODUCT FOR REPAIR/REPLACEMENT WITHOUT CHARGE, THEN BROCADE SHALL ISSUE TO ORDERING ACTIVITY AN RMA; AND (II) IF PRODUCT IS NOT UNDER WARRANTY, THEN ORDERING ACTIVITY MUST ISSUE A PURCHASE ORDER FOR SERVICE TO CONTRACTOR, THROUGH BROCADE, UPON RECEIPT OF WHICH BROCADE WILL ISSUE AN RMA TO ORDERING ACTIVITY; (D) ORDERING ACTIVITY SHALL SHIP THE PRODUCT TOGETHER WITH THE RMA INFORMATION TO THE ADDRESS PROVIDED BY BROCADE; AND (E) CONTRACTOR, THROUGH BROCADE, SHALL REPAIR OR REPLACE PRODUCT. ORDERING ACTIVITY SHALL PAY FREIGHT COSTS FOR RETURN SHIPMENT BY BROCADE TO ORDERING ACTIVITY OF ANY PRODUCT CLAIMED BY ORDERING ACTIVITY TO BE DEFECTIVE BUT DETERMINED BY CONTRACTOR, THROUGH BROCADE, TO NOT BE DEFECTIVE. THE REPAIR LEAD TIME IS THIRTY (30) DAYS FROM RECEIPT OF THE RETURNED PRODUCT AT BROCADE'S REPAIR FACILITY.

#### WARRANTIES AND DISCLAIMERS.

**SOFTWARE WARRANTY.** CONTRACTOR WARRANTS TO ORDERING ACTIVITY FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF

SHIPMENT TO ORDERING ACTIVITY THAT THE SOFTWARE WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE PUBLISHED SPECIFICATION THEREFORE. AS CONTRACTOR'S LIABILITY AND ORDERING ACTIVITY'S REMEDY FOR A BREACH OF THIS WARRANTY, CONTRACTOR SHALL USE ITS COMMERCIALLY REASONABLE EFFORTS, IN CONTRACTOR'S SOLE DISCRETION, TO REPAIR AND/OR REPLACE SUCH NON-CONFORMING SOFTWARE OR TO REFUND THE APPLICABLE PORTION OF THE FEES PAID BY ORDERING ACTIVITY TO CONTRACTOR. "SPECIFICATION" MEANS THE WRITTEN SPECIFICATIONS THAT ACCOMPANY EACH PRODUCT WHEN SOLD OR LICENSED, AS THE CASE MAY BE, PURSUANT TO THIS AGREEMENT. CONTRACTOR SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES AND LIABILITY RELATED TO ANY SECURITY SOFTWARE. ORDERING ACTIVITY ACKNOWLEDGES THAT SECURITY SOFTWARE DOES NOT GUARANTEE THE SECURITY OF ORDERING ACTIVITY'S NETWORK, AND THAT ORDERING ACTIVITY IS RESPONSIBLE FOR ALL OTHER ASPECTS OF SECURITY, INCLUDING WITHOUT LIMITATION, CORRECT INSTALLATION AND SETUP OF THE SECURITY FEATURES OF THE SOFTWARE AND ALL RELATED REQUIREMENTS, CORRECTLY CONFIGURED SECURITY POLICIES, SELECTION OF HARDWARE AND SOFTWARE (INCLUDING NETWORK SECURITY TOOLS), CORRECT INSTALLATION, CONFIGURATION, AND MAINTENANCE OF THE HARDWARE AND SOFTWARE, THE INTEROPERABILITY OF THE VARIOUS COMPONENTS OF ORDERING ACTIVITY'S NETWORK, AND A PHYSICALLY AND ELECTRONICALLY SECURE OPERATING ENVIRONMENT.

**HARDWARE WARRANTY.** CONTRACTOR WARRANTS TO ORDERING ACTIVITY, FOR THE WARRANTY PERIOD SET FORTH IN CONTRACTOR'S QUOTATION FOR THE APPLICABLE HARDWARE THAT EACH UNIT OF HARDWARE SHALL BE FREE OF DEFECTS IN ANY MATERIAL RESPECT IN MATERIALS AND WORKMANSHIP AND SHALL SUBSTANTIALLY CONFORM TO THE SPECIFICATIONS FOR SUCH HARDWARE. THIS WARRANTY DOES NOT APPLY TO THOSE UNITS OF HARDWARE WHICH: (I) HAVE BEEN SERVICED OR ALTERED, EXCEPT AS EXPRESSLY AUTHORIZED BY CONTRACTOR; (II) HAVE NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH ANY INSTALLATION, HANDLING, MAINTENANCE OR OPERATION INSTRUCTIONS SUPPLIED BY CONTRACTOR; (III) HAVE BEEN SUBJECTED TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE OR ACCIDENT; (IV) HAVE BEEN DAMAGED AS A RESULT OF ACCIDENT, MISUSE OR TRANSPORTING; OR (V) INTEROPERATE WITH THIRD PARTY PRODUCTS, SUCH AS OPTICAL TRANSCEIVER COMPONENTS, WHICH HAVE NOT BEEN RECOMMENDED OR CERTIFIED BY CONTRACTOR. CONTRACTOR'S SOLE OBLIGATION AND ORDERING ACTIVITY'S EXCLUSIVE REMEDY FOR FAILURE OF THE HARDWARE(S) TO CONFORM TO THE WARRANTY SET FORTH IN THIS SECTION SHALL BE, AT CONTRACTOR'S EXPENSE, TO REPAIR/REPLACE SUCH DEFECTIVE HARDWARE WITHIN THE NORMAL MANUFACTURING LEAD TIMES APPLICABLE TO SUCH HARDWARE AND TO RETURN SUCH REPAIRED HARDWARE TO ORDERING ACTIVITY OR TO REFUND THE APPLICABLE PORTION OF THE FEES PAID BY ORDERING ACTIVITY TO CONTRACTOR. "SPECIFICATION" MEANS THE WRITTEN SPECIFICATIONS THAT ACCOMPANY EACH PRODUCT WHEN SOLD OR LICENSED, AS THE CASE MAY BE, PURSUANT TO THIS AGREEMENT.

**NO OTHER WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCTS, AND SUPPORT ARE DELIVERED "AS IS" AND NEITHER CONTRACTOR NOR ITS SUPPLIERS MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE PRODUCTS, ANY RELATED DOCUMENTATION OR SERVICES.

**PROPRIETARY RIGHTS.** BROCADE OWNS AND RETAINS FOR ITSELF ALL RIGHT, TITLE AND INTEREST IN AND TO ALL DESIGNS, ENGINEERING DETAILS, AND OTHER DATA AND MATERIALS PERTAINING TO THE PRODUCTS OR, SUPPORT SUPPLIED BY CONTRACTOR AND TO ALL DISCOVERIES, INVENTIONS, PATENTS AND OTHER PROPRIETARY RIGHTS ARISING OUT OF THE WORK DONE BY CONTRACTOR, THROUGH BROCADE, IN CONNECTION WITH THE PRODUCTS AND SUPPORT OR WITH ANY AND ALL PRODUCTS DEVELOPED BY BROCADE AS A RESULT THEREOF, INCLUDING THE SOLE RIGHT TO MANUFACTURE ANY AND ALL SUCH PRODUCTS. ORDERING ACTIVITY WARRANTS THAT IT WILL NOT DIVULGE, DISCLOSE, OR IN ANY WAY DISTRIBUTE OR MAKE USE OF SUCH BROCADE PRODUCTS OR RELATED INFORMATION, AND THAT IT WILL NOT MANUFACTURE OR ENGAGE TO HAVE MANUFACTURED SUCH PRODUCTS.

**NO IMPLIED LICENSES.** NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS CONFERRING ANY RIGHTS BY IMPLICATION, OR OTHERWISE, UNDER ANY INTELLECTUAL PROPERTY RIGHT, OTHER THAN THE RIGHTS EXPRESSLY GRANTED IN THIS AGREEMENT.

#### **Brocade Professional Services Terms and Conditions**

**Working Hours.** Except for any Professional Services with explicitly stated extended work hours, all Professional Services shall be performed during normal business hours. Ordering Activity (herein also referred to as "Customer") shall inform Contractor through Brocade in advance if any off-shift services will be required.

**Facilities.** Professional Services may be performed on Customer's site. Customer agrees to provide the facilities reasonably necessary for Brocade to perform the Professional Services, including a safe and suitable workspace for the Brocade employees or contractors performing the Professional Services, as well as appropriate access to Product and third party hardware, software and/or services. For security and safety reasons, a Customer representative shall be available on-site whenever Brocade employees or contractors are performing the Professional Services at such facilities.

**Prerequisites.** Prior to the commencement of the Professional Services, Customer agrees to take all prerequisite steps identified by Contractor through Brocade, including without limitation, (i) ensuring that all manufacturers' labels (such as serial numbers) are in place, accessible, and legible, (ii) obtaining authorization to have Brocade service a Product that Customer does not own, (iii) licensing, purchasing and/or paying licensing fees and installing the required software and obtaining a license or appropriate permission for Brocade to access and use such software, and (iv) testing all hardware and software necessary to perform the Professional Services, and all such hardware and software documentation shall be made available to Brocade, and (v) any other prerequisites identified by Brocade. Customer acknowledges that any failure to perform the prerequisites may result in voiding the warranty, a delay in performance or additional costs for the particular service. IT IS CUSTOMER'S RESPONSIBILITY TO ENSURE THAT CUSTOMER HAS COMPLETE BACKUPS OF ALL DATA PRIOR TO COMMENCEMENT OF ANY SERVICES. CONTRACTOR OR BROCADE ASSUMES NO RESPONSIBILITY FOR LOST DATA. Contractor or Brocade will not be responsible for Customer's failure to obtain such permissions and licenses.

**Scheduling Professional Services.** Promptly following receipt of Customer's order, Contractor through Brocade shall contact Customer's representative to schedule the Professional Services. All Professional Services must be scheduled to begin within one hundred eighty (180) days of the date of the order.

**Cancellation.** Unless otherwise quoted by Contractor, Customer may cancel the Professional Services at any time on thirty (30) days prior written notice to Contractor through Brocade. In such event, Customer shall pay Contractor for all Professional Services performed through the date of termination and reimburse Contractor for all expenses incurred and billable pursuant to the Customer's order. Contractor will credit or refund any prepaid fees applicable to cancelled Professional Services not performed on the date of termination, less any volume or other discount taken to which Customer is no longer entitled.

**Rights in the Software Deliverables.** The following terms shall apply for any Software deliverables provided by Contractor through Brocade as part of the Professional Services. Subject to the terms and conditions of this Attachment A and payment of the applicable license fees, Brocade and its third party licensor, if applicable, grant to Customer a non-exclusive, non-transferable license to use the applicable Software deliverables in object code form solely for internal purposes and solely the purposes set forth in the relevant Brocade product documentation. Customer shall have no right to sublicense such Software deliverables or any rights related thereto.

**Acceptance Procedures.** Upon completion of the Professional Services, Customer shall have ten (10) days (or such other time period specified in the quotation) following the date of delivery to evaluate such Professional Services. On or before the tenth (10th) day following such delivery, Customer shall provide Contractor with either (i) a written acceptance of the Professional Services; or (ii) written notice of rejection describing in detail the deficiency that is the basis for the rejection. A deficiency is a material non-conformity of the Professional Services to the acceptance criteria stated in the applicable Contractor's quotation or in the absence of such criteria, a material non-conformity to the description of the Professional Services set forth in the quotation. In the event that Customer rejects the Professional Services in accordance with the afore-described procedure, Contractor will use diligent efforts to correct the deficiency promptly. The Professional Services and any associated deliverables that are re-performed or redelivered shall be subject to Customer's acceptance in accordance with this provision. In the event Customer fails to accept or reject the Professional Services within 10 days after Contractor's completion of the applicable Professional Services, or accept or reject re-performed Professional Services within 10 days after Contractor's completion of the applicable Professional Services, the Professional Services shall be deemed accepted by Customer, and Customer shall have no further right to reject the Professional Services.

**Right to Instruct.** Brocade consultants deployed to perform any services for Customer under this Attachment A are under the exclusive supervision and instruction of Brocade. Brocade reserves the exclusive right to instruct its consultants, in particular with respect to work hours and the scope and manner of services to be performed under this Attachment A. Customer has no rights to instruct Brocade's consultants whatsoever.

**Professional Services Warranty.** Contractor warrants for a period of thirty (30) days: (i) following the completion of the Professional Services, in the case where no acceptance procedure is applicable, and (ii) following acceptance of the Professional Services, otherwise, that all Professional Services will be performed in a professional and workman-like manner by appropriately trained personnel, using generally accepted industry standards and practices. As Contractor's liability and Customer's remedy for a breach of this warranty, if the Professional Services are not provided as warranted, Contractor will, at its sole discretion, either: (i) correct any material non-conformances in the Professional Services deliverables; (ii) re-perform the Professional Services; or (iii) credit Customer for the amount paid for the nonconforming Professional Services. This warranty does not apply to the extent any non-conformity relates to (i) any specifications, code, diagnostic or other tools, or any other materials provided by Customer; (ii) the integration, operation, modification, or use of the Professional Services or any deliverables in any manner not authorized by Contractor, and (iii) any changes to the network environment after the services were rendered. EXCEPT AS EXPRESSLY SET FORTH IN THIS ATTACHMENT A, THE PROFESSIONAL SERVICES ARE DELIVERED "AS IS" AND NEITHER CONTRACTOR NOR ITS THIRD PARTY SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**Proprietary Rights.** Brocade owns and retains for itself all right, title and interest in and to all designs, engineering details, and other data and materials pertaining to the Professional Services supplied by Brocade and to all discoveries, inventions, patents and other proprietary rights arising out of the work done by Brocade in connection with the Professional Services or with any and all products developed by Brocade as a result thereof, including the sole right to manufacture any and all such Products; however, Customer shall have perpetual unlimited rights to all designs, engineering details and other data and materials pertaining to the Professional Services. Customer warrants that it will not divulge, disclose, or in any way distribute or make use of such Brocade Professional Services or related information, and that it will not manufacture or engage to have manufactured such Products.

**Security and Conduct.** Customer shall maintain industry standard security policies, practices and procedures, and shall comply with all applicable laws and regulations and with all applicable health, safety and security rules, programs and procedures. Contractor and Brocade shall comply with all such Customer security policies, practices and procedures to the extent applicable and to the extent Brocade is made aware of such policies, practices and procedures.

**Background Checks and Drug Free Workplace.** Contractor through Brocade has certain procedures in place to perform background checks and to ensure a drug free workplace for its employees and contractors performing Professional Services. Upon request, Brocade will provide information related to such procedures. Customer acknowledges that certain jurisdictions do not allow or limit such checks, and Brocade will not perform such checks in these jurisdictions or for employees from these jurisdictions.

C2 Company a PrimeKey Company  
 951 Mariners Island Blvd  
 San Mateo, CA 94404

## ATTACHMENT A – PRIMEKEY, INC.

### General Terms and Conditions for Appliance Delivery

By both parties executing this Agreement in writing, These General Terms and Conditions shall apply to all offers and Agreements under which PrimeKey Solutions AB (the "PrimeKey") supplies Appliances or Product (as de-fined below) to the undersigned Ordering Activity under GSA Schedule contracts ("Customer" or "Ordering Activi-ty").

No deviations from these General Terms and Conditions shall be valid unless expressly agreed in writing.

#### Definitions

Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

**Agreement:** The agreement, including appendices, entered into between the parties.

**Appliance Hardware:** The physical hardware Appliance unit(s) to be delivered in accordance with the Agree-ment.

**Appliance Software:** The Appliance Software Products agreed to be included in the Appliance including any Updates developed by PrimeKey and provided under a Support and Maintenance Agreement between Customer and PrimeKey Support AB.

**Appliance Software Product:** Each software product/module agreed to be delivered in accordance with the Agreement.

**Firmware:** Any software embedded in the Appliance Hardware

**Appliance:** The Appliance Hardware security platform unit including EJBCA, SignServer, or third party applica-tions The Appliance consists of Appliance Hardware and Appliance Software.

**Product:** The Appliance Hardware and/or the Appliance Software Products.

#### 1. SCOPE OF DELIVERY

##### A. Quantity

Customer shall purchase and PrimeKey shall deliver the quantity of Appliances and with the content of the Appli-ance Software as specified in the Agreement.

##### B. Purchase Order(s)

Additional purchase orders shall not be binding on PrimeKey unless and until PrimeKey has accepted the pur-chase order by a written acknowledgement. A Purchase Order shall be a separate Agreement, unless otherwise agreed. These General Terms and Conditions shall apply on such purchase order. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

##### C. Standard Products

The Products shall be PrimeKey's standard products. Unless specifically stated in a separate agreement between PrimeKey and Customer, PrimeKey shall have no obligation to create special or customized versions of any such product, or to ensure that the Products operate with Customer's equipment, software, or systems. PrimeKey re-serves the right, without prior approval from or notice to Customer, to make changes to any Product (i) to meet published specifications; (ii) that do not adversely affect the performance of the Product below any published specification; or (iii) when required for purposes of safety. PrimeKey also reserves the right to make changes to any Product without any obligation to make the same changes to Products previously ordered by or sold to Cus-tomer.

##### D. Serial number

PrimeKey will specify applicable serial number for the delivered Appliance.

#### 2. PRICE AND PAYMENT TERMS

##### A. Prices

The price(s) for the Appliances to be delivered in accordance with the Agreement are stated in the Agreement in accordance with the GSA Schedule Pricelist. The price for additional Purchase order(s) is to be specified in PrimeKey's written acknowledgement in accordance with the GSA Schedule Pricelist. If only a fixed price is given for the Appliance it includes purchase price for the Appliance Hardware and license fee for the Appliance Soft-ware. Otherwise a price is given for the Appliance Hardware and license fee for each Appliance Software Prod-uct. Under a line of GAO (U.S. Government Accountability Office) cases based on the Supremacy Clause of the US Constitution, the Government is exempt from state and local taxes whose "legal incidence" falls on the Feder-al Government. The applicability of a particular tax to the Government is a case by case determination for the contracting officer. Further, FAR 52.212-4(k) provides that the contract price includes all applicable Federal, state and local taxes and duties.

##### B. Payment terms

PrimeKey will invoice the Customer at the time of each shipment of Appliances, or Product as the case may be, to the Customer. Payment terms for all invoiced amounts shall be thirty (30) days from the receipt date of invoice(s), or PrimeKey



ship the Appliances to Customer freight collect according to Section 3 B. Customer shall make all payments due to PrimeKey WITHOUT ANY OFFSET OR DEDUCTION WHATSOEVER, and without regard to whether Customer has made or may make inspections of the Appliances delivered to Customer. If deliveries are authorized in installments, each shipment shall be paid for when due without regard to other scheduled deliveries. Any invoiced amount which is not paid when due shall bear late interest at the rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

### **3. DELIVERY TERMS**

#### **A. Shipping Schedule - delay**

PrimeKey shall use its reasonable efforts to ship Appliances to Customer in accordance with the shipment schedule provided by PrimeKey to Customer. Delivery dates proposed by Customer in its purchase order or other documentation shall not be binding on PrimeKey. If there is a delay in delivery caused by PrimeKey for more than 30 days, the Customer may cancel the delayed shipment through written notice to PrimeKey. Excusable delays shall be governed by FAR 52.212-4(f). The delivery schedule shall be extended automatically by a period of time equal to the time lost because of any such delay. If PrimeKey has requested a bank guarantee in the Agreement a shipment is conditioned on that PrimeKey has received the requested bank guarantee.

#### **B. Shipment**

All deliveries of the Appliances shall be Ex works PrimeKey's facility, in accordance with the INCOTERMS 2010 of the International Chamber of Commerce.

#### **C. Shipment Appliance Software**

The Appliance Software Product will either be installed by PrimeKey on the Appliance Hardware as specified in the Agreement and shipped in accordance to clause A in this Section 3 or made available for electronic download and installation in accordance with Section 5 A. In the latter case Customer will be responsible for accessing PrimeKey's site and downloading the Appliance Software Product. Delivery term shall be as set forth in clause B in this Section 3.

### **4. TITLE TO APPLIANCE HARDWARE**

#### **A. Transfer of Title**

Title to the Appliance Hardware shall pass to Customer upon payment in full of the price for the Appliance. Notwithstanding any provision herein to the contrary, Customer shall take no title to any Firmware.

### **5. LICENSE TO APPLIANCE SOFTWARE**

#### **A. License to Appliance Software**

PrimeKey grants to the Customer a perpetual, non-exclusive, non-transferable right to use the Appliance Software Product in the object code only on the number of Appliance Hardware that Customer bought a license for and only to install and use the Appliance Software Product on the hardware delivered under the Agreement (the Appliance Hardware) and to the extent that may be stipulated in other documents in the Agreement. For an Appliance Software Product that is a third party product, there may be third party supplier's license conditions different from those of this Agreement. Nothing herein shall bind the Ordering Activity to any Appliance Software Product Third Party terms unless the terms are provided for review and agreed to in writing by all parties

#### **B. Restrictions**

Customer agrees: (a) not to use the Appliance Software Product on any other hardware than on the Appliance Hardware except for the backup license referred to in C below, (b) not to transfer or sublicense the Appliance Software Product to any third party, (c) not to copy the Appliance Software Product except for the backup license referred to in C below and (d) to comply with the restrictions set forth in Section 6 B.

#### **C. Back up license**

If a Hardware Appliances is not used by the Customer and provided that it or part of it is subject to repair or replacement by PrimeKey under the warranty provisions clause 7 or maintenance services under a valid Maintenance agreement with PrimeKey, Customer will have after prior written notice to PrimeKey a temporary license to use the Appliance Software Product on another hardware appliance as long as such non-working Hardware Appliances is not working subject to the license conditions in these General Terms and Conditions. PrimeKey will make the Appliance Software Product available to the Customer for electronic download according to clause C Section 9 or permit the Customer to make the necessary copy of the Appliance Software Product.

### **6. INTELLECTUAL PROPERTY RIGHTS**

#### **A. Rights**

All rights, title, ownership and interest in and to Appliance Software and derivative works thereof and to the Firmware including, but not limited to, all intellectual property rights therein, are and shall remain the property of PrimeKey and/or its PrimeKey except the rights expressly contained herein.

#### **B. Restrictions**

Except to the extent permitted by applicable law, Customer shall not reverse engineer, decompile, disassemble or otherwise translate or modify, alter or otherwise change the Appliance Software and derivative works thereof and to the Firmware

#### **C. Trademarks**

Customer shall not alter or remove from the Products (or their packaging or documentation), or alter, any of PrimeKey's or its suppliers' trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Products (or their packaging or documentation).

## **7. LIMITED WARRANTIES – APPLIANCE HARDWARE**

### **A. Express Warranty for the Appliance Hardware**

Subject to the provisions of this Section 7 and Section 10, PrimeKey expressly warrants that, for a period of twelve (12) months (the “Warranty Period”), all components of the Appliance Hardware shall be free from faulty workmanship and defective materials under normal use and service. The Warranty Period shall commence on the date the Appliance Hardware is shipped from PrimeKey’s facility (as evidenced by PrimeKey’s packing slip or other receipt. The warranty stated by PrimeKey in this Section 7(A) is the only express warranty provided by PrimeKey. This express warranty may be modified only by express written agreement between the parties, and may not be modified or amended by any course of dealing between the parties, or custom and practice in the industry. Customer’s remedies and PrimeKey’s aggregate liability with respect to the warranty provided by PrimeKey in this Section 7(A) are set forth in and limited by this Section 7 and Section 10. PrimeKey’s warranty does not apply to consumable items (e.g. batteries)

### **B. Warranty Remedy**

If an Appliance Hardware fails under normal use and service during the Warranty Period due to a defect in materials or faulty workmanship (“defect”), PrimeKey’s sole obligation shall be to repair or replace the Appliance Hardware, at PrimeKey’s option. Following repair or replacement, the Warranty Period shall expire at the end of the original period. Appliance Hardware and components that are replaced by PrimeKey shall become PrimeKey’s property.

### **C. Warranty Conditions**

PrimeKey’s express warranty is strictly for the benefit of Customer and does not extend to any third party PrimeKey’s express warranty is contingent upon Customer’s payment of the purchase invoice and proper use of the Appliance Hardware, in accordance with any instructions or manuals provided by or available from PrimeKey. PrimeKey shall have no obligation under this express warranty unless Customer promptly reports the claim. PrimeKey’s obligations under this warranty are subject to PrimeKey’s examination of the Appliance Hardware and PrimeKey’s determination to its reasonable satisfaction that the claimed defect or fault actually exists and is not excluded from PrimeKey’s warranty under this Section 7. If PrimeKey determines that the Appliance Hardware is not defective or faulty within the terms of the express warranty, Customer shall pay for all costs of handling, transportation and repairs at PrimeKey’s then prevailing repair rates.

### **D. Warranty Exclusions**

PrimeKey’s express warranty shall not apply if the defect or fault is caused by any of the following after delivery by PrimeKey: accident, unusual physical, electrical or electromagnetic stress, neglect, misuse, failure of electric power or environmental controls, rough handling during transportation, Customer’s failure to maintain the Product in accordance with PrimeKey’s specifications, abuses to the Product other than ordinary use, modifications by Customer, alterations or repairs by a party other than PrimeKey (unless specifically authorized by PrimeKey in writing). This express warranty will be rendered void if PrimeKey’s serial numbers, warranty data or quality assurance decals on the Product are removed or altered.

### **E. Disclaimer**

THE EXPRESS WARRANTIES OF PRIMEKEY STATED IN SECTION 7(A) ARE IN PLACE OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE EXPRESS OBLIGATION OF PRIMEKEY STATED IN SECTION 7(B) REPLACES ANY OTHER LIABILITY OR OBLIGATION OF PRIMEKEY ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE Appliance Hardware. PRIMEKEY DOES NOT INSURE THE SECURITY PROVIDED BY THE Appliance Hardware, NOR DOES IT WARRANT AGAINST IMPROVEMENTS IN THE TECHNICAL ARTS THAT MAY RENDER THE PRODUCTS INEFFECTIVE OR OBSOLETE.

## **8. APPLIANCE SOFTWARE - “LIMITED WARRANTY”**

**A.** PrimeKey Support AB and the Customer shall enter into a Support and Maintenance Agreement. The rectification and liability for any defects in the Appliance Software shall be solely regulated and governed by the Maintenance Agreement. PrimeKey Support AB warrants that the Appliance Software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Appliance Software written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Customer may not in any case make any claims against PrimeKey for any defects or problems with the Appliance Software under the Agreement. Notwithstanding this, if there is a major defect in the Appliance Software that is reported in writing within 30 days from the delivery of the Appliance Software and the defect has not been rectified according to the Support and Maintenance Agreement within 60 days from the report, the Customer may, in writing, set a reasonable final deadline for rectification. If the material defect has not been rectified when the deadline has expired and it is of substantial significance for the Customer’s use of the concerned Appliance and PrimeKey knew or should have known of this, the Customer shall be entitled after the expiry of the deadline to notify the supplier in writing of the cancellation of the Agreement for the applicable Appliance. If the Customer cancels the Agreement for the concerned Appliance the Customer shall be entitled to refund of the paid price for that Appliance, which shall be the exclusive remedy for the cancellation and with no right to damages for Customer.

**B.** PrimeKey makes no warranty regarding the Appliance Software, expressed or implied, including but not limited to any implied warranties of merchantability and fitness for particular purpose, other than that the Appliance Software will operate in combination with the software and hardware in the Appliance. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN NO CASE WILL PRIMEKEY BE OBLIGED TO COMPENSATE THE CUSTOMER FOR DAMAGE, BE IT DIRECT OR INDIRECT, CAUSED BY MALFUNCTIONS OF THE APPLICATION SOFTWARE OR THE CUSTOMER’S USE OF IT, NOR IS PRIMEKEY RESPONSIBLE FOR DAMAGE WHICH MAY OCCUR AS A CONSEQUENCE OF THE CUSTOMER’S



USE OF THE APPLIANCE SOFTWARE SUCH AS LOSS OF DATA, SALES, PRODUCTION OR PROFITS OR ANY DAMAGE TO A THIRD PARTY.

## **9. INFRINGEMENT**

**A.** PrimeKey undertake to defend, at its own expense, the Customer against any claim, suit or proceeding brought against any of them based on the allegation that the use of any Appliance Software within EU or United States furnished by PrimeKey under the Agreement constitutes an infringement of any intellectual property rights or applications thereof or an unauthorized use of know-how, trade secrets or other proprietary rights. PrimeKey shall furthermore indemnify the customer against any costs or damages that the Customer may become liable to pay as a result of a judgment or settlement. The obligation of PrimeKey only applies if the Customer has notified PrimeKey without undue delay in writing of such claim, suit or proceeding and PrimeKey given authority, information, and assistance to settle the claim or control the defense of any suit or proceeding. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

**B.** In the event that the Appliance Software or any part thereof is in such suit held to constitute an infringement and/or its further use is enjoined, PrimeKey shall promptly, at its own expense and at its option, and to the extent it is commercial reasonable either: (a) replace the infringing Appliance Software with non-infringing software programs and documentation of equivalent function and performance; or (b) modify the Appliance Software so that they become non-infringing without detracting from function or performance. If it is not commercial reasonable for PrimeKey to fulfil its obligations pursuant to the above within a reasonable time, the customer shall be entitled to a reduction of the price corresponding to the reduced value of the Appliance resulting from the infringement but not for longer period than five years from its delivery date.

**C.** PrimeKey's liability for infringements of the Appliance Software does not cover any third party products or infringements caused by Customer. PrimeKey's entire liability for infringements is limited to what is set forth in this section 9.

## **10. LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES**

**A.** Notwithstanding anything herein to the contrary, PrimeKey shall not be liable to Customer, or to any third party claiming through Customer, for the failure of performance of any obligation of PrimeKey except as specifically set forth herein, or otherwise agreed to in writing.

**B.** PRIMEKEY'S AGGREGATE LIABILITY ARISING OUT OF THE SALE OF A APPLIANCE TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL NOT EXCEED THE PURCHASE PRICE FOR THAT APPLIANCE PAID BY CUSTOMER TO PRIMEKEY.

**C.** IN NO EVENT SHALL PRIMEKEY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF ANTICIPATED PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF THE PRIMEKEY PRODUCTS OR PRIMEKEY'S PERFORMANCE OF SERVICES OR OF ANY OTHER OBLIGATIONS RELATING TO THIS AGREEMENT OR THE PRIMEKEY PRODUCTS. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**D.** Excusable delays shall be governed by FAR 52.212-4(f).

**E.** The limitations of liability contained herein are a fundamental part of the bargain, and Customer acknowledges that PrimeKey would not sell Appliance absent these limitations.

## **11. SECRECY**

**A.** During a period of three years from the actual delivery date, neither party may, without the approval of the other party, use or otherwise divulge to a third party information concerning the internal affairs of the other party which may be regarded as a business or professional secret or information which, according to law, is covered by a duty of confidentiality. The duty of confidentiality does not extend to information which a party can show has become known to the party otherwise than in connection with the execution or performance of the Agreement, or which is in the public domain. Nor shall the duty of confidentiality apply where a party is obligated to disclose such information by law, court or government order or binding stock exchange regulations. Where a party is required to disclose information in such way, it shall notify the other party to this effect prior to disclosure. PrimeKey recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

**B.** A party shall, through confidentiality undertakings with personnel or other appropriate measures, ensure compliance with the above duty of confidentiality. A party shall also ensure that retained subcontractors and their employees sign corresponding confidentiality undertaking.

## **12. APPLICABLE LAW, DISPUTES**

**A.** This Agreement shall be governed by and construed in accordance with the Federal laws of the United States.

**B.** Reserved.

## **13. EXPORT –COMPLIANCE WITH LAW**

**A.** PrimeKey is responsible for obtaining and maintaining any export licenses required for delivery of appliance to the agreed destination to The Customer. Prior the execution of this agreement, PrimeKey is responsible to provide the relevant export control commodity numbers (the "ECCN codes") of products according to US and EU export administration regulations or the

corresponding data according to other applicable regulations. This information shall be updated on an ongoing basis every time a non-insignificant update is provided or when new regulations come into effect

**B.** Customer shall comply with all applicable laws, including export controls imposed by the Federal Government of the United States. Without limiting the generality of the foregoing, Customer agrees that it shall not export or re-export any PrimeKey Products to any country without first obtaining all necessary and required licenses, consents and approvals. Customer acknowledges that shipments of the PrimeKey Products may be subject to export laws and that such laws could delay or preclude delivery of PrimeKey Products in the future. Customer shall, at its sole cost and expense, obtain and maintain in effect all permits, licenses and other consents necessary to the conduct of its activities hereunder.

#### **14. GENERAL PROVISIONS**

**A.** The Agreement, including the schedules and exhibits hereto, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior oral and written agreements and understandings relating thereto.

**B.** For purposes of the Agreement, the term "written" means anything reduced to a tangible form by a party, including a printed or hand written document, e-mail or other electronic format.

**C.** No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by both PrimeKey and Customer. The failure of either PrimeKey or Customer at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision.

**D.** All notices to be given in connection with this Agreement shall be effective upon receipt, shall be made in writing and shall be sufficiently given if personally delivered or if sent by facsimile transmission, e-mail, courier or other express mail service, postage prepaid, addressed to the party entitled or required to receive such notice at the address for such party set forth below. Either party may by such notice to the other change such address.

**E.** The Agreement shall be binding upon, and inure to the benefit of, PrimeKey and Customer and their respective legal representatives, successors and permitted assigns. The parties shall not assign, sublicense or otherwise transfer any of its duties, hereunder, in whole or in part, without the prior written consent of the other Party.

**F.** In the event that any provisions contained in this Agreement or any part thereof shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, to such extent such provision shall be deemed null and void and severed from this Agreement, the remainder of this Agreement shall remain in full force and effect, and the invalid provision shall be replaced with a valid provision which most closely approximates the intent and economic effect of the invalid provision.

**G.** The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

### **General Terms and Conditions for Support/Maintenance of Appliance**

These General Terms and Conditions shall apply to all on support and maintenance provided by PrimeKey Solutions AB ("PrimeKey") for Appliances or Product (as defined below) to the Customer.

No deviations from these General Terms and Conditions shall be valid unless expressly agreed in writing. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

PrimeKey and Customer are also referred to herein individually as a "**Party**" and collectively as the "**Parties**".

#### **Definitions**

Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

**Appliance:** The Appliance Hardware security platform unit including EJBCA, SignServer, or third party applications. The Appliance consists of Appliance Hardware and Appliance Software.

**Appliance Hardware:** The physical hardware Appliance unit(s) to be supported and maintained in accordance with the Support and Maintenance Agreement.

**Appliance Software Product:** Each software product/module agreed to be supported and maintained by PrimeKey in accordance with the Support and Maintenance Agreement including any Releases provided by PrimeKey under the Support and Maintenance Agreement.

**Firmware:** Any software embedded in the Appliance Hardware

**Product:** The Appliance Hardware and/or the Appliance Software Products.

**Services:** The services to be provided by PrimeKey under the Support and Maintenance Agreement.

**Support and Maintenance Agreement:** The Support and Maintenance agreement, including appendices, entered into between the parties

Any **definition** in the main document or other appendices of the Support and Maintenance Agreement shall also apply in this document.

#### **1. PRIMEKEYS SERVICES OBLIGATIONS**

PrimeKey shall from the Effective Date for a Product provide to Customer the support and maintenances in accordance with the terms and conditions set out in Appendix DMSHW Description of Maintenance/Support service for Appliances. PrimeKey shall maintain an organization with employees that are appropriate, qualified and competent to perform services. The Supplier shall perform the Services in a professional manner.

The Services will be provided during the Business Hours as defined in Appendix DMSHW unless otherwise agreed.

## **2. THIRD PARTY SOFTWARE**

The Services does not apply to third-party Software.

## **3. DEFAULT REPORTING – CUSTOMER OBLIGATIONS**

The Customer shall to the Support Center as specified in Appendix DMSHW of any fault in a Product within a reasonable time from the point in time at which Customer becomes aware of the fault in question.

The Customer shall provide the assistance as set forth in Appendix DMSHW.

## **4. END OF LIFE - APPLIANCE HARDWARE**

The need to End-of-Life (EOL) a product occurs from time-to-time as technology advances make earlier versions obsolete, as components and parts become no longer available for manufacture or repair and as the resulting ability to provide acceptable support becomes severely constrained and costly. PrimeKey, at its discretion, will from time-to-time declare a Product to be in an EOL state. An EOL state encompasses multiple phases that includes providing sufficient notice to customers, providing alternatives for upgrade or migration and defining the path for eventual suspension of all Product support.

EOL announcements will be made to customers that will include dates for last time buy, upgrade or migration path options, and dates when changes to support coverage take effect.

### **A. Repairs**

Repairs for End of Life Products will be performed only if components are reasonably available and replacements will be provided only as long as inventory is reasonably available.

### **B. Support**

PrimeKey will provide best efforts to support an EOL Product but will be under no obligation to provide Major, Minor, or Maintenance Releases with respect to any product during its EOL state. PrimeKey will continue to provide Web-based, e-mail and telephone support to the extent reasonably practicable without providing Major Releases, Minor Releases or Maintenance Releases, and PrimeKey provides no guarantee that a problem with a Product supported on an End of Life basis can or will be resolved.

## **5. FEES**

The annual fees for the Services are set forth in Appendix PSMHW, Price Schedule in accordance with the GSA Schedule Pricelist, and shall be paid in the currency expressed in the Price Schedule. The annual support and maintenance fee is fixed during the initial terms of this Support and Maintenance Agreement.

## **6. PAYMENT**

**A.** The annual support and maintenance fee will be invoiced and paid annually, in the first instance as of the Effective Date and every six (6) months thereafter, payable thirty (30) days after receipt of the invoice by Customer.

**B.** PrimeKey shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**C.** Reserved.

## **7. OWNERSHIP AND LICENSE**

The Customer's rights and obligations regarding releases of Appliance Software Product and work performed during the Services are the same as its rights and obligations regarding the original version of the Appliance Software Product under the Delivery Agreement. Any release will be a part of the original Delivery Agreement. PrimeKey will only be responsible for any Releases provided under the Support and Maintenance Agreement according to the conditions in the Delivery Agreement.

## **8. CONFIDENTIAL INFORMATION**

### **A. Definitions**

Confidential Information means any and all information relating in any way (directly or indirectly) to either parties business, finances, products, processes or employees and includes any information obtained by the other party in the course of accessing the other parties computers or networks, including passwords and security procedures ("Confidential Information"). Each party shall maintain the confidentiality of such Confidential Information and shall not disclose such Confidential Information except to those of its agents and employees who need to know such information in order to perform the Services. Both during and after the term of this Support and Maintenance Agreement, such agents and employees shall hold all disclosures by the other party in strict confidence and shall not use the Confidential Information for any purpose other than in connection with the transactions contemplated in this Support and Maintenance Agreement.

### **B. Restrictions**

During the term of this Support and Maintenance Agreement and for a period of five (5) years thereafter, the recipient shall not use the Confidential Information, except as necessary to complete the Services and shall not disclose the Confidential Information to any third party.

### **C. Exclusions**

Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault or breach of this Agreement by the recipient; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the Confidential Information; (d) is obtained by the recipient from a third party without obligation of confidentiality; or (e) is disclosed with the prior written approval of the disclosing party. recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be re-released, despite being characterized as "confidential" by the vendor.

#### **9. LIMITATION OF LIABILITY AND EXCLUSION OF DAMAGES**

**A.** Notwithstanding anything herein to the contrary, PrimeKey shall not be liable to Customer, or to any third party claiming through Customer, for the failure of performance of any obligation of PrimeKey except as specifically set forth herein, or otherwise agreed to in writing.

**B.** PRIMEKEY'S AGGREGATE LIABILITY ARISING OUT OF THE PERFORMANCE OF SERVICES, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL EXCEED THE TOTAL CONTRACT PRICE, INCLUDING AGGREGATE FEES FOR THE RELEVANT PRODUCT OR APPLIANCE, PAID BY CUSTOMER TO PRIMEKEY.

**C.** IN NO EVENT SHALL PRIMEKEY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF ANTICIPATED PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, PRIMEKEY'S PERFORMANCE OF SERVICES OR OF ANY OTHER OBLIGATIONS RELATING TO THIS SUPPORT AND MAINTENANCE AGREEMENT. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**D.** Excusable delays shall be governed by FAR 52.212-4(f).

**E.** The limitations of liability contained herein are a fundamental part of the bargain, and Customer acknowledges that PrimeKey would not provide the Services absent these limitations.

#### **10. PREMATURE TERMINATION**

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, PrimeKey shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

#### **11. GENERAL PROVISIONS**

##### **A. No Assignment**

A Party may not assign this Support and Maintenance Agreement may not assign this Support and Maintenance Agreement without the other Party's prior written approval.

##### **B. Notices**

Notice of termination and/or any other notices shall be sent by courier, registered post or electronic message to the other party's Coordinator at the address specified by such party.

The other party shall be deemed to have received such notice:

- (i) At the time of delivery, if delivered by courier;
- (ii) 5 days after dispatch, if sent by regular post;
- (iii) At the time of arrival at the recipient's electronic address, if sent by electronic message

##### **C. Invalid Provisions**

If any provision of this Support and Maintenance Agreement is held invalid or prohibited, such provision shall be invalid only to such extent without invalidating the remainder of this Support and Maintenance Agreement.

##### **D. Modification of Support and Maintenance Agreement**

This Support and Maintenance Agreement may not be modified nor may any provision hereof be waived except by a written document, duly executed by an authorized representative of each of the parties hereto, that specifically references this Support and Maintenance Agreement. No delay or omission by any party to exercise or detect any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver of any provision of this Support and Maintenance Agreement on any occasion or occasions shall not constitute a waiver of such provision on any succeeding occasion.

##### **E. Entire Agreement**

This Support and Maintenance Agreement any Customer purchase order(s) issued with respect to this Support and Maintenance Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, embody the entire understanding of the parties and shall supersede any and all previous oral agreements, understandings, letters, documents, letters of understanding, memoranda, memoranda of understanding, representations, discussions, proposals and quotes between the parties relating to the subject matter of this Agreement.

##### **F. Counterparts**

This Support and Maintenance Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

##### **G. Coordinators**



Parties will each appoint and advise the other in writing of the name and address of a Coordinator. The only official channel for communications between the parties shall be through their respective Coordinators, except as may be otherwise authorized in writing by the parties. Each party shall promptly advise the other in writing of the name and address of the successor any Coordinators which may be appointed hereunder. Changes or modifications to the terms and conditions of this Support and Maintenance Agreement are not within the duties or authority of the Coordinators.

## 12. APPLICABLE LAW, DISPUTES

This Support and Maintenance Agreement shall be governed by and construed in accordance with the Federal laws of the United States.

## Description of Maintenance/ Support services for PrimeKey Appliances

### Definitions:

Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

**Business Hours:** are the hours between 9am and 5pm CEST, Monday through Friday excluding legal holidays.

**Major Release:** mean major enhancements to the Appliance Software Product and is marked by the first digit in the Release digits i.e Release 1.2.3. A Major Release does not include enhancements/ new functionality that is sold as a separate module.

**Minor Release:** mean minor enhancements to the Appliance Software Product and is marked by the second digit in the Release digits i.e Release 1.2.3.

**Maintenance Release:** mean defect corrections and flaws in the finish to the Appliance Software Product and is marked by the third digit in the Release digits i.e Release 1.2.3.

### Second Line support

### Third Line support

The **definitions** in the main document and other appendices to the Support and Maintenance Agreement shall also apply in this document.

## 1. GENERAL

### A. Telephone support

Telephone support means that where there is a fault, or suspected fault, in the Appliance, PrimeKey shall assist the Customer by replying to question from persons specifically appointed by the Customer, provided the time required to answer them is reasonable. Telephone Support is made only in English. Telephone support will be provided during the Business Hours.

Telephone Support does NOT include general system infrastructure, network design or troubleshooting, installation assistance, or configuration support for third party components.

### B. Problem Reporting and Tracking Procedures

Customer may use the services described herein only by making reference to the authorized Support and Maintenance Agreement number.

### C. Services not included

Customer agrees that it will not expect PrimeKey to handle routine support and maintenance issues that are typically the responsibility of a Product end-user and which were explained in reasonable detail in the provided product documentation, or during the training conducted by PrimeKey for Customer technical personnel as part of the installation and acceptance testing of the PrimeKey Products. Specifically PrimeKey support does not include any of the following:

- a) custom programming services;
- b) on-site support, including installation of hardware or software;
- c) support of any software not constituting part of the Appliance Software;
- d) training;

### D. Supported Releases of the Appliance Software

PrimeKey will provide support for the current Major or Minor Release and the Major or Minor Release preceding the current Release, unless otherwise is specified in the next paragraph.

If PrimeKey offers a new Major Release, then PrimeKey will support the preceding Minor Release for 12 months. After this time, PrimeKey shall have no further responsibility for supporting and maintaining the prior releases, but may continue to do so in PrimeKey's sole discretion.

PrimeKey shall notify the Customer if a Major Release is not compatible with the Appliance Hardware that is a service object under the Support and Maintenance Agreement.

### E. Third party software

PrimeKey's undertaking does not apply to an Appliance Software Product that is a third party product.

### F. Incompatibilities (Exception from PrimeKey's obligations)

PrimeKey assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Appliance Software Product, if Customer has made unauthorized changes to the Appliance Hardware or Appliance Software Product configuration in effect as of the effective date this Agreement, or to the operational environment approved by PrimeKey in writing and were made without prior notification and written approval by PrimeKey.

**G. Customer assistance**

Customer shall provide all reasonable assistance requested by PrimeKey and PrimeKey shall not be responsible for any delays or failures to support or maintain the Appliance Software and Appliance Hardware if and to the extent such failure is a result of Customer’s failure to provide reasonable assistance to PrimeKey or otherwise perform its obligations under the Agreement.

Customer shall provide a description of the commands and procedures that reveal a fault.

**H. Second Line support**

If it is stated in the main document to the Support and Maintenance Agreement that Customer shall perform Sec-ond Line support, Customer shall perform the Second Line support and PrimeKey’s shall only perform Third Line support.

**2. SUPPORT SERVICES**

**A. Support Service Plans**

If Customer reports an error in the Appliance Hardware or PrimeKey diagnose establishes that the incident is related to an Appliance Hardware defect section 4 Hardware repair services shall apply.

Different support service plans related to Appliance Software and Hardware Products are provided by PrimeKey.

**Support Center HOTLINE**

PrimeKey will make available support contacts to request servicing of the Products. The initial support contacts are:

- a) Issue Tracker at <https://jira.primekey.se/>, or
- b) email at [support@primekey.com](mailto:support@primekey.com), or
- c) telephone number at +46 8 522 11 660 or (888) 832-0111.

**i. Standard Support Service Plan**

The Support Center HOTLINE for Standard Support is available during Business Hours.

**ii. Premium Support Service Plan**

The Support Center HOTLINE for Premium Support is available twenty-four (24) hours a day, seven (7) days a week, three-hundred-sixty-five (365) days a year.

**iii. Service Response Times**

TABLE A

	<b>Standard</b>	<b>Premium</b>
<b>Severity 1</b>	<b>8 Business Hours</b>	<b>4 hours</b>
<b>Severity 2</b>	<b>16 Business Hours</b>	<b>8 hours</b>
<b>Severity 3</b>	<b>32 Business Hours</b>	<b>24 hours</b>
<b>Severity 4</b>	<b>64 Business Hours</b>	<b>24 hours</b>

**B. Severities**

Upon receipt by PrimeKey through the Support Center HOTLINE of an error, defect, malfunction or nonconformity in the Products, PrimeKey shall respond as provided below.

i. **Severity 1:** Produces an emergency situation in which the PrimeKey Product is inoperable, produces incorrect results, or fails catastrophically.

**Service Response:** PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA period stated in Table A. The resolution will be delivered as a work-around, emergency software. If PrimeKey delivers an acceptable work-around, the severity classification will drop to a Severity 2.

ii. **Severity 2:** Produces a detrimental situation in which performance (throughput or response) of the PrimeKey Products degrades substantially under reasonable loads, such that there is a severe impact on use; the PrimeKey Software is usable, but materially incomplete; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.

**Service Response:** PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 2 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA



period stated in Table A. The resolution will be delivered in the same format as Severity 1 problems. If PrimeKey delivers an acceptable work around for a Severity 2 problem, the severity classification will drop to a Severity 3.

iii. **Severity 3:** Produces an inconvenient situation in which Appliance Software is usable, but does not provide a function in the most convenient or expeditious manner, and the user suffers little or no significant impact.

**Service Response:** PrimeKey will use reasonable commercial efforts to resolve Severity 3 problems in the next Maintenance Release.

iv. **Severity 4:** Produces a noticeable situation in which the use is affected in some way that is reasonably correctable by a documentation change or by a future, regular release from PrimeKey.

**Service Response:** PrimeKey will provide, if agreed by PrimeKey, as a fix or fixes for Severity 4 problems in future Maintenance Release.

### C. Support Incident

PrimeKey, in its reasonable discretion, will determine what constitutes a support Incident. Typically, a support Incident is a situation where Customer needs remedial support focusing on one aspect of the Appliance Software Product Severity Levels 1, 2 and 3. Note that Severity Level 4 from is not considered as a support Incident. One support Incident may involve multiple emails, phone consultations, and off-line research.

A Support Incident has reached resolution when Customer receives one of the following:

- a) Information that resolves the issue;
- b) Information on how to obtain a software solution that will resolve the issue, or information that identifies the issue as being resolved by upgrading to a new Release of the Appliance Software Product;
- c) Notice that the issue is caused by a previously known, unresolved issue or an incompatibility issue with the Appliance Software;
- d) information that isolates issue to a third-party product, not supported by PrimeKey.

### 3. MAINTENANCE APPLIANCE SOFTWARE AND FIRMWARE

PrimeKey will maintain the Products by providing Appliance Software Products and Firmware with Major Releases, Minor releases and Maintenance Releases as the same are offered by PrimeKey to its licensees of the Appliance Software Product under maintenance generally.

Releases will be provided on an as-available basis and include the items listed below:

- a) Bug fixes;
- b) Enhancements to keep current with the Appliance Hardware delivered under the same Delivery Agreement as the Appliance Software Products; and
- c) Performance enhancements to the PrimeKey Software;

Releases do not include:

- a) Platforms not included in Appliance;
- b) new functions such as new applications/modules.

Releases will be provided in object code or update archives and updates to related documentation will be made available for electronic download. All such deliveries shall be made by a single communication to the Agreement Coordinator. Duplication, distribution and installation of Releases are the responsibility of Customer.

PrimeKey will not be responsible for incompatibilities as set forth in section 1.F above.

### 4. APPLIANCE HARDWARE REPAIR SERVICE

#### A. Repair Service

During the maintenance period, PrimeKey will repair or replace an Appliance Hardware that fails due to error, provided the Customer has obtained a valid PrimeKey RMA (Return merchandise authorization (RMA) from PrimeKey. PrimeKey will pay return shipping expenses. PrimeKey shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. The replacement device or part may be reconditioned or new. Reconditioned equipment is tested, certified, and carries the remainder of the original equipment's warranty.

#### B. Maintenance Service Plans

Different maintenance service plans related to Appliance Hardware Repair are provided by PrimeKey.

##### i. Standard Maintenance Service Plan

Defect devices or parts will be repaired or replaced within 5 working days of receipt of the product. (Turn-around times do not include shipping time)

##### ii. Premium Maintenance Service Plan

Defect devices or parts will be repaired or replaced within 2 working days of receipt of the product. (Turn-around times do not include shipping time)

##### iii. Premium Maintenance Service Plan with HW+ Option

In addition to the Premium Maintenance Service Plan, HW+ offers Customers the option for an advance replacement of defect devices or parts without charges. Upon an RMA approval, PrimeKey will ship a replacement part before receiving the defective part. Customer is responsible for return of the equipment within 30 days and return shipping charges. Unreturned equipment will be invoiced at then current list price.

**C. Excluded items**

PrimeKey’s obligations and the stated fees do not include the following, unless otherwise follows from the Specification:

- a)** Procurement of add-ons, consumables and other equipment;
- b)** Maintenance of consumables, add-ons and other equipment

**5. END OF LIFE – APPLIANCE HARDWARE**

The need to End-of-Life (EOL) a product occurs from time-to-time as technology advances make earlier versions obsolete, as components and parts become no longer available for manufacture or repair and as the resulting ability to provide acceptable support becomes severely constrained and costly. PrimeKey, at its discretion, will from time-to-time declare a Product to be in an EOL state.

EOL announcements will be made to customers that will include dates for last time buy, upgrade or migration path options, and dates when changes to support coverage take effect.

Repairs for End of Life Products will be performed only if components are reasonably available and replacements will be provided only as long as inventory is reasonably available.

PrimeKey will provide best efforts to support an EOL Product but will be under no obligation to provide Major, Minor, or Maintenance Releases with respect to any product during its EOL state.

PrimeKey will continue to provide support to the extent reasonably practicable without providing Major Releases, Minor Releases or Maintenance Updates, and PrimeKey provides no guarantee that a problem with a Product supported on an End of Life basis can or will be resolved.

## PrimeKey License Conditions for Software

These license conditions shall apply to all offers and Agreements under which PrimeKey Solutions AB (the "PrimeKey") supplies Software (as defined below) to the Customer.

No deviations from these License Conditions shall be valid unless expressly agreed in writing. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

### Definitions

Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

**Agreement:** The agreement, including appendices, entered into between the parties regarding the license of Software.

**Software** means the enterprise version of EJBCA, SignServer and other PrimeKey Software. The Software includes software programs and releases provided under the Supports and Maintenance Agreement regarding the Software.

## 1. LICENSE

### A. License grant

Subject to these PrimeKey's license conditions PrimeKey grants to Customer a non-exclusive, non-transferable right, perpetual right to use the Software in object code form for internal purposes and not as a part of service provided to third parties.

### B. Restrictions

Customer agrees that Customer shall not: (a) modify, reverse engineer or decompile, disassemble or otherwise translate the Software or alter or make derivative works thereof, unless permitted according to mandatory law; (b) remove any of PrimeKey's proprietary notices or legends, including any PrimeKey Trademark contained in or on the Software or the documentation, without the specific prior written consent of PrimeKey; (c) make any copies of the Software or the documentation except for back up purposes; (d) sublicense, assign or otherwise transfer its rights under this Article 1.

## 2. SCOPE OF DELIVERY

### A. Purchase Order(s)

Additional purchase orders shall not be binding on PrimeKey unless and until PrimeKey has accepted the purchase order by a written acknowledgement. These General Terms and Conditions shall apply on such purchase order. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

### B. Standard Software

The Software shall be PrimeKey's standard Software. Unless specifically stated in a separate agreement between PrimeKey and Customer, PrimeKey shall have no obligation to create special or customized versions of any such product, or to ensure that the Software operate with Customer's equipment, software, or systems. PrimeKey reserves the right, without prior approval from or notice to Customer, to make changes to any Product (i) to meet published specifications; (ii) that do not adversely affect the performance of the Product below any published specification; or (iii) when required for purposes of safety. PrimeKey also reserves the right to make changes to any Product without any obligation to make the same changes to Software previously ordered by or sold to Customer.

## 3. PRICE AND PAYMENT TERMS

### A. Prices

The price(s) for the Software to be delivered in accordance with the Agreement are stated in the Agreement in accordance with the GSA Schedule Pricelist. The price for additional Purchase order(s) is to be specified in PrimeKey's written acknowledgement in accordance with the GSA Schedule Pricelist. PrimeKey shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

### B. Payment terms

PrimeKey will invoice the Customer at the time of delivery of the Software to the Customer. Payment terms for all invoiced amounts shall be thirty (30) days from the receipt date of invoice(s). Customer shall make all payments due to PrimeKey WITHOUT ANY OFFSET OR DEDUCTION WHATSOEVER, and without regard to whether Customer has made or may make inspections of the Software delivered to Customer. Any invoiced amount which is not paid when due shall bear late interest at the interest rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

## 4. DELIVERY TERMS

**A** PrimeKey will deliver the Software on electronic media, or make the Software available for electronic download within 5 working days from the date of the accepted Purchase Order. In the latter case Customer will be responsible for accessing PrimeKey's site and downloading the Software.

**B** The delivery term for the Software shall be Ex works PrimeKey's facility INCOTERMS 2010. If PrimeKey has requested a bank guarantee in the Agreement a delivery is conditioned on that PrimeKey has received the requested bank guarantee.

## 5. INTELLECTUAL PROPERTY RIGHTS

### A. Rights

All rights, title, ownership and interest in and to Software and derivative works thereof but not limited to, all intellectual property rights therein, are and shall remain the property of PrimeKey and/or its PrimeKey except the rights expressly contained herein.

## **B. Trademarks**

Customer shall not alter or remove from the Software (or their packaging or documentation), or alter, any of PrimeKey's or its suppliers' trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Software (or their packaging or documentation).

## **6. SOFTWARE - "LIMITED WARRANTY"**

**A.** PrimeKey and the Customer shall enter into a Support and Maintenance Agreement. The rectification and liability for any defects in the Software shall be solely regulated and governed by the Maintenance Agreement. PrimeKey warrants that the Appliance Software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Appliance Software written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Customer may not in any case make any claims against PrimeKey for any defects or problems with the Software under the Agreement. Notwithstanding this, if there is a major defect in the Software that is reported in writing within 30 days from the delivery of the Software and the defect has not been rectified according to the Support and Maintenance Agreement within 60 days from the report, the Customer may, in writing, set a reasonable final deadline for rectification. If the material defect has not been rectified when the deadline has expired and it is of substantial significance for the Customer's use of the concerned Software and PrimeKey knew or should have known of this, the Customer shall be entitled after the expiry of the deadline to notify the supplier in writing of the cancellation of the Agreement for the applicable Software. If the Customer cancels the Agreement for the concerned Software the Customer shall be entitled to refund of the paid price for that Software, which shall be the exclusive remedy for the cancellation and with no right to damages for Customer.

**B.** PrimeKey makes no warranty regarding the Software, expressed or implied, including but not limited to any implied warranties of merchantability and fitness for particular purpose. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN NO CASE WILL PRIMEKEY BE OBLIGED TO COMPENSATE THE CUSTOMER FOR DAMAGE, BE IT DIRECT OR INDIRECT, CAUSED BY MALFUNCTIONS OF THE SOFTWARE OR THE CUSTOMER'S USE OF IT, NOR IS PRIMEKEY RESPONSIBLE FOR DAMAGE WHICH MAY OCCUR AS A CONSEQUENCE OF THE CUSTOMER'S USE OF THE SOFTWARE SUCH AS LOSS OF DATA, SALES, PRODUCTION OR PROFITS OR ANY DAMAGE TO A THIRD PARTY.

## **7. INFRINGEMENT**

**A.** PrimeKey undertake to defend, at its own expense, the Customer against any claim, suit or proceeding brought against any of them based on the allegation that the use of any Software within EU or United States furnished by PrimeKey under the Agreement constitutes an infringement of any intellectual property rights or applications thereof or an unauthorized use of know-how, trade secrets or other proprietary rights. PrimeKey shall furthermore indemnify the Customer against any costs or damages that the Customer may become liable to pay as a result of a judgment or settlement. The obligation of PrimeKey only applies if the Customer has notified PrimeKey without undue delay in writing of such claim, suit or proceeding and PrimeKey given authority, information, and assistance to settle the claim or control the defense of any suit or proceeding. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

**B.** In the event that the Software or any part thereof is in such suit held to constitute an infringement and/or its further use is enjoined within EU or United States, PrimeKey shall promptly, at its own expense and at its option, and to the extent it is commercial reasonable either: (a) replace the infringing Software with non-infringing software programs and documentation of equivalent function and performance; or (b) modify the Software so that they become non-infringing without detracting from function or performance. If it is not commercial reasonable for PrimeKey to fulfil its obligations pursuant to the above within a reasonable time, the Customer shall be entitled to a reduction of the price corresponding to the reduced value of the Software resulting from the infringement but not for longer period than five years from its delivery date.

**C.** PrimeKey's liability for infringements of the Software does not cover any third party software or infringements caused by Customer. PrimeKey's entire liability for infringements is limited to what is set forth in this section 7.

## **8. LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES**

**A.** Notwithstanding anything herein to the contrary, PrimeKey shall not be liable to Customer, or to any third party claiming through Customer, for the failure of performance of any obligation of PrimeKey except as specifically set forth herein, or otherwise agreed to in writing.

**B.** PRIMEKEY'S AGGREGATE LIABILITY ARISING OUT OF THE SALE/LICENSE OF A SOFTWARE TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL NOT THE PRICE FOR THAT SOFTWARE PAID BY CUSTOMER TO PRIMEKEY.

**C.** IN NO EVENT SHALL PRIMEKEY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF ANTICIPATED PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF THE SOFTWARE OR OF ANY OTHER OBLIGATIONS RELATING TO THIS AGREEMENT OR THE SOFTWARE. The foregoing limitation of liability shall not apply

to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**D.** Excusable delays shall be governed by FAR 52.212-4(f).

**E.** The limitations of liability contained herein are a fundamental part of the bargain, and Customer acknowledges that PrimeKey would not sell Software absent these limitations.

#### **9. AUDIT**

At PrimeKey's request Customer shall at least annually provide a signed certification verifying that the Software is being used pursuant to the provisions of the Agreement and a listing of the numbers of the systems on which the Software is run. In addition, PrimeKey shall be entitled periodically audit the Customer's use of the Software to ensure that Customer are using the Software in accordance with the provisions of the Agreement. If an audit reveals that a Customer has used or permitted the use of the software in excess of the amount of licenses purchased, PrimeKey shall obtain payment from the Customer for the excessive use.

#### **10. SECRECY**

**A.** During a period of three years from the actual delivery date, neither party may, without the approval of the other party, use or otherwise divulge to a third party information concerning the internal affairs of the other party which may be regarded as a business or professional secret or information which, according to law, is covered by a duty of confidentiality. The duty of confidentiality does not extend to information which a party can show has become known to the party otherwise than in connection with the execution or performance of the Agreement, or which is in the public domain. Nor shall the duty of confidentiality apply where a party is obligated to disclose such information by law, court or government order or binding stock exchange regulations. Customer further undertakes without limitation in time to keep the Software and any and documentation and other information related to the Software strictly confidential, and not to disclose the Software to any third party, without the prior written consent of Licensor. PrimeKey recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

**B.** A party shall, through confidentiality undertakings with personnel or other appropriate measures, ensure compliance with the above duty of confidentiality. A party shall also ensure that retained subcontractors and their employees sign corresponding confidentiality undertaking.

#### **11. APPLICABLE LAW, DISPUTES**

**A.** This Agreement shall be governed by and construed in accordance with the Federal laws of the United States.

**B.** Reserved.

#### **12. EXPORT – COMPLIANCE WITH LAW**

**A.** PrimeKey is responsible for obtaining and maintaining any export licenses required for delivery of Software to the agreed destination to the Customer. Prior the execution of this agreement, PrimeKey is responsible to provide the relevant export control commodity numbers (the "ECCN codes") of Software according to US and EU export administration regulations or the corresponding data according to other applicable regulations. This information shall be updated on an ongoing basis every time a non-insignificant update is provided or when new regulations come into effect

**B.** Customer shall comply with all applicable laws, including export controls imposed by the Federal Government of the United States. Without limiting the generality of the foregoing, Customer agrees that it shall not export or re-export any PrimeKey Software to any country without first obtaining all necessary and required licenses, consents and approvals. Customer acknowledges that shipments of the PrimeKey Software may be subject to export laws and that such laws could delay or preclude delivery of PrimeKey Software in the future. Customer shall, at its sole cost and expense, obtain and maintain in effect all permits, licenses and other consents necessary to the conduct of its activities hereunder.

#### **13. GENERAL PROVISIONS**

**A.** The Agreement, including the schedules and exhibits hereto, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior oral and written agreements and understandings relating thereto.

**B.** For purposes of the Agreement, the term "written" means anything reduced to a tangible form by a party, including a printed or hand written document, e-mail or other electronic format.

**C.** No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by both PrimeKey and Customer. The failure of either PrimeKey or Customer at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision.

**D.** All notices to be given in connection with this Agreement shall be effective upon receipt, shall be made in writing and shall be sufficiently given if personally delivered or if sent by facsimile transmission, e-mail, courier or other express mail service, postage prepaid, addressed to the party entitled or required to receive such notice at the address for such party set forth below. Either party may by such notice to the other change such address.

**E.** The Agreement shall be binding upon, and inure to the benefit of, PrimeKey and Customer and their respective legal representatives, successors and permitted assigns. The parties shall not assign, sublicense or otherwise transfer any of its duties, hereunder, in whole or in part, without the prior written consent of the other Party.

**F.** In the event that any provisions contained in this Agreement or any part thereof shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, to such extent such provision shall be deemed null and

void and severed from this Agreement, the remainder of this Agreement shall remain in full force and effect, and the invalid provision shall be replaced with a valid provision which most closely approximates the intent and economic effect of the invalid provision.

**G.** The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.



## Description of Maintenance/ Support services for PrimeKey Software

### Definitions:

Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

**Business Hours:** are the hours between 9am and 5pm CEST, Monday through Friday excluding legal holidays.

**Major Release:** mean major enhancements to the Software Product and is marked by the first digit in the Re-lease digits i.e Release 1.2.3. A Major Release does not include enhancements/ new functionality that is sold as a separate module.

**Minor Release:** mean minor enhancements to the Software Product and is marked by the second digit in the Release digits i.e Release 1.2.3.

**Maintenance Release:** mean defect corrections and flaws in the finish to the Software and is marked by the third digit in the Release digits i.e Release 1.2.3.

### Second Line support

### Third Line support

The **definitions** in the main document and other appendices to the Support and Maintenance Agreement shall also apply in this document.

## 1. GENERAL

### A. Telephone support

Telephone support means that where there is a fault, or suspected fault, in the Software, PrimeKey shall assist the Customer by replying to question from persons specifically appointed by the Customer, provided the time required to answer them is reasonable. Telephone Support is made only in English. Telephone support will be provided during the hours between 9am and 5pm CEST, Monday through Friday excluding legal holidays (“Busi-ness Hours”).

Telephone Support does NOT include general system infrastructure, network design or troubleshooting, installa-tion assistance, or configuration support for third party components.

### B. Problem Reporting and Tracking Procedures

Customer may use the services described herein only by making reference to the authorized Support and Maintenance Agreement number. A twenty-four (24) hour Support Center HOTLINE is provided for problem re-porting, including reporting of problems outside of normal business hours.

### C. Services not included

Customer agrees that it will not expect PrimeKey to handle routine support and maintenance issues that are typi-cally the responsibility of a Product end-user and which were explained in reasonable detail during the training conducted by PrimeKey for Customer technical personnel as part of the installation and acceptance testing of the PrimeKey Products. Specifically PrimeKey support does not include any of the following:

- a) custom programming services;
- b) on-site support, including installation of hardware or software;
- c) support of any software not constituting part of the Software;
- d) training;

### D. Supported Releases of the Software

PrimeKey will provide support for the current Major and Minor Release and the Major or Minor Release preceding the current Release. If Prime Key offers a Major Release PrimeKey will support the last Release in the preceding Minor Release 12 months after notice to the Customer that the support of the Major Release will cease. After this time, PrimeKey shall have no further responsibility for supporting and maintaining the prior releases, but may continue to do so in PrimeKey’s sole discretion.

PrimeKey shall notify the Customer if a Major Release is not compatible with the Software Hardware that is a service object under the Support and Maintenance Agreement.

### E. Third party software

PrimeKey’s undertaking does not apply to a Software that is a third party product.

### F. Incompatibilities (Exception from PrimeKey’s obligations)

PrimeKey assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Software, if Customer has made changes to the Software Hardware or Software configuration in effect as of the effective date this Agreement or to the it environment approved by PrimeKey in writing and were made without prior notification and written approval by PrimeKey.

### G. Customer assistance

Customer shall provide all reasonable assistance requested by PrimeKey and PrimeKey shall not be responsible for any delays or failures to support or maintain the Software if and to the extent such failure is a result of Cus-tomer’s failure to provide reasonable assistance to PrimeKey or otherwise perform its obligations under the Agreement.

Customer shall provide a description of the commands and procedures that reveal a fault.

### H. Second Line support

If it is stated in the main document to the Support and Maintenance Agreement that Customer shall perform Sec-ond Line support, Customer shall perform the Second Line support and PrimeKey’s shall only perform Third Line support.

**2. SUPPORT SERVICES**

**A. Support Service Plans**

**Support Center HOTLINE**

PrimeKey will make available support contacts to request servicing of the Products. The initial support contacts are:

- a) Issue Tracker at <https://jira.primekey.se/>, or
- b) email at [support@primekey.com](mailto:support@primekey.com), or
- c) telephone number at +46 8 522 11 660 or (888) 832-0111.

**i. Standard Support Service Plan**

The Support Center HOTLINE for Standard Support is available during Business Hours.

**ii. Premium Support Service Plan**

The Support Center HOTLINE for Premium Support is available twenty-four (24) hours a day, seven (7) days a week, three-hundred-sixty-five (365) days a year.

**iii. Service Response Times**

TABLE A

	<b>Standard</b>	<b>Premium</b>
<b>Severity 1</b>	<b>8 Business Hours</b>	<b>4 hours</b>
<b>Severity 2</b>	<b>16 Business Hours</b>	<b>8 hours</b>
<b>Severity 3</b>	<b>32 Business Hours</b>	<b>24 hours</b>
<b>Severity 4</b>	<b>64 Business Hours</b>	<b>24 hours</b>

**B. Severities**

Upon receipt by PrimeKey through the Support Center HOTLINE of an error, defect, malfunction or nonconformity in the Products, PrimeKey shall respond as provided below.

i. **Severity 1:** Produces an emergency situation in which the PrimeKey Product is inoperable, produces incorrect results, or fails catastrophically.

**Service Response:** PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA period stated in Table A. The resolution will be delivered as a work-around, emergency software. If PrimeKey delivers an acceptable work-around, the severity classification will drop to a Severity 2.

ii. **Severity 2:** Produces a detrimental situation in which performance (throughput or response) of the PrimeKey Products degrades substantially under reasonable loads, such that there is a severe impact on use; the PrimeKey Software is usable, but materially incomplete; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.

**Service Response:** PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 2 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA period stated in Table A. The resolution will be delivered in the same format as Severity 1 problems. If PrimeKey delivers an acceptable work around for a Severity 2 problem, the severity classification will drop to a Severity 3.

iii. **Severity 3:** Produces an inconvenient situation in which Software is usable, but does not provide a function in the most convenient or expeditious manner, and the user suffers little or no significant impact.

**Service Response:** PrimeKey will use reasonable commercial efforts to resolve Severity 3 problems in the next Maintenance Release.

iv. **Severity 4:** Produces a noticeable situation in which the use is affected in some way which is reasonably correct-able by a documentation change or by a future, regular release from PrimeKey.

**Service Response:** PrimeKey will provide, if agreed by PrimeKey, as a fix or fixes for Severity 4 problems in future Maintenance Release.

**C. Support incident**

PrimeKey, in its reasonable discretion, will determine what constitutes a support Incident. Typically, a support Incident is a situation where Customer needs remedial support focusing on one aspect of the Software Product Severity Levels 1, 2 and 3. Note that Severity Level 4 from is not considered as a support Incident. One support Incident may involve multiple emails, phone consultations, and off-line research.

A Support Incident has reached resolution when Customer receives one of the following:

- a) Information that resolves the issue;
- b) Information on how to obtain a software solution that will resolve the issue, or information that identifies the issue as being resolved by upgrading to a new Release of the Software Product;
- c) Notice that the issue is caused by a previously known, unresolved issue or an incompatibility issue with the Software;

d) information that isolates issue to a third-party product, not supported by PrimeKey.

**3. MAINTENANCE**

PrimeKey will maintain the Software by providing Major Releases, Minor releases and Maintenance Releases as the same are offered by PrimeKey to its licensees of the Software under maintenance generally.

Releases will be provided on an as-available basis and include the items listed below:

a) Bug fixes;

b) Enhancements to keep current with the Software Hardware delivered under the same Delivery Agreement as the Software; and

c) Performance enhancements to the PrimeKey Software; but

Releases do not include:

a) Platforms not included in Software;

b) new functions such as new applications/modules.

Releases will be provided in object code or update archives and updates to related documentation will be made available for electronic down load. All such deliveries shall be made by a single communication to the Agreement Coordinator. Duplication, distribution and installation of releases are the responsibility of Customer. If requested, PrimeKey will provide assistance in the installation of Releases on a time and materials basis, plus expenses.

PrimeKey will not be responsible for incompatibilities as set forth in section **1.F** above

**CATBIRD NETWORKS, INC.**  
**1800 GREEN HILLS ROAD, SUITE 113**  
**SCOTTS VALLEY, CA 95066**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Catbird Networks, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the

terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**CATBIRD NETWORKS, INC.**

**CATBIRD NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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**ARTICLE 1: DEFINITIONS**

“Catbird” means Catbird Networks Inc., 1800 Green Hills Road Suite 113, Scotts Valley, CA 95066.

“Catbird Control Center” is a web-based management console for managing one or more Catbird Virtual Machine Appliances (as defined below).

“Catbird Virtual Machine Appliance” is software that provides security by connecting to physical or virtual network switches.

“Catbird Virtual Security Professional” or “CVSP” is a suite of training materials comprising curricula and software.

“Catbird vSecurity® Application” comprises two components: the Catbird Virtual Machine Appliance and the Catbird Control Center. The Catbird Virtual Machine Appliance operates in existing virtual infrastructures or as a standalone virtual machine using a virtual machine player technology. The Catbird Control Center provides management, data correlation, data analysis, logging and integration with other vendor products.

“Seat” means a named individual user of CVSP.

“Socket” means a CPU slot on a printed circuit board (PCB) that is designed to house a CPU (also called a microprocessor). CPU sockets are found on the motherboard of server computers.

“Software” means the Catbird vSecurity® Application and CVSP, including (a) all of the contents of the files, download packages delivered to Ordering Activity or hosted by Catbird or its distributors, resellers, OEM/MSP partners, or other business partners (collectively “Authorized Partner(s)”) and accessed by Ordering Activity, including but not limited to (i) Catbird or third party computer information or software; (ii) related explanatory materials in printed, electronic, or online form, including information on the term of Ordering Activity license (“Documentation”); and (b) upgrades, modified or subsequent versions and updates of the Software, if any, licensed to Ordering Activity by Catbird or an authorized partner as part of a maintenance contract or service subscription.

“Use” or “Using” means to access, install, download, copy or otherwise benefit from the Software.

**ARTICLE 2: LICENSE GRANTS**

Section 2.1 Catbird Control Center License. Contractor hereby grants Ordering Activity, as defined in GSA Order ADM4800.2H and revised from time to time, a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install and use Catbird Control Center on Ordering Activity computer(s), for the sole purpose of managing Catbird Virtual Machine Appliances. Ordering Activity license is for the number of Seats set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.2 Catbird Virtual Machine Appliance License. Contractor hereby grants Ordering Activity a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install, and Use the Catbird Virtual Machine Appliance software on Ordering Activity computer(s), for the sole purpose of implementing network security controls and virtual infrastructure monitoring within Ordering Activity network. Ordering Activity license is for the number of Sockets set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.3 CVSP License. Contractor hereby grants Ordering Activity a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install and Use CVSP for the sole purpose of Using the Catbird vSecurity® Application. Ordering Activity's license is for the number of Seats set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.4 Feedback License. Ordering Activity hereby grant to Catbird through Contractor a royalty-free, worldwide, irrevocable, perpetual license to make any and all use of any and all suggestions, enhancement requests, recommendations or other feedback provided by Ordering Activity or on Ordering Activity's behalf relating to the Software, any portion thereof, or any Documentation and training materials associated therewith.

**ARTICLE 3: USE OF THE SOFTWARE**

Section 3.1 No Third-Party Grants. Ordering Activity will not sell, assign, rent, lease, distribute, export, import, act as an intermediary or provider, or otherwise grant rights to third parties with regard to the Software or any portion thereof.

Section 3.2 No Improper Use. Ordering Activity will not (i) permit any third party to access the Software or make the Software available for access by any third party unless expressly agreed to in writing by Catbird, (ii) copy, frame or mirror any part or content of the Software, (iii) access the Software in order to build a competitive product or service, (iv) copy any features, functions or graphics of the Software, (v) Use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (vi) Use the Software to store or transmit malicious code or software, (vii) interfere with

or disrupt the integrity or performance of the Software or third-party data contained therein, (viii) attempt to gain unauthorized access to the Software or its related systems or networks, or (ix) Use the Software, alone or in combination with other components, to infringe the intellectual property rights of any third party.

Section 3.3 **No Reverse Engineering.** Ordering Activity will not undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of the Software or any portion thereof. Any source code, ideas, know-how, techniques, algorithms, procedures, and any other concepts derived from any act performed in violation of this Section 3.3 shall constitute intellectual property of Catbird to which Catbird shall retain all exclusive right, title, and interest, and to which the terms of Section 4.1 shall apply.

Section 3.4 **No Unlawful Use.** Ordering Activity will Use the Software solely for lawful purposes. In this respect, Ordering Activity may not, without limitation (a) intercept or monitor any equipment that is not Ordering Activity's; (b) use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble the Software; (c) Use the Software to cause or intend to cause embarrassment or distress to, or to threaten, harass any third party.

Section 3.5 **Consent.** If Ordering Activity Use of the Software is dependent upon the use of a processor and bandwidth owned or controlled by a third party, Ordering Activity acknowledge and agree that Ordering Activity license to Use the Software is subject to Ordering Activity obtaining consent from the relevant third party for such use. Ordering Activity represent and warrant that by accepting this Agreement and using the Software, Ordering Activity have obtained such consent.

#### **ARTICLE 4: EXCLUSIVE OWNERSHIP**

Section 4.1 **Owned by Catbird.** As between Ordering Activity and Catbird, Catbird shall own all right, title, and interest in and to the Software and any associated Documentation and training materials, including all related intellectual property rights ("**IP Rights**"). Nothing in this Agreement shall be construed to transfer any such IP Rights to, or to vest any such IP Rights in, Ordering Activity. Ordering Activity will not take any action to jeopardize, limit or interfere with Catbird's IP Rights. Any unauthorized use of Catbird's IP Rights is a material breach of this Agreement as well as a violation of intellectual property laws and treaties, including without limitation copyright laws and trademark laws. For the avoidance of doubt, Ordering Activity possession, installation, or Use of the Software does not transfer to Ordering Activity any title to the intellectual property in the Software, and Ordering Activity will not acquire any rights to the Software except as expressly set forth in this Agreement. Any copy of the Software and Documentation authorized to be made hereunder must contain the same proprietary notices that appear on and in the Software and Documentation.

Section 4.2 **No Removal of Notices.** Ordering Activity will not remove, obscure, make illegible or alter any notices or indications of the IP Rights and/or Catbird's rights in the Software or any associated documentation and Training Materials and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to any materials.

#### **ARTICLE 5: UPGRADES AND UPDATES**

Section 5.1 **Upgrades.** Contractor, in its sole discretion, reserves the right to add additional features or functions, or to provide programming fixes, updates and upgrades, to the Software. Contractor has no obligation to make available to Ordering Activity any subsequent versions of the Software.

Section 5.2 **Updates.** Contractor, in its sole discretion, reserves the right to updates security information to the Catbird vSecurity® Application. Contractor has no obligation to make available to Ordering Activity any subsequent updates to the security information contained within the Catbird vSecurity® Application.

#### **ARTICLE 6: RESERVED**

#### **ARTICLE 7: INDEMNIFICATION, WARRANTY DISCLAIMER AND LIMITATIONS OF LIABILITY**

Section 7.1 **Reserved.**

Section 7.2 **Warranty Disclaimer.** CONTRACTOR MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM THE EXTENT TO WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW, CONTRACTOR, ITS SUPPLIERS, AND AUTHORIZED PARTNERS MAKE NO WARRANTY, CONDITION, REPRESENTATION, OR TERM (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT OF THIRD PARTY RIGHTS, SATISFACTORY QUALITY, OR INTEGRATION. WITHOUT LIMITING THE FOREGOING PROVISIONS, CONTRACTOR MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(o). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

Section 7.3 **Reserved.**

#### **ARTICLE 8: TERMINATION**

Section 8.1 **Reserved.**

Section 8.2 **Reserved.**

Section 8.3 Consequences of Termination. Upon termination of this Agreement:

(a) all licenses and rights to Use the Software shall immediately terminate; (b) Ordering Activity will immediately cease any and all Use of the Software; and (c) Ordering Activity will immediately remove the Software from all hard drives, networks and other storage media and destroy all copies of the Software in Ordering Activity's possession or under Ordering Activity's control.

## **ARTICLE 9: MISCELLANEOUS**

Section 9.1 Export Controls. Ordering Activity are advised that the Software is of United States origin and subject to the United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. Ordering Activity agree not to directly or indirectly export, import, download or transmit the Software to any country, end user or for any Use that is prohibited by applicable United States regulation or statute (including but not limited to those countries embargoed from time to time by the United States government). Additionally, Ordering Activity agree not to directly or indirectly export, import or transmit the Software contrary to the laws or regulations of the United States.

Section 9.2 Government End Users. The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any Use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Schedule Contract and shall be prohibited except to the extent expressly permitted by the terms of this Schedule Contract.

Section 9.3 Reserved.

Section 9.4 Reserved.

Section 9.5 No Waiver. No waiver of any term or condition of this Agreement will be valid or binding on either Party unless the same will have been mutually assented to in writing by an officer of both Parties. The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either Party to enforce each and every such provision thereafter.

Section 9.6 Partial Invalidity. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect, and the Parties shall negotiate in good faith a substitute, valid, and enforceable provision that most nearly reflects the Parties' intent in entering into this Agreement.

Section 9.7 Catbird Customer Contact. If Ordering Activity have any questions concerning this Agreement, or if Ordering Activity would like to contact Catbird for any other reason, please call (831) 440-8149, fax (831) 461-1611, or write: Catbird Networks, Inc., Attention: Customer Service, 1800 Green Hills Road, Suite 113, Scotts Valley, California 95066

**CBT NUGGETS**  
1550 VALLEY RIVER DRIVE,  
EUGENE, OR 97401



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## End User License Agreement

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### RECITALS:

CBT Nuggets is engaged in the business of creating and selling information technology training materials, including, but not limited to, applications and platforms, individual videos within a series, entire series, series packages, supplemental materials, Learner resources, quiz questions, proprietary instances of the virtual lab and/or access to any portions thereof (the “CBT Content”).

Specific to this Agreement, CBT Nuggets offers a streaming subscription to access the CBT Content offered by CBT Nuggets through its website located at <http://www.cbtnuggets.com> (the “Website”), the CBT Nuggets mobile applications (“Apps”), as well as other learning resources and team coaching services (collectively the “Services”).

The Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Government Customer” or “Ordering Activity”) desires to access the CBT Content and, as applicable, to make the CBT Content and Services available to Government Customer’s employees and contractors (individually “End User” and collectively the “End Users”), and CBT Nuggets desires to provide the same pursuant to the terms and subject to the conditions of this End User License Agreement (“Agreement”).

### AGREEMENT:

The Parties agree as follows:

#### GRANT OF LICENSE.

While Government Customer has an active subscription to access the CBT Content through the Website, CBT Nuggets grants Government Customer non-transferrable, non-royalty bearing, non-assignable (except as explicitly permitted herein), non-exclusive, non-sublicensable licenses to access, view and to use the CBT Content. The licenses are solely for use by Government Customer and its End Users.

Government Customer may not copy, reproduce, reverse engineer, translate, port, modify or make derivative works of the CBT Content in whole or in part. Government Customer may not rent, sell, assign, lease, sublicense, market, publish, display, distribute or transfer the CBT Content in any manner not expressly authorized by this Agreement without the consent of CBT Nuggets. Government Customer shall communicate to all End Users the restrictions and limitations of the license as set forth in this Paragraph 1.

Each license is a single user license and the single user license must be connected to a named End User. The email address attached to license must be specifically associated solely with that individual End User. Government Customer may reassign to a new End User any single user license that has been held by another End User for at least thirty (30) days prior to any such assignment.

Upon Government Customer’s discovery and/or the request of CBT Nuggets, Government Customer agrees to promptly remedy any violation of this Paragraph 1 and to provide CBT Nuggets with sufficient evidence that Government Customer is in compliance with this Paragraph 1.

**WHEN THE END USER IS AN INSTRUMENTALITY OF THE U.S., RECOURSE AGAINST THE UNITED STATES FOR ANY ALLEGED BREACH OF THIS AGREEMENT MUST BE MADE AS A DISPUTE UNDER THE CONTRACT DISPUTES CLAUSE (CONTRACT DISPUTES ACT). DURING ANY DISPUTE UNDER THE DISPUTES CLAUSE, CBT NUGGETS SHALL PROCEED DILIGENTLY WITH PERFORMANCE OF THIS AGREEMENT, PENDING FINAL RESOLUTION OF ANY REQUEST FOR RELIEF, CLAIM, APPEAL, OR ACTION ARISING UNDER THE AGREEMENT, AND COMPLY WITH**

**ANY DECISION OF THE CONTRACTING OFFICER.**

End Users connected to a valid license may access additional training resources, as provided by CBT Nuggets, including Accountability Coaching, access to the Learner Community, and other training offerings. Access to such resources are as available and dependent upon an End User's professionalism and decorum while engaging such resources, CBT Nuggets staff, and/or other End Users through such resources or the Services.

Access to and use of the CBT Nuggets Content and Services is inextricably linked to the processing of personal data, as outlined in the CBT Nuggets Privacy Policy available at <https://www.cbtnuggets.com/privacy>.

**Limited Warranty.** Each party warrants to the other party that it has all necessary authority to enter into and perform its obligations under this Agreement. CBT Nuggets further warrants that: (i) any Services provided under this Agreement and the Order Form will be performed in a professional manner in accordance with the prevailing industry standards; (ii) the Services will be performed substantially in accordance with any applicable CBT Nuggets documentation under normal use and circumstances; and (iii) the functionality and accessibility of the CBT Content will not be materially decreased during the term of this Agreement. Government Customer's exclusive remedy for any breach of these warranties shall be to terminate this Agreement pursuant to Paragraph 5 herein.

**Disclaimer of Warranties.** Except as expressly provided in Paragraph 3 of this Agreement, the CBT Content and Services are provided to Government Customer on an "AS IS" and "WITH ALL FAULTS" basis. The CBT Content and Services are complex and may contain nonconformities, defects or errors. CBT Nuggets does not warrant that the CBT Content and Services will be error free. **CBT Nuggets does not make any warranty, express or implied, and hereby disclaims any and all warranties, including but not limited to, warranties of merchantability and fitness for a particular purpose.**

**Intellectual Property.** All right, title and interest in and to the CBT Content and Services, and the content, materials, and data contained therein, including any applicable statutory or common law trademarks and/or copyrights expressly reserved by CBT Nuggets. No portion of the CBT Content may be copied, reproduced, distributed, displayed, transferred or assigned without the express written consent of CBT Nuggets.

**TERM AND TERMINATION.**

**Term.** The term of Government Customer's subscription period for accessing the CBT Content and the related services shall commence on the Effective Date and shall continue for the duration stated on the Order Form. Unless the Parties otherwise agree in writing, through the execution of a renewal or extension of this Agreement ("Renewal Order Form"), once any applicable subscription period has concluded, the licenses granted by this Agreement shall immediately terminate and Government Customer shall have no further right to access, review or use in any manner any CBT Nuggets content, including the CBT Content.

**Termination for Cause.** When the End User is an instrumentality of the United States, recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the Contract Disputes Act. During any dispute under the Disputes Clause, CBT Nuggets shall proceed diligently with performance of this Agreement, pending final resolution for relief, claim, appeal, or action arising under this Agreement, and comply with any decision of the Contracting Officer.

**Effect of Termination of Services.** Upon expiration of Government Customer's subscription authorized under the Order Form or, as applicable, the Renewal Order Form, Government Customer shall immediately discontinue all access and use of the CBT Content. Neither Party shall be liable for any damages resulting from a termination of this Agreement in accordance with this Paragraph 5. Those sections of this Agreement, which by their nature should survive, shall survive.

**Governing Law and Venue.** In the event of any dispute or claim relating to or arising out of this Agreement shall be governed by, and construed and interpreted in accordance with United States Federal law, and any action seeking legal or equitable relief will be brought and adjudicated only in the courts of the United States.

**MISCELLANEOUS PROVISIONS.**

**Notices.** Notices may be provided by either electronic or physical mail as provided in the Order Form. If no email address is stated, then physical mail shall be the only method of providing notice. The person(s)/department(s)

identified in the Order Form will receive notices on behalf of their respective party. Each

Party may change the person(s)/department(s) to which notices shall be sent by providing written notice to the other Party.

**Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**Entire Agreement.** This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s) and the CBT Nuggets Privacy Policy sets forth the entire understanding between CBT Nuggets and Government Customer with respect to the subject matter hereof, and supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. No other rights are granted hereunder except as expressly set forth in this Agreement.

**Order of Precedence, Conflicting Terms.** In the event of any conflict between the terms contained in the Agreement and the Order Form, the terms of the Order Form shall take precedence.

**Compliance with Laws.** Both Parties agree to comply with all applicable local, state, national and foreign laws, rules and regulations including, but not limited to, all applicable export and import laws and regulations, in connection with their performance, access and/or use of the CBT Content under this Agreement to the extent permitted by United States Federal law and does not limit the sovereignty of the United States.

**STANDARD TERMS.**

Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The vendor shall state separately on its invoices taxes excluded from the fees, and the Government Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204.

The vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor. When the end user is an instrumentality of the U.S. Government, neither this Agreement, the Order Form, nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect.



**CHECK POINT SOFTWARE TECHNOLOGIES, INC.  
800 BRIDGE PARKWAY  
REDWOOD CITY, CA 94065**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Check Point Software Technologies, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the

terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**CHECK POINT SOFTWARE**

**CHECK POINT SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS**

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**1. DEFINITIONS:**

**“Licensed Configuration”** means to the extent applicable, as indicated on the License Key, the choice of features and the maximum number of users, devices or nodes (an internal computing device with an IP address) on the trusted side of the network or that is trying to traverse the firewall, and the numbers of cores, or the maximum throughput capacity stated, or the code generated from the master installation, or any other hardware or software specifications, as declared by You in Your purchase order, or request for License Key, and upon which the licensing fee was based. If the Product purchased by You does not come with a License Key then the Licensed Configuration shall be the minimum configuration allowed for the Product by Check Point upon which the licensing fee was based.

**“Licensed-server”** means the server or appliance (defined by the host ID identified by You to Contractor through Check Point when obtaining the License Key) which enables the Product to operate in accordance with the Licensed Configuration. **“License Key”** means the code provided to You by Contractor through Check Point, which enables the Product to operate on the Licensed-server or appliance for the specified Licensed Configuration.

**“Product”** means the object code copy of the software program, including Third Party Software, provided to You, together with the associated original electronic media and/or associated hardware devices (“Hardware Products”) and all accompanying manuals and other documentation, if available, and together with all enhancements, upgrades, and extensions thereto that may be provided by Contractor through Check Point to You from time to time.

**“Standard User”** means You indicated in Your purchase order or in requesting the License Key that You intend to use the Products on Your own behalf, or You obtained the products from a Managed Service Provider, reseller, vendor or any other intermediate supplier.

**“Third Party Software”** means any software programs provided by third parties contained in the Product.

**“Third Party Software Provider”** means the third party that has the right to provide and grant licenses for the use of Third Party Software.

**“You”** or **“Your”** means Ordering Activity.

**2. LICENSE AND RESTRICTIONS:**

**License.** Contractor hereby grants only to You, a non-exclusive, non-sublicensable, non-transferable perpetual license (with the exception of (i) the license shall not be perpetual if the Product is designated for a limited time period only, in which case the license shall terminate at the expiration of the applicable period; and (ii) with regards to any Hardware Product, the license shall be valid only as part of and for the life of the originally designated Hardware Product) to install and use the copy of the Product in accordance with the relevant end user documentation provided by Contractor only on the Licensed-server and only for the Licensed Configuration. You have no right to receive, use or examine any source code or design documentation relating to the Product.

**Standard User Restrictions.** If You are a Standard User, the Products are licensed to You solely for use by You to provide policy management for Your own operations. To the extent applicable, You may reproduce the downloaded or installed Product for the purpose of connecting only with a duly licensed Check Point product, in accordance with the functionality, as described in the accompanying documentation for which You have paid the applicable fees to Contractor, and only within the designated limits of Your Product license for which You have purchased and provided to users, according to the restricted, maximum, authorized number of users, computer instances (means a computing unit individuated by an instance of an operation system), or copies of the Product (as the case may be) that can be used and installed at any given time. No Product, nor any portion thereof, may be used by or on behalf of, accessed by, re-sold to, rented to, or distributed to any other party.

**General Restrictions.** Except for copies solely for back-up or disaster recovery purposes or as may be permitted by applicable law, You may not copy the Product, in whole or in part. You must reproduce and include the copyright notice and any other notices that appear on the original Product on any back up copy. You agree not to allow others to use the Product and You will not use the Product for the benefit of third parties. You acknowledge that the source code of the Product, and the underlying ideas or concepts, are valuable intellectual property of Check Point and You agree not to, except as expressly authorized and only to the extent established by applicable statutory law, attempt to (or permit others to) decipher, reverse translate, decompile, disassemble or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms or file formats or programming or interoperability interfaces of the Products by any means whatsoever. You will not develop methods to enable unauthorized parties to use the Product, or to develop any other product containing any of the concepts and ideas contained in the Product not independently developed by You. You will not (and will not direct any third party to) modify Product or incorporate any portion of Product into any other software or create a derivative work of any portion of the Product. You will not (and will not direct any third party to) remove any copyright or other proprietary notices from the Product. Your use of the Product may require the purchase of separate licenses to use particular features, functionalities, operations, or capabilities.

**Specific Restrictions.** The Product is licensed to You based on the applicable Licensed Configuration purchased, as set forth in the Licensed Configuration definition in Section 1. The License permits the use of the Product only in accordance with the Product specifications as declared by You in Your purchase order, or request for License Key, and upon which the licensing fee was based. It is

a violation to create, set-up or design any hardware, software or system which alters the number of readable IP addresses, users, number of cores or exceeds the maximum throughput capacity presented to the Product with the intent, or resulting effect, of circumventing the Licensed Configuration.

**Disabled License-server.** The License Key You obtain from Contractor through Check Point enables the Licensed-server which enables You to use the Licensed Configuration of the Product. If your Licensed-server is disabled for any reason, Check Point may, at its sole discretion, issue You another License Key which will enable You to operate this Product on a substitute Licensed-server. In this event, You agree not to use the Product on the original Licensed-server nor its License Key.

**Customization for Product with VPN Functionality.** For a Product with VPN functionality, customization is permitted to allow the inclusion of a bitmap on the left side of the authentication challenge/response dialog, and the insertion of text in the authentication success and authentication failure dialog boxes; provided, however, that the Product is used to communicate with a Check Point VPN-1 gateway licensed to the entity using the Product and the customization may not contain any reference to a competitive gateway or to Check Point products or services without Contractor's prior written approval.

**Check Point Data Loss Prevention ("DLP") Blade, DLP-1 Product Family and Document Security Product Family.** If you are using any of these products, in many countries you may be required to advise users that their data, actions taken on the data, and web traffic may be inspected. Please consult the Check Point user guide and local laws as applicable.

**Third Party Violation.** In purchasing a Product, You are acknowledging that Contractor through Check Point may need to make a determination for You on the potential effect the identified programs may have on Your system. You agree that the Product may automatically delete and/or restrict access to certain programs and/or provide to You the customized ability to delete and/or restrict access to certain programs. The deletion and/or restriction of access to any of these programs may be in violation with other license agreements that You have knowingly or unknowingly agreed to. The deletion and/or restriction of these programs and the potential violation of a third party license is Your responsibility. Check Point has no ability to verify what, if any, third party agreements You may have agreed to.

**Inspecting Encrypted Traffic.** Certain Check Point products and/or features may enable the inspection of encrypted traffic. The ability to define the inspection rules is provided to You and You may define it based on your organizational needs. However, it shall be your sole responsibility to comply with all applicable laws and regulations in defining Your inspection rules and privacy regulations. You understand that this feature enables decrypting the traffic at the gateway in order to inspect it, after which it is re-encrypted before it is sent to the server.

### 3. TITLE AND INTELLECTUAL PROPERTY:

All right, title, and interest in and to the Product shall remain with Check Point and its licensors. The Product is protected under international copyright, trademark and trade secret and patent laws. The license granted herein does not constitute a sale of the Product or any portion or copy of it.

### 4. LIMITED WARRANTY, WARRANTY DISCLAIMERS:

**Limited Software Warranty.** Contractor warrants to You that the encoding of the software program on the media on which the Product is furnished will be free from defects in material and workmanship, and that the Product shall substantially conform to its user manual, as it exists at the date of delivery, for a period of ninety (90) days. Contractor's liability and Your remedy under this warranty shall be, at Contractor's option, either: (i) return of the price paid to Contractor for the Product, resulting in the termination of the purchase order, or (ii) repair or replacement of the Product or media that does not meet this limited warranty. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS SECTION, THE PRODUCT AND ANY SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED. CONTRACTOR DOES NOT WARRANT THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. CONTRACTOR DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Some jurisdictions do not allow the exclusion of implied warranties or limitations on how long an implied warranty may last, so the above limitations may not apply to You. This warranty gives You specific legal rights.

### 5. PRE-RELEASE VERSIONS:

**License Grant.** With respect to any pre-release version of a Check Point product, including a Beta or an Early Availability product (all collectively referred to herein as a "Beta Product") that may be provided to You by Contractor through Check Point from time to time, at its sole discretion, Contractor grants You a non-transferable and non-exclusive license to use the Beta Product for evaluation purposes only. The license is designed to provide You with early operational experience with the Beta Product and to provide Check Point with specified information regarding Your experiences with the installation and operation of the Beta Product. The license shall be in effect for a limited period as determined by Check Point and certain other restrictions may apply. You may be asked to sign a separate agreement pertaining to the Beta Product.

**No Obligations.** Contractor has no obligation to provide support, maintenance, upgrades, modifications, or new releases for a Beta Product. Owing to the experimental nature of the Beta Product, You are advised not to rely exclusively on the Beta Product for any reason. YOU AGREE THAT THE BETA PRODUCT AND RELATED DOCUMENTATION ARE BEING DELIVERED "AS IS" WITHOUT WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL CONTRACTOR BE LIABLE TO YOU OR ANY OTHER PERSON FOR DAMAGES, DIRECT OR INDIRECT, OF ANY NATURE OR EXPENSES INCURRED BY YOU IN CONNECTION WITH THE BETA TESTING. YOUR REMEDY SHALL BE TO TERMINATE THE BETA TEST AND THIS LICENSE BY WRITTEN NOTICE TO CONTRACTOR.



**EXHIBIT A – CHECK POINT HARDWARE WARRANTY:****1. LIMITED HARDWARE WARRANTY:**

Contractor warrants that the hardware components of its Hardware Product shall be free from material defects in design, materials, and workmanship and will function, under normal use and circumstances, in accordance with the documentation provided, for a period of one (1) year from the date of activation of the Hardware Product. If the Hardware Product has not been activated, the warranty will be valid for fifteen (15) months from the date of Contractor's shipment of the Hardware Product ("Warranty Period").

After the Warranty Period, certain return material authorization ("RMA") services, as provided by Contractor through Check Point (which are not covered under this warranty), are available for all Hardware Products pursuant to a purchased and active Check Point support agreement.

Ordering Activity's (herein also referred to as "You" or "Your") remedy, and Contractor's liability for defective hardware components, shall be that Contractor through Check Point, upon confirmation of a defect or failure of a hardware component to perform as warranted, shall at its sole option, either repair or replace the nonconforming hardware component or return of the price paid for the Hardware Product. All replacement parts furnished to you under this warranty shall be refurbished and equivalent to new, and shall be warranted as new for the remainder of the original warranty period. If a hardware failure occurs in the first 30 days from the product's software activation, Contractor through Check Point will replace it with new part or full unit as may be needed. All defective parts, which have been replaced, shall become the property of Check Point. All defective parts that have been repaired shall remain Your property. This warranty gives You specific legal rights.

**2. EXCLUSIONS:**

The foregoing warranties and remedies shall be void as to any Hardware Products damaged or rendered unserviceable by one or more of the following: (1) improper or inadequate maintenance by anyone other than Contractor or Contractor's authorized agents, (2) software or interfacing supplied by anyone other than Contractor, (3) modifications, alterations or additions to the Hardware Products by personnel not certified by Contractor or Contractor's authorized agents to perform such acts, or other unauthorized repair, installation or opening or other causes beyond Contractor's control, (4) unreasonable refusal to agree with engineering change notice programs, (5) negligence by any person other than Contractor or Contractor's authorized agents, (6) misuse, abuse, accident, electrical irregularity, theft, vandalism, fire, water or other peril, (7) damage caused by containment and/or operation outside the environmental specifications for the Hardware Products, (8) alteration or connection of the Hardware Products to other systems, equipment or devices (other than those specifically approved by Contractor) without the prior approval of Contractor, or (9) any use that is inconsistent with the user manual supplied with the Hardware Product. The warranty period is not extended if Contractor through Check Point repairs or replaces a warranted product or any parts. Contractor may change the availability of limited hardware warranties, at its discretion, but any changes will not be retroactive.

**3. HARDWARE RETURN PROCEDURES:**

If a Hardware Product or one of its component parts does not function as warranted during the warranty period, and such nonconformance can be verified by Contractor through Check Point, Check Point, at its election, will provide either return and replacement service or replacement with a refurbished part/unit for the Hardware Product under the type of warranty service Check Point designates for that Hardware Product. A defective Hardware Product or one of its component parts may only be returned to Check Point upon Check Point's prior written approval. Any such approval shall reference an RMA number issued by an authorized Check Point service representative. To request an RMA number, you or your local Check Point Certified Solution Provider ("CCSP/CSP/ACSP") must contact Check Point's Technical Assistance Center ("TAC") and open a Service Request. You should always register the Hardware Product in your Check Point User Center account. If you do not register the Hardware Product with Check Point, you may be required to present proof of purchase as evidence of your entitlement to warranty service. The Hardware Product's identification number will be required for all RMA cases.

Transportation costs, if any, incurred in connection with the return of a defective Hardware Product to Contractor through Check Point shall be borne by You. Any transportation costs incurred in connection with the redelivery of a repaired or replacement item to You by Check Point shall be borne by Check Point; provided, however, that if Check Point determines, in its sole discretion, that the allegedly defective item is not covered by the terms and conditions of the warranty or that a warranty claim is made after the warranty period, the cost of the repair by Check Point, including all shipping expenses, shall be reimbursed by You.

**4. HARDWARE REPLACEMENT PROCEDURES:**

Contractor through Check Point will attempt to diagnose and resolve your problem over the phone or web. Upon determination of the hardware issue is related to a malfunction of one of the Hardware Product components, an RMA process will be initiated by Check Point's TAC. Check Point's TAC will either issue a replacement of the faulty part (like Power Supply, Fan, Hard Disk, etc.) or a full Unit Replacement.

For **Warranty Replacement** service, it is required that you deliver the faulty unit to a location Contractor through Check Point designates, and provide courier name and tracking number to Check Point's TAC. After the Faulty unit is returned to Check Point, Check Point will use commercially reasonable efforts to ship the replacement hardware within seven (7) business days. Actual delivery times may vary depending on Your location. Check Point's TAC will send the required hardware to the Hardware Product's physical location, as it appears in your User Center and as verified with You when opening the Support Service Request.

For **Hardware Advanced Replacement**, support options Standard, Standard Onsite, Premium, and Premium Onsite are available for



customers who have purchased the Hardware Product support plan with Contractor.

#### **5. HARDWARE RETURN PROCEDURES:**

If a defective Hardware Product covered under warranty fails to operate within thirty (30) days from its activation, but no more than one hundred and twenty (120) days from the date of Contractor's shipment of the Hardware Product, Contractor through Check Point will provide expedited replacement of a new unit within two (2) business days from Check Point fulfillment hub, following confirmation of any such failure. Customers outside of the fulfillment hub region should allow for additional transit time due to international customs clearance.

#### **6. ADDITIONAL RESPONSIBILITIES:**

You agree:

Before Contractor or its partner exchanges a Hardware Product or part, to remove all features, parts, options, alterations, data and attachments not under warranty service and ensure that the Hardware Product is free of any legal obligations or restrictions that prevent its exchange.

To obtain authorization from the owner to have Contractor or its partner service a Hardware Product that you do not own.

Where applicable, before service is provided:

Follow the service request procedures that Contractor or its partner provides;  
Backup and secure all programs and data in the Hardware Product;  
Inform Contractor or its partner of changes in the Hardware Product physical location.

To provide Contractor or its partner with sufficient and safe access to your facilities to permit Contractor to fulfill its obligations.

To ship back the faulty Hardware Product (or replaceable unit) suitably packaged according to the guidelines as Contractor through Check Point specified in the letter shipped with the RMA, to the Check Point designated location.

You shall ship the faulty Hardware Product once TAC approves the RMA and provide the courier name and tracking number to TAC before Contractor through Check Point processes the RMA.

If you are a customer who has purchased the support plan with Contractor covering Advanced Replacement Service, You will ship the faulty Hardware Product within five (5) business days of the arrival of the RMA.

To securely erase from any Hardware Product you return to Contractor through Check Point for any reason all programs and data not provided by Check Point with the Hardware Product. You acknowledge that in order to perform its responsibilities under this Limited Hardware Warranty, Check Point may ship all or part of the Hardware Product or its software to third party locations around the world, and you authorize Check Point to do so.

#### **EXHIBIT B - CHECK POINT DIRECT SUPPORT PROGRAM:**

##### **DEFINITIONS:**

"Advance Hardware Replacement" means a Hardware replacement service for Ordering Activities who have purchased Hardware Support, whereby after Check Point TAC approves an RMA, Check Point delivers a replacement to Ordering Activity's Site before returns the faulty hardware to Check Point.

"ACE Partner" means an authorized Check Point partner who is staffed with Check Point Certified Professionals and Appliance Certified Experts (ACE) in accordance with Check Point ACE Partner requirements.

"Activation Date" means the date a License Key is registered for activation of Software within the Check Point User Center.

"Appliance" shall have the meaning set forth herein for the term "Hardware".

"Business Day" means normal working day in the time zone where the Ordering Activity is located.

"Certified Professional" means an individual who has passed the appropriate current Check Point Certification Test(s) to demonstrate technical competency. The current minimum requirement of a Certified Professional is a Check Point Certified Security Expert (CCSETM) for the current Major Release of Network Software, Check Point Certified End Point Expert (CCEPE) for End Point Software and Check Point Appliance Certified Expert (CCSE ACE) for current Major Release of Hardware.

"Check Point" means Check Point Software Technologies, Inc..

"Ordering Activity" means the party identified as the purchasing organization.

"Designated Contacts" means Ordering Activity named contacts, engineering resource individuals, who are established person-specific email addresses in the User Center account associated with the Customer Support contract. It is expected that these contacts will be Check Point Certified Professionals.

“Device Number” means a unique identifier of a hardware device, which can be located in a label on a Hardware Product. Check Point uses Media Access Control (MAC) Address, Serial Number (SN), or Service Tag Number (STN) as a Device Number, depending on the type of Hardware.

“Documentation” means user and technical manuals provided by Check Point for use with the Software and Hardware.

“Endpoint Security Product(s)” means Check Point product(s) with an Endpoint device security focus.

“Enhancement” means all Software changes, including new releases, new versions, product improvements, system modifications, updates, upgrades, Service Packs, Feature Packs, field modifications, and all Hardware changes, including official Check Point Hardware product enhancements and accessories.

“Error” means an Error in the product, which degrades the product as defined by the Severity definitions, as compared to Check Point published functionality and performance specifications.

“Hardware” means a computing device and/or its component with a specific function and limited configuration ability. The Hardware is sold by Check Point for the purpose of executing the specific Check Point Software supplied with it.

“Information” means any idea, data, program, technical, business, or other intangible information, however conveyed.

“Intellectual Property” means Patents, copyrights, trademarks, and/or trade secrets whose owners have rights at law or in equity to exclude others from exploiting such property.

“Level 1 Support” means the ability to provide general pre and post-sales product information; hardware and software configuration; questions on upgrade Support; collect relevant technical problem identification information; perform base problem determination; provide basic Support on the standard products, protocols and features; replace Field Replaceable Units (FRUs) or whole Hardware units.

“Level 2 Support” means the ability to provide Level 1 Support plus the ability to resolve the majority of misconfigurations, troubleshoot and simulate complex configuration, hardware, and software problems; perform Hardware diagnostics to determine Hardware malfunction; support problem isolation and determination of product specification defects; provide lab simulation and interoperability and compatibility testing for new software and hardware releases prior to being deployed into a Ordering Activity production network; define an action plan; provide advanced Support on all products, protocols and features; have the ability to analyze traces, diagnose problems remotely, and provide Ordering Activity with complete steps to reproduce a problem.

“Level 3 Support” means the ability to provide Level 1 and Level 2 Support plus the ability to provide software enhancements such as patches and Hotfixes, fixing or generating workarounds that address software bugs; troubleshoot bugs that were not diagnosed during Level 2 Support; work with Ordering Activities to resolve critical situations, and building action plans with Ordering Activities to address complex issues.

“License Key” means code provided by Check Point, which activates the Software and enables the Software to operate.

“Major Release” means the current issuance of Software and/or Hardware that is designated by Check Point, as a change in the number or name, signifying a new product level, e.g. Check Point VPN-1 NG with Application Intelligence, NGX, or NGX R65. Hot Fix Accumulators (HFAs), Hotfixes, and/or Feature Packs do not constitute a Major Release change.

“Network Security Product(s)” means Check Point product(s) with network security focus.

“Previous Sequential Release” means Release of Software or Hardware, which has been replaced by a subsequent version of the product.

“Release” means Major Release of the same product.

“Problem Resolution” means the use of reasonable commercial efforts to resolve the reported problem. These methods may include (but are not limited to): configuration changes, patches that fix an issue, replacing a failed hardware, reinstalling the software, etc.

“Respond” means addressing the initial request and taking ownership of the issue.

“Response Time” means the amount of time elapsed between the initial contact by Ordering Activity to Check Point TAC and the returned response to Ordering Activity by Check Point support staff.

“RMA” means Return Material Authorization (RMA), the process of replacing a faulty Hardware or a component of a Hardware product. The process must be authorized by Check Point TAC.

“Service Request (SR)” means a single issue opened with Check Point TAC. The SR number identifies the Service Request. The format for the unique SR number can be as follows: 1-nnnnnnnnn or 11-nnnnnnnn (“n” is a digit).

“Severity” Definitions for Network Security product(s):

“Severity 1” means

- (a) an Error with a direct security impact on the product;
- (b) an Error isolated to Software or Appliance in a production environment that renders the product inoperative or causes the product to fail catastrophically; e.g., critical system impact, system down;
- (c) a reported defect in the licensed product in a production environment, which cannot be reasonably circumvented, in which there is an emergency condition that significantly restricts the use of the licensed product to perform necessary business functions; or
- (d) inability to use the licensed product or a critical impact on operation requiring an immediate solution.

“Severity 2” means

- (a) an Error isolated to Software or the Appliance that substantially degrades the performance of the product or materially restricts business; e.g., major system impact, temporary system hanging;
- (b) a reported defect in the licensed product, which restricts the use of one or more features of the licensed product to perform necessary business functions but does not completely restrict use of the licensed product; or
- (c) ability to use the licensed product, but an important function is not available, and operations are severely impacted.

“Severity 3” means

- (a) an Error isolated to the Software or Appliance that causes only a moderate impact on the use of the product; e.g., moderate system impact, performance/operational impact;
- (b) a reported defect in the licensed product that restricts the use of one or more features of the licensed product to perform necessary business functions, while the defect can be easily circumvented; or
- (c) an Error that can cause some functional restrictions but it does not have a critical or severe impact on operations.

“Severity 4” means

- (a) a reported anomaly in the licensed product that does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions; this is a minor problem and is not significant to operation; or
- (b) an anomaly that may be easily circumvented or may need to be submitted to Check Point Research and Development as a request for enhancement.

“Severity” Definitions for Endpoint Security product(s):

“Severity 1” means

- (a) an Error with a direct security impact on the product; or
- (b) an Error isolated to Software, for which there is no reasonable Workaround, which renders the product inoperative, causing the end-point devices to fail catastrophically, affecting more than 1000 end point devices or 35% of deployed client base (in any case more than 100 affected end-point devices) within a production environment (not pre deployment or staging) where end-point devices have been interrupted and not recovered; e.g., severe and general deployment wide system impact, systems are down, making end-point devices unable to perform (even with reduced performance) necessary business operations even after a change of, and/or addition of procedures, configurations, applications, tools and/or data.

“Severity 2” means

- (a) an Error isolated to Software, for which there is no reasonable workaround, which substantially degrades the usability of the end-point devices, restricting the usage of and/or access to one or more necessary business functions without completely restricting the use of the licensed product, affecting more than 500 end-point devices or 25% of deployed client base (in any case more than 50 affected end-point devices) within a production environment (not pre deployment or staging) where the end-point devices and/or Software may have been interrupted but recovered, in part or completely; e.g., end-point devices are operative but with limited capacity, substantially impacting the end-point devices’ ability to perform one or more necessary business functions; end-point devices and/or Software are operative, but an important product function is unavailable or not operating; end-point devices and/or Software may have been interrupted but recovered, in part or completely; inability to connect to the Internet /Intranet; or
- (b) an Error causing severe Software deployment/upgrade problems without prohibiting necessary business operations, affecting more than 500 end-point devices or 25% or more of the actual/intended client base (at least 50 devices affected); it may, or may not, be possible to circumvent the error, e.g., inability to install and/or upgrade product, without prohibiting the endpoint devices ability to perform necessary business operations; or business operations are not prohibited but may run with reduced performance.

“Severity 3” means

- (a) an Error isolated to Software, for which there is a reasonable Workaround, or an Error that causes only a minor impact on the end-point client. Restriction in usage of one or more features of the licensed product with minor impact of necessary business functions. The Error can cause some functional restrictions but it does not have a critical or severe impact on operations, e.g., the endpoint device is operational but may experience performance or operational limitations; or
- (b) an Error isolated to Software only affecting one or a limited number of individual end-point devices, that is not common for the installed end-point device population; it may, or may not, be possible to circumvent the error, e.g., an individual end-point device(s) is encountering issues not common for deployed end-point device client base.

“Severity 4” means a reported anomaly in the licensed product that does not substantially affect endpoint ability to perform normal business operations. This is a minor problem and does not constitute any significant limitation to products ability to allow normal business operation. An anomaly may be easily circumvented, e.g., a product cosmetic anomaly or documentation flaw; end-point devices and/or Software may have been interrupted but recovered.

“Site” means the physical location where System(s) are installed as specified by Ordering Activity in Ordering Activity’s User Center account.

“Software” means the object code version of the intangible information constituting one or more computer or apparatus programs and the informational content of such programs, together with any Documentation supplied in conjunction with, and supplementing such

programs, the foregoing being provided to Ordering Activity by way of electronic transmission or by being fixed in media furnished to Ordering Activity.

“Software Subscription” means registered access to modifications, corrections, and/or updates to Software; including Hot Fix Accumulators (HFAs), security fixes, Feature Packs, and/ or major upgrades, provided to Ordering Activity by unlimited web download access or by mail upon Ordering Activity’s request. Software Subscription is a deliverable for all Support Contracts.

“Shelf Spare Unit(s)” means Check Point Hardware unit(s) that is stored at Ordering Activity’s Site and which is reserved for Hardware replacement usage only in case of failure of Ordering Activity’s Hardware which is covered under Check Point On-Site Hardware Support Plan.

“Support” means the technical Support and Hardware replacement services provided by Check Point directly to Ordering Activity as set forth in this Agreement.

“System(s)” means the Hardware, Software and Documentation that have been provided to Ordering Activity by Check Point or Check Point’s authorized resellers/partners.

“TAC” means Check Point Technical Assistance Center, which is staffed by Check Point Support personnel providing assistance with diagnosis and resolution of defects and/or failures in Check Point products.

“Workaround” means a change in the followed procedures or data to avoid error without substantially impairing use of the product.

#### CHECK POINT SUPPORT OBLIGATIONS:

Upon Contractor’s acceptance of a valid purchase order, and corresponding payment for that Support offering selected, Ordering Activity will be entitled to receive Support according to the features and benefits provided under that offering, subject to these terms and conditions.

#### Technical Support:

For Ordering Activities covered under a valid Check Point Support offering, technical Support will be provided pursuant to the terms of this Section “TECHNICAL SUPPORT.” Contractor through Check Point agrees to provide Support, where appropriate, to Ordering Activity, which may include but is not limited to, the following actions:

(a) Provide Ordering Activity with access to product update releases, related Documentation and knowledge articles, upon general commercial release;

(b) Provide Ordering Activity with access to TAC Technical Representatives, who will work with Ordering Activity to diagnose issues, and provide Problem Resolutions, including escalating the issue through TAC management as needed.

**Hardware Replacement.** For Ordering Activities covered under Hardware Support, Contractor through Check Point will use commercially reasonable efforts to provide Hardware replacement in accordance with the terms set forth in the Section “HARDWARE REPLACEMENT.”

**On-site Hardware Support.** For those Ordering Activities whose Hardware Support level includes an on-site service feature, upon Ordering Activity’s request, after TAC determines that the hardware issue is related to a malfunction of one of the Hardware components, and after a repair action plan has been defined, Contractor through Check Point will use commercially reasonable efforts to dispatch a Check Point Certified Onsite Technician or ACE Partner to the Site in accordance with the terms and timeframes of such plan as set forth on Exhibit A. Provision of on-site support is subject to the following limitations:

(a) On-site Hardware Support is limited to Advance Hardware Replacement only; it does not include on-site service for Software troubleshooting or any Software related issues.

(b) On-site Hardware Support service may not dispatch a certified technician on-site to help set up the RMA unit outside of Check Point’s normal on-site service areas (<http://www.checkpoint.com/services/onsite-availability.html>). Under those situations, Check Point may provide a Shelf Spare solution under specific conditions to ensure a rapid unit replacement at the Ordering Activity’s site. Ordering Activity will need to sign up for this service under a separate Shelf Spare Replacement Agreement.

(c) On-site service response times may be dependent upon the Ordering Activity’s Site address for the Hardware, the timely arrival of replacement parts at Ordering Activity’s Site, and accessibility to the Site. On-site Hardware Support is effective one (1) month from the day it was purchased.

**On-site Software Support for Critical Severity 1 Issues.** For those Ordering Activities covered under Elite Support, the Ordering Activity shall contact Check Point TAC directly by telephone. After TAC confirms that the matter is a Severity 1 issue, TAC and the Ordering Activity will work diligently, with highly skilled, experienced engineers to resolve the critical situation and to restore operation. In the case the criticality of the issue remains or no progress is made, after four (4) hours, Contractor through Check Point will use commercially reasonable efforts to dispatch a local engineer to Ordering Activity’s Site. If no local resources are available, travel arrangements will be made for the next available flight to the Ordering Activity’s Site. The engineer will remain on-site until the issue is no longer defined as critical (an acceptable resolution or workaround was achieved) or up to three (3) days, with travel and expense included. Provision of on-site critical Severity 1 case support under Elite Support is subject to the following limitations:

- (a) An Elite Ordering Activity is entitled up to three (3) visits on-site a year as required to resolve critical Severity 1 cases.
- (b) On-site critical case Support is limited to Software Support only, and does not include on-site service for Hardware issues and Hardware replacement.
- (c) On-site critical case Support may not be available for some Check Point Software products or in some geographic regions, and may require a set-up period before it can be made available to Ordering Activities.
- (d) For Elite support service for critical issues, which requires fast arrival to the site, Contractor through Check Point will cover all locations which are accessible within 12 hour elapsed commercial travel time from G7 countries hubs (US (mainland), UK, Germany, Italy, France, Japan, and Canada). In some remote locations, entry certifications requirements might add additional time to the engineer arrival on site.
- (e) It is necessary that Elite Ordering Activities commit the necessary resources around the clock (24x7) in working with Check Point TAC and/or the engineer towards Problem Resolution of Severity 1 Errors.

#### Support Lifecycle.

- (a) Contractor through Check Point provides Support on the then-current Major Release and the Previous Sequential Release of all the Software products covered under a valid Software support plan. Check Point will also provide commercially reasonable technical assistance on all Software Products for a minimum of four (4) years, starting from the general availability date of the product's Major Release version. General availability date is defined as the date on which a product is officially made available for purchase, but Problem Resolution may be limited to the current Major Release of the product.
- (b) Contractor through Check Point usually ends Software Support for a Major Release version only when the second subsequent major version has been released, or at least four (4) years have elapsed since the release of the major version in question. Check Point will provide End of Support notification for discontinued Software to Ordering Activity through an announcement posted on the Check Point Software Support Timeline website at URL: [http://www.checkpoint.com/services/lifecycle/support\\_periods.html](http://www.checkpoint.com/services/lifecycle/support_periods.html).
- (c) Contractor through Check Point provides a comprehensive support lifecycle for its Hardware. Check Point TAC is available for Technical Assistance for up to five (5) years after Check Point's new appliance availability announcement. The supported version includes the combination of the exact Hardware model number and the specification with the Check Point Software installed on it.
- (d) For Software or Operating System installed on Check Point Hardware:
- a. The then-current Major Release of the Software that was installed on the Hardware is fully supported until one (1) year after Check Point's new appliance availability announcement.
  - b. Maintenance releases/bug fixes are supplied for up to three (3) years after new appliance availability announcement. These fixes may require a Software upgrade by the Ordering Activity.
  - c. Fixes and Software upgrades will be supplied to handle support issues for up to five (5) years after Check Point's new appliance availability announcement. New Software releases may require the purchase of Hardware upgrades by the Ordering Activity.
  - (e) Contractor through Check Point provides Hardware Replacement for up to five (5) years after Check Point's new appliance availability announcement. Hardware shall be repaired or replaced with same or similar products when needed, at Check Point's discretion.
  - (f) Contractor through Check Point will provide the date of Check Point's new appliance availability announcement and End of Support notification for discontinued Hardware to Ordering Activity through an announcement posted on the Check Point Appliance Support Timeline website at URL: [http://www.checkpoint.com/services/lifecycle/appliance\\_support.html](http://www.checkpoint.com/services/lifecycle/appliance_support.html).
  - (g) Contractor through Check Point reserves the right to modify Support Lifecycle policy at any time; notifications regarding changes in policy will be posted on the websites.

Nonconformance. If Contractor through Check Point determines the problem is due to nonconformance to published specifications of a Software version, or another substantial Check Point related problem, then under Check Point's Support plan, Check Point shall provide any Software fix for the reported nonconformance that may be available at the time the problem is reported. If no such fix is available, Check Point will use commercially reasonable efforts to remedy such nonconformance, which may include a Workaround or other temporary fix to the Software.

#### Exclusions.

Support does not include the following items or actions:

- (a) Step-by-step installation of Software or Service Packs;
- (b) Onsite services (unless Ordering Activity's level of Support, as purchased, includes this feature), Professional Services, or Educational Services;
- (c) Modification of software code, security-policy configuration, audits, or security design.

Contractor through Check Point shall have no obligation to Support:

- (a) An altered, damaged, or modified product or any portion of the product incorporated with or into other software, hardware, or products not specifically approved by Contractor through Check Point;
- (b) Product problems caused by Ordering Activity negligence, misuse, misapplication, or use of the product other than as specified in the Check Point user manual, or any other causes beyond the control of Contractor through Check Point;
- (c) Product installed on any computer hardware that is not supported by Contractor through Check Point;
- (d) Product not purchased from the Contractor's then-current GSA Price List;
- (e) Products subjected to unusual physical or electrical stress, misuse, negligence or accident, or used in ultra-hazardous activities;
- (f) Products that are past their End-of-Support date.

Contractor through Check Point shall have no obligation to Support Ordering Activity if:

- (a) Appropriate payment for Support has not been received by Contractor; or
- (b) Ordering Activity's annual Support term has expired without renewal.

Reporting Non-Check Point Errors to Ordering Activity. Upon working the Service Request under normal processes, and with appropriate management review, if at that point Contractor through Check Point believes that a problem reported by Ordering Activity may not be due to an error in the Check Point product, Check Point will notify Ordering Activity. At that time, Ordering Activity may: (a) instruct Check Point to proceed with problem determination at Ordering Activity's possible expense as set forth herein; or (b) instruct Check Point that Ordering Activity does not wish the problem to be pursued at Ordering Activity's possible expense.

If Ordering Activity requests that Contractor through Check Point proceed with problem determination at Ordering Activity's possible expense and Check Point determines that the error was not due to the error in the product, Ordering Activity shall pay Contractor, at the Contractor's Check Point then-current GSA rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. Ordering Activity shall not be liable for:

- (a) problem determination or repair to the extent the problems are due to anomalies in the Check Point product; or
- (b) work performed after Ordering Activity has notified Contractor through Check Point that it no longer wishes problem determination to be continued at Ordering Activity's possible expense (such notice shall be deemed given when actually received by Check Point).

If Ordering Activity instructs Contractor through Check Point that it does not wish the problem pursued at Ordering Activity's possible expense or such determination requires effort in excess of Ordering Activity instructions, Check Point may, at its sole discretion, investigate the anomaly with no liability thereof.

#### ORDERING ACTIVITY OBLIGATIONS:

Staffing. All Ordering Activity personnel contacting Contractor through Check Point for Support must be fully trained on both the Major Release of the Check Point Software and/or Hardware and the current issue for which Ordering Activity requires assistance.

Named Designated Contacts. Ordering Activity agrees that contact with Contractor through Check Point will be through the specified number of Designated Contacts. Ordering Activity is responsible for specifying and updating valid Designated Contacts in the Check Point User Center with person-specific email addresses. Ordering Activity agrees that access to any Support deliverable, Software Subscription downloads and SecureKnowledge will be through these Designated Contacts, not any alias. The ability to add additional contacts may be purchased per the prevailing Support Plan program guidelines.

Network Access. To the extent possible, and as requested by Contractor through Check Point, Ordering Activity understands that it may be necessary to provide Check Point or its authorized Technical Representative access to the affected network environment for any Severity 1 issue, or when Check Point determines that its Technical Representative needs to access Ordering Activity's network in order to remotely diagnose an issue. Ordering Activity understands that if access is not provided as requested by Check Point, problem determination will be slower or impaired.

Configuration Files. Ordering Activity agrees to maintain a backup of the configuration that can be used to restore the Hardware.

System Information. Ordering Activity must provide to Contractor through Check Point information for each System under a Support Plan by registering all products in the Ordering Activity's User Center Account with accurate details:

- (a) Product License Key or Device Number;
- (b) Physical Site location of the Hardware product; and
- (c) Site contact person.



If Ordering Activity physically moves any Hardware from the original Site to another location, Ordering Activity must inform Contractor through Check Point of such change immediately with updated Site location and contact. It is Ordering Activity's responsibility to update such change in the Ordering Activity's User Center Account. Prior to Check Point's receipt of such notification from Ordering Activity, Check Point shall not be liable for any lapses in service coverage or Hardware delivery delays with respect to such Hardware.

**Backup and Removal of Data.** To reconstruct lost or altered Ordering Activity files, data, or programs, Ordering Activity must maintain a separate backup system or procedure that is not dependent on the Software or Hardware products under Support.

Where applicable, before receiving Hardware Replacement Services or before disposal or return of Hardware to Contractor through Check Point, Ordering Activity agrees to:

- (a) backup and secure all programs and data contained in the Hardware;
- (b) securely erase all programs and data not provided by Contractor through Check Point with the Hardware product. Ordering Activity acknowledges that, to perform its responsibilities under this Replacement Service, Check Point may ship all or part of the Hardware product or its Software to third party locations around the world, and Ordering Activity authorizes Check Point to do so; and
- (c) remove all features, parts, options, alterations, and attachments not provided by Contractor through Check Point with the Hardware product, and ensure that the Hardware is free of any legal obligations or restrictions that prevent its exchange.

**On-site Access.** Where applicable, Ordering Activity agrees to provide Contractor through Check Point or its authorized partner with sufficient and safe access to Ordering Activity's facilities in order to permit Check Point to fulfill its obligations.

**Shelf Spare Units.** In the event that Ordering Activity has purchased Hardware Support with a Shelf Spare Replacement solution, Ordering Activity agrees that Contractor through Check Point shall, at all times, remain the sole owner of the Shelf Spare Unit(s) stored at the Ordering Activity's premises. Ordering Activity agrees that each Shelf Spare Unit stored at Ordering Activity's on-site location is to be used ONLY in case of Hardware failure approved by Check Point's TAC. Each Shelf Spare Unit's on-site location will be required to take an inventory of Hardware physically in stock on a quarterly basis and provide the results to the Check Point Logistics at [logistics-reports@checkpoint.com](mailto:logistics-reports@checkpoint.com). If it has been determined that the Shelf Spare Unit on-site location does not have the relevant Check Point inventory in stock and the missing inventory cannot be found or accounted for, or if the inventory is damaged as result of Ordering Activity's practices, the item shall be considered lost, and Check Point shall have the right to seek reimbursement from the Ordering Activity at the standard Check Point list price.

In the case that Contractor through Check Point will certify a local ACE Partner or subcontractor to provide the on-site Replacement Service, Check Point shall have the right to ask the Ordering Activity to send, at Check Point's expense, the Shelf Spare Unit from the Ordering Activity premises to the relevant partner at any time. In case this Support Plan is not renewed, Ordering Activity agrees to send the Shelf Spare Unit back to Check Point, or pay the full Check Point list price of a new unit.

#### **HARDWARE REPLACEMENT:**

**Hardware Return Procedure.** If a Hardware product or one of its component parts does not function during the Hardware Support period, and such nonconformance can be verified by Contractor through Check Point, Check Point, at its election, will provide Advance Hardware Replacement service with a refurbished part /unit for the Hardware under the type of Hardware Support Plan Check Point designates for that Hardware. A defective Hardware product or one of its component parts may only be returned to Check Point upon Check Point's prior written approval. Any such approval shall reference a Returned Material Authorization ("RMA") number issued by an authorized Check Point service representative. To request an RMA number, Ordering Activity must contact Check Point TAC and open a Service Request. Ordering Activity should always register the Hardware Product in Ordering Activity's Check Point User Center account. If Ordering Activity does not register the Hardware Product with Check Point, Ordering Activity may be required to present proof of purchase as evidence of entitlement to Hardware Support service. The Hardware Product's Device Number will be required for all RMA cases.

**Hardware Replacement Procedure.** For Order Activities who have purchased Support for their Hardware, Contractor through Check Point will attempt to diagnose and resolve problem over the phone or web. Upon determination that the Hardware issue is related to a malfunction of one of the Hardware components, an RMA process will be initiated by Check Point TAC. Check Point TAC will either issue a replacement of the faulty part (like Power Supply, Fan, Hard Disk, etc.) or a full Unit Replacement. Check Point will send the required hardware to the Site location, as it appears in Order Activity's User Center and as verified with Order Activity when opening the Support Service Request, in accordance with the Hardware Support Plan Check Point designates for that Hardware.

Order Activity must ship back the faulty Hardware product (or replaceable unit) suitably packaged according to the guidelines, as specified by Contractor through Check Point in the RMA letter shipped with the replacement, to a location that Check Point designates; return shipment of the faulty Hardware should be made within five (5) business days of the arrival of the replacement or approval of the RMA for Shelf Spare Unit usage.

#### **TECHNICAL SUPPORT:**

**Web-based Support.** Check Point web-based Support available at URL: <https://support.checkpoint.com> provides the Ordering Activity access to:

- (a) Documentation, containing product documentation, release notes, troubleshooting guides and technical white papers about Check Point Software and Hardware products, as releases become generally commercially available.

(b) SecureKnowledgeSM, a self-service knowledge base, restricted repository of thousands of technical documents as well as tools covering everything from planning installation and upgrades, to understanding error messages and fixing specific known issues. Technical solutions, how-to's, and troubleshooting documents written by Check Point engineers and technical staff are added daily. Ordering Activity may have Advanced or Expert Access in accordance with their Support level and the specifications of this Agreement. When a solution is identified to solve an issue, Check Point TAC may share this solution with Ordering Activity via email or verbal communication.

(c) Software Subscription Downloads, restricted download site for the sole use of the Supported Ordering Activity; includes latest product upgrades, Hot Fix Accumulators (HFAs), Feature Packs, security fixes, tools, and utilities for the contract term. Software Subscription guarantees that Check Point solutions are kept as current as possible through the latest product enhancements and capabilities.

For Major Product releases, Ordering Activity may request Contractor through Check Point to ship a Media Kit that includes Software upgrade package.

(d) Product Forums, containing shared knowledge of Check Point products and solutions within an online community of customers, partners and employees, as well as news on Check Point products and technologies. Support Ordering Activities can view and post on the discussion threads in all Forums.

Contact TAC. Ordering Activity's access to TAC should be either by telephone, by web request, or by live chat.

(a) By Telephone: Contact the nearest TAC (refer to URL: <http://www.checkpoint.com/services/contact/index.html>.) An Automatic Call Distribution System will prompt Ordering Activity to select appropriate Support Plan options. After Ordering Activity is directed to a TAC Technical Representative, Ordering Activity's email address must be provided. Once TAC verified Ordering Activity is a Designated Contact and account has a valid Support contract, TAC will inquire information about the issue and create a Service Request in the Check Point database.

(b) By Web Request: Log into User Center, under the "Support" Tab, select the "Create Service Request" link. Complete the request form with all of the appropriate information about the issue and submit the request. A Service Request will be generated in the Check Point database.

PLEASE NOTE: DO NOT submit a Service Request for a Severity 1 issue via the Web request form. For a Severity 1 case, please contact Contractor through Check Point by telephone and select the appropriate options for your support.

(c) By Live Chat: Log into User Center, under the "Support" Tab, select "Live Chat" icon. Live Chat is for quick and simple questions about Check Point products and services. Any issue requires troubleshooting must be submitted by telephone or by web request.

(d) By Email: Contractor through Check Point does not allow opening a Service Request via email. All requests should be opened by Telephone or by web request. Correspondence on an open Service Request may be made via email, as long as the Ordering Activity Designated Contact writes a reply to emails received from Check Point TAC.

Availability and accessibility of TAC is in accordance with the specifications of this Agreement, subject to the situations set forth in Section 8.1 Force Majeure.

	Standard	Premium	Elite
TAC Availability	5x9 Business Day	7x24 Every Day	7x24 Every Day
Unlimited Service Requests	Yes	Yes	Yes

Technical Support Procedures. Under Check Point's Software support plan, Check Point TAC utilizes a multi-tier support model for Problem Resolution. When initial contact with TAC is made, a Technical Representative or Web Service Request Tool will validate Ordering Activity information, contract information, Device Number, and gather details relevant to the question or issue. A unique Service Request (SR) number will be assigned and delivered to the Ordering Activity Designated Contact, either verbally, via Web request, or via email. This SR number will be used to track any given issue from initial contact to final Problem Resolution. If appropriate, an issue will be reproduced in the Check Point Test Lab. Additional testing and problem duplication may take place in a network laboratory environment. Further investigation, including additional troubleshooting or debugging activity may be required. Based on the results of the Test Lab investigation, an issue may be resolved, or, if an anomaly is identified, elevated to the appropriate Check Point Team for final Problem Resolution.

Contractor through Check Point agrees to use commercially reasonable efforts to work with the Ordering Activity for Problem Resolution for an issue in accordance with the specifications of these terms. Timely efforts must be made by all parties involved. If communication from Ordering Activity ceases without notice, after five (5) business days, Check Point may, upon notice, close a Service Request due to inactivity on the part of the Ordering Activity. A Service Request may be reopened within thirty (30) consecutive days of closure. Once a Service Request is closed for thirty (30) consecutive days, this issue will be considered permanently closed, and it cannot be reopened. If further work is necessary, a new Service Request will be opened, and all pertinent materials may need to be resubmitted before work can continue.

Severity Level Response Time and Resource Commitment. Contractor through Check Point agrees to use commercially reasonable efforts to respond to Ordering Activity requests based on the Severity of the issue as follows:

Severity Level	Response Time (in accordance with Support Plan)			Commitment
	Standard	Premium	Elite	
Severity 1	30 minutes	30 minutes	30 minutes	Check Point and Ordering Activity will commit the necessary resources around the clock for Problem Resolution to obtain workaround or reduce the severity of the Error.
Severity 2	4 Hours	2 Hours	30 Minutes	Check Point and Ordering Activity will commit full-time resources during normal business hours for Problem Resolution to obtain workaround or reduce the severity of the Error and alternative resources during non Standard Business Hours.
Severity 3	4 Hours	4 Hours	4 Hours	Check Point and Ordering Activity will commit full time resources during normal business hours for Problem Resolution, to obtain workaround or reduce the severity of the Error.
Severity 4	4 Hours	4 Hours	4 Hours	Check Point and Ordering Activity will provide Resources during normal business hours for Problem Resolution.

Note: Contractor through Check Point does not guarantee the resolution of a problem within the times specified.

For Severity definitions for Network Security Product(s) or Endpoint Security Product(s), refer to the Section "DEFINITIONS," "Severity" Definitions for Network Security Product(s) and "Severity" Definitions for Endpoint Security product(s).

The response times set forth in this Section constitute targeted goals of the Technical Support to be provided by Contractor through Check Point to Ordering Activity, and it is understood that Check Point shall use commercially reasonable efforts to respond to Ordering Activity requests within the target times set for the relevant Severity level. The parties acknowledge the potentially idiosyncratic nature of any issue, and agree that any sporadic failure to meet targeted times shall not constitute a breach of Check Point Support obligations under this Agreement.

**Escalation Process and Procedure.**

(a) Ordering Activity-initiated Escalation: Under Check Point's Support plan, some work items (especially those associated with critical situations) may need to be expedited. When this becomes the case, Ordering Activity shall notify Check Point TAC of the critical situation. If TAC determines that sufficient information has been provided by Ordering Activity and the escalation is accepted, Check Point will work with Ordering Activity on providing the appropriate solution. The escalation begins in accordance to Check Point standard business practices. Upon request, Check Point may provide an action plan to Ordering Activity that may include (but is not limited by): problem statement, next action items to resolve the issue and time estimates on these action items.

(b) Check Point Internal Escalation Process: When TAC determines an issue needs internal escalation, the issue receives a combination of increasing levels of engineering expertise and managerial attentions in accordance with Check Point standard business practice. Except for the case of a Ordering Activity-initiated Escalation in accordance with Section 5.5 (c) below, that issue need not be escalated to a higher managerial level until the Severity of the issue increases or progress toward resolution ceases or is unduly delayed.

(c) Management Escalation: If Ordering Activity feels that the issue is not moving forward in an appropriate timeframe to closure, and/or an issue requires managerial attention, for immediate escalation, Ordering Activity can either request Technical Representative to connect the Ordering Activity to a Team Leader or contact the Team Leader of the Technical Representative handling the case directly. Team Leader's contact details are located at the bottom of the Service Request email. Regardless of the total elapsed time of an outstanding Service Request, the point of escalation shall be initiated at the Technical Representative level, escalated to the Team Leader(s), followed by TAC Manager(s), the TAC Director(s), and then the TAC Vice President. For the most current list of Check Point TAC Escalation Management contacts, refer to Escalation Management link in Service Request Web tool in the User Center.

**CHECK POINT DIRECT SUPPORT PLAN DESCRIPTIONS**

Check Point Support Offerings. In order to meet the needs of its enterprise Ordering Activities, Contractor through Check Point offers its Enterprise Support program for the support of Check Point Software products. This provides a total support service solution directly to enterprise/business customers. Below, are the program levels available under Check Point's direct Enterprise Support program:

Direct Enterprise Support
Enterprise Software Subscription
Enterprise Standard
Enterprise Premium
Enterprise Elite

Support Plan Descriptions.

**Enterprise Software Subscription:** Enterprise Software Subscription ensures uninterrupted security and protection for all Check Point products, with access to critical hot fixes, service packs, and major upgrades for a full year. Take advantage of the latest security features as soon as they're available, protecting your business and your investment while maximizing your ROI with Check Point solutions.

Ensure continuous security with access to critical hot fixes and service packs  
Maximize ROI and investment with access to major upgrades and enhancements

**Enterprise Standard Support:** Check Point Enterprise Standard Support delivers all the benefits of Enterprise Software Subscription with comprehensive, unlimited support from our experienced and certified security experts. With online tools and extensive resources devoted to Check Point security, you can count on Check Point to resolve your mission-critical issues quickly and efficiently:

Software Subscription - Access critical hot fixes, service packs, and major upgrades.  
Protect your business with unlimited, comprehensive support from experienced engineers  
Ensure business continuity with 5x12 business day Web, Chat and Phone support and 4 hour committed response  
Free use of Check Point support center tools – Sophisticated tools to initiate, manage, collaborate, and track Service Requests online including active notifications via mail or SMS  
Reduce support time and costs with Advanced Access to SecureKnowledge, get auto notification on new materials posted in your subject area.  
Appliance Support  
Replacement units shipped same business day; delivery usually within 2-3 business days  
Efficient hardware diagnosis using advanced tools  
Return Materials Authorization (RMA) process by Check Point TAC (Technical Assistance Center) Hardware experts  
Optional Upgrade to Standard Onsite Support  
5x8x Next Business Day onsite service  
Delivery and basic installation of replacement hardware by a certified engineer  
Available in over 250 locations world wide

**Enterprise Premium Support:** Check Point Enterprise Premium Support delivers all the benefits of Enterprise Software Subscription with comprehensive, 7x24 unlimited support from our experienced and certified security experts. With online tools, global 7x24 service centers, and committed 30 minute response times, you can count on Check Point to resolve your mission-critical issues quickly and efficiently.

Software Subscription - Access critical hot fixes, service packs, and major upgrades.  
Protect your business with unlimited, comprehensive support from experienced engineers and 30 minute response with Fast Path to premium desk  
Ensure mission-critical support with 7x24 support and 30 minute committed TAC response for severity 1 issues and 2hour response for severity 2  
Free use of Check Point support center tools – Sophisticated tools to initiate, manage, collaborate upon, and track Service Requests online including active notifications via mail or SMS  
Reduce support time and costs with Advanced Access to SecureKnowledge, get auto notification on any new material which posted in your subject area.  
Appliance Support  
Replacement units are shipped by Next Flight-Out/ Express Delivery (in mainland US and European Union), Appliances are shipped during normal business hours and could arrive during off hours or next business day until 9AM.  
Efficient hardware issue diagnosis using advanced tools  
Return Materials Authorization (RMA) process by Check Point TAC (Technical Assistance Center) Hardware experts  
Optional upgrade to Premium On-site Support  
7x24 hours onsite service  
Delivery and basic installation of replacement hardware by a certified engineer  
Available in over 250 locations world wide

**Enterprise Elite Support:** Check Point Elite delivers 7 x 24 x 365 support plus on-demand expert care wherever you need it. With committed response times, advanced self-help tools and priority handling, Elite Support will minimize business downtime and keep your network running.

24-hour on-demand onsite engineer to resolve critical software cases  
Fastest Response Times – 30 minutes for Priority 1 and 2 cases  
Priority case handling and fast path escalations  
Increased productivity and uptime with expert knowledge transfer, tools and techniques  
Appliance Support  
Next flight out hardware replacement service  
Enhanced Return Material Authorization (RMA) processing  
Elite Onsite Support  
Extends the benefits of Elite Support with 4-hour RMA onsite hardware care for the fastest logistics. Check Point provides the delivery and basic installation of replacement hardware by a certified engineer with 4 hours following RMA determination.

**Direct Enterprise Support Price Calculation:** The cost of Enterprise Support is calculated using the account rate multiplied by the sum of product list price within the included account(s). Product list price is determined based on the product value in the current Check Point Price List. The account rate is based on the sum of product price list for all products included under the Enterprise Support contract. The applicable GSA discount will then be applied to the Ordering Activity:

Program Name	Enterprise Software Subscription	Enterprise Standard Support	Enterprise Premium Support	Enterprise Elite Support
Part Number	CPES-SS	CPES-SS-Standard	CPES-SS-Premium	CPES-SS-Elite
Install Base Value (SW)				
<\$50,000	15%	30%	40%	43%
\$50,001 - \$100,000	14.5%	28%	36%	39%
\$100,001 - \$250,000	14%	26%	33%	36%
\$250,001 - \$500,000	13.5%	24%	30%	33%
\$500,001 - \$1 million	13%	22%	27%	30%
\$1 million and above	12.5%	20%	24%	27%

**Appliance Support:** Check Point Appliance Support provides comprehensive solution for HW & SW support, including diagnosis, resolution and parts /unit replacement services when applicable, according to SLAs corresponding with Check Point's support programs.

Direct Appliance Support (EBS) – List price of the support is calculated by multiplying the applicable rate in the below table, times the list price of the applicable appliance. The applicable GSA discount will then be applied to the Ordering Activity. The exception is for legacy 2 blade appliances, list price is established as explained in the below table:

Product Range	Standard	Standard RMA Next business day onsite**	Premium*	Premium RMA 4 hours onsite**	Elite***	Elite RMA 4 hours onsite**
	CPES-SS-STANDARD Annual support rate	CPES-SS-STANDARD-ONSITE	CPES-SS-PREMIUM Annual support rate	CPES-SS-PREMIUM-ONSITE	CPES-SS-ELITE Annual support rate	CPES-SS-ELITE-ONSITE
High End	12%	20%	17%	23%	20%	26%
Mid Range	12%	22%	17%	25%	20%	28%
Low End	12%	27%	17%	30%	20%	33%
2 Blade appliance xx2 series (like UTM-1 272,572 or NGX non Total Security)	Standard account rate	Standard account rate + 10%	Premium account rate	Premium account rate + 8%	Elite account rate	Elite account rate + 8%

\* Next Flight Out/Express Delivery is available in the European Union and mainland US. Appliances are shipped during normal business hours and may arrive during off hours or next business day until 9AM.

\*\* Onsite services are provided world wide by Check Point certified technicians. For available locations [click here](#).

\*\*\* Emergency engineer dispatch for critical software issues [for more info click here](#)

For other locations contact [Check Point Onsite services](#).

Note: Onsite Hardware Support becomes effective one (1) month from the day it was purchased.

Note: All other Check Point appliances that do not appear in the Appliance Classification table receives regular account rate and no onsite service is available.

Note: customers may upgrade support for specific appliances based on their operational needs regardless to the customer's User Account Service Level Agreement.

**Appliance classification:**

Appliance classification				
Appliance Range	Security Gateway Appliances	Smart-1	VSX-1	Dedicated Gateways
High End	12400 Appliances 12600 Appliances 21400 Appliances 61000 Appliances Power-1 5075 / 5077 Power-1 9075 / 9077 Power-1 11xxx series IP 1285 / 1287 IP 2455 / 2457	Smart-1 50 Smart-1 150	VSX 12400 VSX 12600 VSX 21400 VSX-1 3070 VSX-1 9070 VSX-1 9090 VSX-1 11xxx series VSX-1 112xx series	DLP-1 9571 IPS-1 9070 IPS-1 5070 Connectra 9072
Mid Range	4600 Appliances 4800 Appliances	Smart-1 5 Smart-1 25	VSX 12200	DLP-1 2571 IPS-1 2070

	12200 Appliances UTM-1 274 / 276 / 278 UTM-1 574 / 576 / 578 UTM-1 1073 / 1075 / 1076 / 1078 UTM-1 2073 / 2075 / 2076 / 2078 UTM-1 3073 / 3075 / 3076 / 3078 IP 295 / 297 IP 395 / 397 IP 565 / 567 IP 695 / 697			IPS-1 4070 Connectra 270 Connectra 3070
Low End	2200 Appliances 4200 Appliances UTM-1 134 / 136 / 138 SG86*			

\* On-site services for SG82 & SG86 include only product replacement (w/o a technician).

- ▶ The above special support-rates apply to Software Blades based Appliances with 3 blades (and above), NGX based UTM-1 Total Security and Power-1 Appliances only.
- ▶ For NGX UTM-1 non Total-Security Appliances, please use the regular account rate.
- ▶ UTM-1 Edge RMA is shipped Next Business Day for all SLAs.
- ▶ Regular account rates apply to all other Check Point appliances that do not appear in the above table (e.g. UTM-1 Edge) and no on-site services are available (excluding 2 Blade appliances or NGX non Total Security).
- ▶ For IAS (Integrated Appliance Solutions) support offering and rates contact [Check Point Onsite Services](#).
- ▶ For UTM-1 xx50 series, you can purchase only Premium/Standard/Elite Support, On-site Services are not available (unless it is on-site renewal).



**CHECKMARX, INC**  
**5250 OLD ORCHARD RD.**  
**SUITE 300**  
**SKOKIE, IL 60077**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

**Scope.** This Rider and the attached Checkmarx, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (*e.g.*, the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the

terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**CHECKMARX, INC.**

**CHECKMARX, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**CODEBASHING SERVICES AGREEMENT**

**DEFINITIONS.**

**"Affiliate"** means, with respect to a Party, any entity that, directly or indirectly, controls, is controlled by, or is under common control with such Party, and "control" means the direct or indirect possession of the power to direct or to cause the direction of the management and policies of the entity.

**"Effective Date"** means the date this Agreement is fully executed by both Parties

**"Intellectual Property Rights"** means all intangible legal rights, title and interests including without limitation: all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets, and all other proprietary rights in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations, translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.

**"Fees"** means the Service fees charged by Licensor to Customer, as set forth in the Quote and applicable purchase order in accordance with the GSA Pricelist.

**"Named User"** means the license is tied to a specific individual named user so that the license may only be used by that individual named user.

**"Quote"** means the quotation document provided by Licensor setting out the quantity and type of Service licenses purchased by Customer.

**"Service"** means the Codebashing e-learning cloud-based interactive application security tutorial service.

**"Term"** means the term of this Agreement, as further forth in Section 6.1.

**LICENSE GRANTS AND RESTRICTIONS.**

**License Grants.** Licensor grants the Ordering Activity under GSA Schedule contracts ("Customer" or "Ordering Activity") a limited, non-exclusive, non-transferable, non-sublicensable, revocable license during the Term and according to the number of Named User licenses set out in the Quote and applicable purchase order, to permit licensed users to access the Service and to view and use the reports generated by the Service for Customer's internal business purposes. It is hereby clarified that the license does not grant any rights whatsoever to the source code of the Service. The Named User license is activated upon the first log-in of the Named User and may not be transferred thereafter to another Named User.

**Title; Intellectual Property Rights.** The Service is licensed, not sold, and this Agreement does not convey any right, title or ownership in the Service to Customer other than the limited rights and licenses set out herein. The Service and its associated documentation shall remain the sole property of Licensor. All Intellectual Property Rights evidenced by or embodied in or related to the Service, and to any customizations, modifications, enhancements or derivatives thereof, are and shall be owned solely by Licensor. Licensor reserves all rights not expressly granted hereunder.

**Restrictions.** Customer may not: (a) use the Service in excess of the number of Named User licenses authorized by Licensor (for paid use, according to the number of Named User licenses purchased, as set out in the purchase order); (b) work around any technical limitations in the Service or attempt to circumvent any licensing restrictions; (c) reverse engineer, decompile, disassemble or create derivative works of the Service; (d) attempt to derive the source code of the Service; (e) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend access to the Service to any third party, including Customer's Affiliates; (f) transfer, assign or permit the sharing of license keys or product codes to a third party, including Customer's Affiliates; (g) attempt to access the Service outside of the interfaces provided by Licensor; or (h) provide access to the Service (or any part thereof) or the output generated by the Service to any individual who does not hold a valid license to use the Service.

**Additional Terms and Restrictions.** Customer agrees that: (a) all use of the Service shall be in compliance with all applicable laws; (b) the Service is being supplied only for Customer's internal use; (c) Customer is prohibited from granting any sublicenses to use the Service; and (d) Customer may not copy, transfer or communicate the Service or any part thereof to any third party, including Customer's Affiliates, or the public in violation of this Agreement.

**DATA USAGE.**

**Data Usage.** The Service collects usage data, analytics data, and the usernames and email addresses of the users of the Service (the "Data"). Licensor and its authorized third party service providers will use the Data for the purpose of providing the Service to Customer. Licensor may also use the Data to improve the Service and for the internal business purposes of Licensor and its Affiliates.

**SUPPORT.**

**Description of Support.** Service availability and uptime is set out in Exhibit A. Licensor will provide support for the Service during the Term in accordance with the service level agreement attached hereto as Exhibit B.

**RESERVED.**

**TERM AND TERMINATION**

**Term.** This Agreement shall be effective during the license term set out in the purchase order, unless renewed by written agreement of the Parties or earlier terminated according to the termination provisions set out in the underlying GSA Schedule Contract.

**Reserved.**

**Effect of Termination.** Customer's access to the Service shall immediately terminate upon expiration of the Service Term or the termination of this Agreement, and any reports or data generated in connection with the Service will no longer be available for viewing/downloading. Customer is solely responsible for ensuring that any reports or data have been downloaded prior to termination of the Service. Licensor shall have no liability due to the Customer's inability to access or use the Service after expiration of the Service Term or termination of this Agreement.

**Survival of Certain Provisions.** The Parties' rights and obligations contained in Sections 2.2 ("Title; Intellectual Property Rights"); 6.3 ("Effect of Termination"); and 8.0 ("General Provisions"); as well as any obligations to make payments of Fees or other amounts accrued or due hereunder prior to termination, shall survive any termination of this Agreement.

**DISCLAIMER OF WARRANTIES.**

**LIMITED WARRANTY.** Licensor warrants that the Service will, for a period of sixty (60) days from the date Customer is first provided access to the Service, perform substantially in accordance with Service written materials accompanying it subject to Customer's use of the Service in accordance therewith. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE SERVICE IS MADE AVAILABLE BY LICENSOR ON AN "AS IS" AND "AS AVAILABLE" BASIS. ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED AND/OR ERROR FREE.

LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE USE OF THE SERVICE WILL BE FREE FROM ERRORS OR SAFE FROM INTRUSIONS OR ANY OTHER SECURITY EXPOSURES. NOTHING IN THE FOREGOING RESTRICTS THE EFFECT OF WARRANTIES OR CONDITIONS WHICH MAY NOT BE EXCLUDED, RESTRICTED OR MODIFIED AS A MATTER OF LAW.

**RESERVED.**

**EXCLUSIVITY OF WARRANTIES.** CUSTOMER ACKNOWLEDGES THAT THE WARRANTY DISCLAIMERS SET OUT IN THIS SECTION SHALL EXCLUSIVELY GOVERN CUSTOMER'S USE OF THE SERVICE AND ANY CLAIM ARISING OUT OF OR IN RELATION TO THIS AGREEMENT.

**GENERAL PROVISIONS.**

**Exclusions.** The United Nations Convention Relating to a Uniform Law on the International Sale of Goods, or any similar or successor convention or law, shall not apply to this Agreement. The Parties expressly agree that the Uniform Computer Information Transactions Act shall not apply to this Agreement and, to the extent that it is applicable, the parties agree to opt-out of its applicability pursuant to its provisions.

**Headings and Wording.** Section and/or paragraph headings used in this Agreement are for reference purposes only and shall not be used in the interpretation hereof. No provision of this Agreement shall be construed against either Party as the drafter thereof.

**Assignment.** This Agreement may not be assigned, delegated or transferred by either party without the other party's written consent, and any attempt to take such action shall be void and without effect.

**Restricted Parties.** Customer represents and warrants that it is not a "Restricted Party," which shall be deemed to include any person or entity: (a) located in or a national of Iran, Lebanon, Libya, North Korea, Sudan, Syria, or any other countries subject to U.S. or Israeli embargo or trade restrictions; (a "Prohibited Territory") or (b) on the U.S. Department of Commerce Denied Person's List, Entity List, or Unverified List; the U.S. Department of the Treasury's list of Specially Designated Nationals and Blocked Persons; or the U.S. Department of State's List of Debarred Parties. Customer shall not distribute, transfer or permit access to any Licensor software or service to any Restricted Party or any person or entity in a Prohibited Territory without the prior, express written authorization from Licensor and, as appropriate, any relevant government agency.

**Entire Agreement.** This Agreement, including any Exhibits, Quotes, and purchase orders incorporated by reference, and the underlying GSA Schedule Contract constitute the entire agreement between Licensor and Customer, and any and all written or oral agreements relating to the license of Licensor's Software existing between Licensor and Customer, including but not limited to any Software evaluation licenses, are expressly terminated as of the Effective Date. Customer acknowledges that it is not entering into this Agreement on the basis of, and has not relied on, any representations not expressly contained in this Agreement.

**No Waiver.** The failure of either Party to enforce at any time, or for any period of time, the provisions of this Agreement shall not be interpreted to be a waiver of such provisions or of the right of such Party to enforce each and every such provision.

**Partial Invalidation.** In the event that any provision of this Agreement shall be held by law, or found by a court or other tribunal of competent jurisdiction to be unenforceable, the unenforceable provision shall be severed and the remaining provisions of this Agreement shall remain in full force and effect. In such an event, Licensor and Customer agree to negotiate in good faith a substitute provision that most nearly reflects the intent of the severed provision.

**Relationship of Parties.** The Parties hereto are independent contractors. Nothing contained herein or done in pursuance of this Agreement shall create a principal-agent, partner, or other relationship between the Parties for any purpose or in any sense whatsoever, or create any form of joint enterprise whatsoever between the Parties.

**No Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of Licensor and Customer. No third party shall be deemed to be a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

**Amendment.** This Agreement may only be modified or supplemented by a written document executed by an authorized representative of each Party.

**Contracting Entity.** For Customers located in the United States of America, "Licensor" is defined as Checkmarx, Inc.

#### Exhibit A

#### SERVICE LEVEL AGREEMENT – UPTIME AND AVAILABILITY

**Service Level Standard:** Licensor will provide no less than ninety-nine point five percent (99.5%) Services Availability, as calculated on an annual basis, subject to the Exclusions below.

"Availability" shall mean the portion (in percentage terms) of Uptime that the Hosted Services are Available for Use (as defined below):

**Uptime = (Total Time (24/7)) – (Scheduled Maintenance Windows)**

**% Availability = (Uptime – Time Unavailable) / Uptime**

"Available for Use" shall mean that all of the supported functions and features of the Services are capable of sending and receiving data to and from the Internet.

"Service Level Period" means 24x7: 24 hours a day, 7 days a week, 365 days a year.

"Time Unavailable" shall mean any period of time during the applicable Service Level Period that the Services are not Available for Use, except for the Exclusions set forth below. **Time Unavailable - Exclusions**

Time Unavailable shall not include the aggregate amount of time during which the Services are not Available for Use due to:

Scheduled maintenance, provided that such scheduled maintenance occurs during scheduled maintenance windows, currently between the hours of Friday 10:00 pm and Sunday 11:00 pm, Eastern US Time (the "Scheduled Maintenance Window");

Emergency maintenance – Licensor may perform any reasonably required, emergency maintenance work outside of the Scheduled Maintenance Window with one (1) hour prior electronic mail or other notice to Customer;  
 Interruptions in third party networks that prevent Internet users from accessing the Service, provided that the data center is served by redundant connections to the internet from multiple internet service providers;  
 Scheduled or emergency maintenance performed by the infrastructure provider.

For clarity, any time during which the Services are not Available for Use due to interruptions in electric power services serving the Hosting Environment shall not be excluded from Time Unavailable.

“**Scheduled Downtime**” shall mean the total minutes during the year represented by the Scheduled Maintenance Window.

“**Uptime**” shall mean the total minutes during the year less the total minutes represented by the Scheduled Downtime.

**Exhibit B**  
**SUPPORT SLA**

**DEFINITIONS.**

“**Bug**” means an error condition that causes the Service to fail to operate.

“**Normal Business Hours**” means Monday through Friday, 09:00 – 17:00, Customer’s local time, excluding public holidays.

“**Resolution Time**” means the time elapsed until a Workaround or permanent solution to a Bug has been provided in accordance with the resolution timelines set out below, according to the severity classification.

“**Workaround**” means a temporary error correction or change in operating procedure allowing Customer to continue to use the Service until a long-term solution has been provided.

All capitalized terms not defined above shall have the meaning set forth in the main body of the license Agreement, which is incorporated herein by reference.

**SUPPORT.**

During the Term of the Agreement and subject to Customer’s payment of applicable Fees:

Licensor will provide technical support and assistance with respect to the Service, including: (i) clarification of functions and features; and (ii) technical support and assistance in the operation of the Service.

Licensor shall provide support during Normal Business Hours via telephone and email to Customer’s Support Contact Designee.

Licensor shall not be responsible for providing support for matters not directly involving problems with the Service, such as Customer network connectivity issues, interfaces with other systems, and third party products (software and/or hardware).

**RESPONSE AND RESOLUTION SCHEDULE.**

Customer will initially classify each Bug in the Service based on the following schedule, and thereafter report such Bug or error to Licensor for correction. Licensor shall perform problem management in accordance with the priority level initially determined by Customer; however, the final classification of the priority level will be determined by Licensor in accordance with the table below:

<b>PRIORITY LEVEL</b>	<b>CRITERIA</b>
Priority 1	<u>Fatal</u> : Bug preventing all use of the Service.
Priority 2	<u>Severe Impact</u> : Bug disabling major functions from being performed. This condition exists when the Service is partially inoperative, but is still usable by Customer and the impact is one of inconvenience.
Priority 3	<u>Minimal Impact</u> : Includes all other Bugs. This condition generally exists when the Service is usable and the problems consist of inconveniences or minor failures involving individual components of the system.

Upon receipt of Customer’s service ticket initially classifying the priority of the problem, Licensor shall use commercially reasonable efforts to promptly contact Customer to confirm the priority level of the service call, and shall use commercially reasonable efforts to respond to, restore or resolve Bug related error reports and service calls according to the following schedule:

<b>PRIORITY LEVEL</b>	<b>RESOLUTION TIME</b>
Priority 1	1 to 2 business days
Priority 2	3 to 6 business days
Priority 3	Licensor’s discretion



**CUSTOMER'S OBLIGATIONS DURING THE SERVICE TERM PERIOD.**

Customer shall notify Licensor of any Bugs and errors by sending an email to [support@checkmarx.com](mailto:support@checkmarx.com).

Customer shall appoint one support contact designee who will be Licensor's single point of contact for support requests.

Customer shall provide Licensor with all reasonably requested reasonable cooperation and assistance as required to provide support in accordance with the response times set out above. Licensor shall not be responsible for failure to meet its service level obligations to the extent caused by Customer's failure to provide reasonable cooperation, support and assistance to Licensor.

All support services are provided remotely. If Customer requires the use of specific remote connectivity software, it is customer's responsibility to license and operate such software. Remote Customer support shall be provided via WebEx or other mutually agreed means.

**CHECKMARX OPEN SOURCE ANALYSIS ("OSA") AGREEMENT**

This Checkmarx Open Source Analysis Agreement (the "**Agreement**") is made by and between the applicable Checkmarx entity identified below ("**Licensor**"), and the customer entity identified above ("**Customer**") (as defined herein, each a "**Party**", and collectively the "**Parties**").

**DEFINITIONS.**

"**Affiliate**" means, with respect to a Party, any entity that, directly or indirectly, controls, is controlled by, or is under common control with such Party, and "control" means the direct or indirect possession of the power to direct or to cause the direction of the management and policies of the entity.

"**Intellectual Property Rights**" means all intangible legal rights, title and interests including without limitation: all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets, and all other proprietary rights in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations, translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.

"**OSA Solution**" means the cloud-based open source management solution provided to users of the licensed Checkmarx software by Licensor and its designated third party service provider(s). Depending on the configuration licensed by Customer, the OSA Solution may consist of a cloud-based open source management solution accessed using the licensed Checkmarx software ("**CxOSA**"), or CxOSA together with a stand-alone solution operated by the OSA Service Provider ("**CxOSA-WS**").

"**Quote**" means the quotation document provided by Licensor setting out the quantity and type of OSA Solution licenses purchased by Customer.

**LICENSE GRANTS AND RESTRICTIONS.**

**License Grants.** Subject to Customer's compliance with these OSA Terms, Licensor grants Customer a limited, non-exclusive, nontransferable, non-sublicensable, revocable license during the OSA Term and according to the number and type of OSA Solution licenses as set out in the Quote and applicable purchase order, to: (a) for CxOSA, to permit licensed users of the Checkmarx software to access the object code form of the OSA Solution through the applicable Checkmarx software interfaces; (b) for CxOSA-WS, to additionally access the object code form of the OSA Solution through the applicable OSA Service Provider interfaces; and (c) for either CxOSA or CxOSA-WS (as applicable) to view and use the reports generated by the OSA Solution for Customer's internal business purposes. It is hereby clarified that the license does not grant any rights whatsoever to the OSA Solution source code.

**Title; Intellectual Property Rights.** The OSA Solution is licensed, not sold, and these OSA Terms do not convey any right, title or ownership in the OSA Solution to Customer other than the limited rights and licenses set out herein. The OSA Solution and documentation shall remain Licensor's or the OSA Service Provider's property, as applicable. All Intellectual Property Rights evidenced by or embodied in or related to the OSA Solution, and to any customizations, modifications, enhancements or derivatives thereof, are and shall be owned solely by Licensor and the OSA Service Provider, as applicable. Licensor reserves all rights not expressly granted hereunder.

**Restrictions.** Customer may not: (a) use the OSA Solution in excess of the number and type of licenses authorized by Licensor (for paid use, as set out in the Quote); (b) work around any technical limitations in the OSA Solution or attempt to circumvent any licensing restrictions; (c) reverse engineer, decompile, disassemble or create derivative works of the OSA Solution; (d) attempt to derive the source code of the OSA Solution; (e) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend access to the OSA Solution to any third party; (f) use the OSA Solution to provide code scanning or audit services to a third party, or make the OSA Solution available in a service bureau or any similar commercial time-sharing arrangement; (g) transfer, assign or permit the sharing of license keys or product codes to a third party; (h) make available to any third party any analysis of the results of the operation of the OSA Solution, including benchmarking results, without the express written consent of Licensor; (i) attempt to access the OSA Solution outside of the software interfaces provided by Licensor and/or the OSA Service Provider; or (j) provide access to the OSA Solution or the output generated by the OSA Solution to any individual who does not hold a valid license to use the OSA Solution.

**DATA USAGE.**

**Data Usage.** The OSA Solution transmits technical data to the OSA Service Provider as required to provide the OSA Solution to Customer (the "**Data**"). No source code of the Customer is sent to the OSA Service Provider. For CxOSA-WS, Customer must provide a customer ID and email addresses to the OSA Service Provider for authentication purposes.

**OSA Service Provider.** The cloud-based open-source analysis service powering the OSA Solution is operated by a third party service provider under contract to Licensor (the "**OSA Service Provider**"). The OSA Service Provider is contractually obligated to handle all Data on a confidential basis and to use the Data only in connection with providing the OSA Solution to Customer. Licensor reserves the right to change OSA Service Providers from time to time.

**SUPPORT.**

**Description of Support.** Licensor will assist with basic e-mail (Level 1) support to assist Customer with its use of the OSA Solution. Advanced (Level 2 and Level 3) support for the OSA Solution shall be provided by the OSA Service Provider. All support shall be provided in accordance with the support level agreement entered into between Licensor and the Customer in connection with the licensed Checkmarx software.

**RESERVED.****TERM AND TERMINATION.**

**Term.** These OSA Terms shall be effective during the OSA Solution term set out in the Quote and applicable purchase order (the "Term"), unless renewed by agreement of the Parties or earlier terminated according to the termination provisions set out in the underlying GSA Schedule Contract.

**Reserved.**

**Effect of Termination.** Customer's access to the OSA Solution shall immediately terminate upon expiration of the Term or the termination of these OSA Terms in accordance with the Contract Disputes Act, and any reports or data generated in connection with the OSA Solution will no longer be available for viewing/downloading. Customer is solely responsible for ensuring that any reports or data have been downloaded prior to termination of the OSA Solution. Licensor shall have no liability due to the Customer's inability to access or use the OSA Solution after termination of these OSA Terms or expiration of the Term. In the event of termination, Customer's sole and exclusive remedy shall be the refund of any unused OSA Fees remaining as of the date of termination.

**DISCLAIMER OF WARRANTIES.**

**WARRANTY DISCLAIMERS.** THE OSA SOLUTION IS MADE AVAILABLE BY LICENSOR ON AN "AS IS" AND "AS AVAILABLE" BASIS. ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE OSA SOLUTION WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF THE OSA SOLUTION WILL BE UNINTERRUPTED AND/OR ERROR FREE. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE USE OF THE OSA SOLUTION WILL BE FREE FROM ERRORS OR SAFE FROM INTRUSIONS OR ANY OTHER SECURITY EXPOSURES. NOTHING IN THE FOREGOING RESTRICTS THE EFFECT OF WARRANTIES OR CONDITIONS WHICH MAY NOT BE EXCLUDED, RESTRICTED OR MODIFIED AS A MATTER OF LAW.

**RESERVED.**

**EXCLUSIVITY OF WARRANTIES AND LIMITATIONS OF LIABILITY.** CUSTOMER ACKNOWLEDGES THAT THE WARRANTY DISCLAIMERS SET OUT IN THIS SECTION SHALL EXCLUSIVELY GOVERN CUSTOMER'S USE OF THE OSA SOLUTION AND ANY CLAIM ARISING OUT OF OR IN RELATION TO THESE OSA TERMS.

**GENERAL PROVISIONS.**

**Governing Law and Venue.** These OSA Terms shall be governed by and interpreted in accordance with the Federal laws of the United States. The United Nations Convention Relating to a Uniform Law on the International Sale of Goods, or any similar or successor convention or law, shall not apply to these OSA Terms. The Parties expressly agree that the Uniform Computer Information Transactions Act shall not apply to these OSA Terms and, to the extent that it is applicable, the parties agree to opt-out of its applicability pursuant to its provisions.

**Miscellaneous Terms.** Should any provision of these OSA Terms be held to be invalid, such provision shall be replaced with a valid provision implementing the intent of the parties at the time of the signing of these OSA Terms. These OSA Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s) supersede any previous agreements or representations, either oral or written regarding the OSA Solution. Customer acknowledges that it has not relied upon any representations or warranties other than those expressly contained in these OSA Terms. These OSA Terms may be amended only by an instrument in writing signed by both parties. Customer or Licensor may not transfer or assign its rights or obligations under these OSA Terms to any third party without the prior written approval of the other party, and any such purported assignment shall be null and void. All notices given under these OSA Terms shall be in writing and shall be deemed to have been duly given: when delivered, if delivered by messenger during normal business hours of the recipient; when sent, if transmitted by facsimile transmission (receipt confirmed and with a confirmation copy sent by post) during normal business hours of the recipient; or on the third business day following posting, if posted by international courier service (FedEx, UPS, DHL).

**Contracting Entity.** For Customers located in the United States of America, "Licensor" is defined as Checkmarx, Inc.

**Chef Software Inc.**  
**619 Western Ave. #400**  
**Seattle, WA 98104**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

**Scope.** This Rider and the attached Chef Software, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the AntiAssignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims

(JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the

copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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**Attachment A – Chef Software Inc.****MASTER LICENSE AND SERVICES AGREEMENT**

This Master License and Services Agreement (“Agreement”) is entered into by and between the Ordering Activity purchasing under the GSA Schedule Contract (“Customer” or “Ordering Activity”), and Chef Software Inc. a Delaware corporation (“Chef”).

**Definitions.** Capitalized terms used herein have the following definitions:

“**Affiliate**” means any entity that is controlled by or under common control with Customer, where “control” means the ability whether directly or indirectly to direct the affairs of another by means of ownership, contract or otherwise.

“**Chef Proprietary Item**” means any Software Usage and Technical Support Data, work, materials, or other tangible or intangible property used by Chef in the course of its performance under this Agreement or any Order Form that is (i) not a Deliverable; or (ii) developed by Chef independently of this Agreement. Inclusion of any Chef Proprietary Item in a Deliverable does not change its character as a Chef Proprietary Item.

“**Confidential Information**” means any proprietary information received by the other party during, or prior to entering into, this Agreement that is identified as confidential at the time of disclosure or that a party reasonably should know is confidential or proprietary based on the circumstances surrounding the disclosure including, without limitation, the Software and any non-public technical and business information. Confidential Information does not include information that (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party’s Confidential Information; or (iv) the receiving party rightfully obtains from a third party without restriction on use or disclosure.

“**Documentation**” means any on-line help files, instruction manuals, operating instructions and user manuals created and provided by Chef that describe the use of the Software and either accompany the Software or are available at <https://docs.chef.io> and <https://www.habitat.sh/docs/overview>

“**Habitat Supervisor**” means a process manager in Chef Habitat™ that (i) starts and monitors the child app service defined in a package; and (ii) receives and acts upon configuration changes from other Habitat Supervisors to which it is connected.

“**Intellectual Property Rights**” means patent rights (including without limitation patent applications and disclosures), copyrights (including without limitation rights in audiovisual works and moral rights), trade secrets, trademarks, know-how, moral rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

“**License Fee**” means fees paid to Chef from Customer in exchange for Customer’s right to use the Software as provided in this Agreement.

“**License Term**” means the term during which Customer is permitted to use the Software, as described in the applicable Order Form.

“**License Unit**” means a specific type of numeric quantity used in an Order Form to establish the extent and amount of Customer’s license to Software. “License Unit” includes Node, Resource, and Service Instance.

“**Node**” means each individual component of Customer’s system - physical or virtual (i.e., server, workstation, IP router, Virtual Machine, or other device or component) that is assessed, installed, configured, updated, scanned and/or managed through the use of Chef Infra.

“**Order Form**” means a separate document that references this Agreement and is signed by both Parties.

“**Professional Services**” means any professional services performed by Chef for Customer pursuant to any Order Form.

“**Target**” means each instance of infrastructure, software, configuration, or other technical resource that is the compliance target of one or more Chef Inspec profiles used by Customer.

“**Service Instance**” means each single instance of an application service that has been packaged by Chef Habitat and is deployed to any environment, including but not limited to application services that are (a) managed by Habitat Supervisors, or (b) downstream of a pipeline that integrates the Habitat Builder service.

“**Services**” means, collectively, Professional Services and Support Services.



**“Software”** means the applicable software made available by Chef and referenced on an Order Form, including all updates, libraries, gems, databases, plug-ins, messaging services, authentication sub-functions, certificate management, and environments provided by Chef to Customer during the applicable License Term.

**“Support Services”** means the technical support services described at <https://www.chef.io/service-level-agreement/> or in any Order Form.

**License Grant and Support.** During the applicable License Term, and subject to Customer’s compliance with the terms and conditions of [Sections 4, 6, 13, 16, and 18](#), Chef grants to Customer a worldwide, non-exclusive, non-transferable, non-sublicensable license to (i) install and use the Software only for the internal use of Customer (“License”), (whether on premises or in the cloud, and including any information technology infrastructure for the benefit of Customer’s customers) and limited to the number of License Units for which Customer is current in the payment of the applicable License Fee and, (ii) to use the Documentation only for its internal operation and use.

**Support.** During the applicable License Term, Chef will provide Customer Support Services for the Software as listed at <https://www.chef.io/service-level-agreement> at the “Standard” level, or as otherwise described in the applicable Order Form.

**Third Party Support.** Customer may also elect, at its discretion, to obtain separate support by a third party for all or some of its licensed Software (“Administered License Units”).

Customer agrees that it will provide Chef the following information in connection with all Administered License Units for all periods that it is using a third party to support Administered License Units during the applicable License Term:

Customer identification number/name with third party  
Number of Administered License Units for the prior month as of the 10th day of each following Month

The License Term for the Software is independent of any support term for Administered License Units that Customer may elect with a third party.

Failure by Customer to provide the information in this [Section 2\(b\)](#) will be a material breach of this Agreement.

**Third Party Software.** The Software includes components under license from third parties, including open source licenses (the “Third Party Components”). Third Party Components are subject to the terms of their accompanying open source licenses. Please see <https://www.chef.io/3rd-party-licenses/> for more details. For avoidance of doubt, Chef’s warranty of the Software includes all Third Party Components to the extent embedded in, and used by, the Software.

**Restrictions.** The License is limited. Except as otherwise expressly permitted in this Agreement, Customer will not: (a) copy or use the Software in any manner except as expressly permitted in this Agreement; (b) use or deploy the Software in excess of the License Units for which Customer has paid the applicable License Fee; (c) transfer, sell, rent, lease, commercialize, lend, distribute, or sublicense the Software to any third party; (d) reverse engineer, disassemble, or decompile the Software (except to the extent such restrictions are prohibited by law); (e) alter or remove any proprietary notices in the Software; (f) make available to any third party the functionality of the Software or any license keys used in connection with the Software; or (g) use the Software for any purpose that is unlawful or prohibited by this Agreement or otherwise. If Customer does not comply with the License terms or the foregoing restrictions, Chef may terminate the applicable License in accordance with the contract Disputes Clause (Contract Disputes Act).

### **Proprietary Rights.**

**Software and Documentation.** Other than the License granted in [Section 2](#), Chef and its licensors retain all right, title and interest in and to the Software and Documentation and all components thereof, including all patent, copyright, trademark, and trade secret rights, whether such rights are registered or unregistered, and wherever in the world those rights may exist and in any derivatives, modifications and enhancements thereto (collectively, the “Chef Rights”). Customer will not commit any act or omission or permit or induce any third party to commit any act or omission, inconsistent with the Chef Rights. Chef or its licensors own all graphics, user and visual interfaces, images, code, applications, and text, as well as the design, structure, selection, coordination, expression, “look and feel”, and arrangement of the Software and its content, and the trademarks, service marks, proprietary logos and other distinctive brand features found in the Software (collectively, the “Chef Marks”). This Agreement does not permit Customer to distribute any product or service using the Chef Marks, including in connection with any Third Party Components. Chef will retain title to all copies of the Software provided to Customer or made by Customer. There are no implied rights or licenses in this Agreement. All rights are expressly reserved by Chef.

**Proprietary Items.** Customer will have or obtain no rights in Chef Proprietary Items (or in any modifications or enhancements to them or any derivative work within the meaning of the US Copyright Act) except that, to the extent the Chef Proprietary Items are incorporated into a Deliverable, Chef will grant Customer a License in such Chef Proprietary Items to use them as part of (but not unbundled from) the Deliverable. All other Intellectual Property Rights in and to the Chef Proprietary Items will remain in and/or are hereby assigned to Chef.

### **Fees and Payment Terms:**

**License Fee.** An Order Form will state the specific License Fee and the number of License Units licensed to deploy or use the Software. License Fees are based on Software purchased, not actual usage (subject always to [Section 15](#)). The number of License Units purchased cannot be decreased during the relevant License Term. License Fees will be paid in accordance with any different billing frequency stated in the applicable Order Form.

**Professional Services Fee.** For Professional Services fees designated as “fixed fee”, Chef will invoice Customer upon execution of the applicable Order Form. For Professional Services not designated as fixed fee, Chef will invoice monthly in arrears based on actual hours worked during the preceding month. Unless the applicable Order Form provides otherwise, Professional Services Fees designated as “fixed fee.”

**Costs and Expenses.** Ordering Activity Licensee agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document.

**Payments.** Unless otherwise provided in an Order Form, all payments of fees or charges payable to Chef under this Agreement will be made in United States dollars and are due in full within thirty (30) days from the invoice receipt date. Customer will provide complete and accurate billing and contact information to Chef and will notify Chef of any changes to such information.

**Late payments.** Late payments (other than amounts disputed in good faith by Customer) will bear interest at the rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. All fees payable under this Agreement are net amounts and are payable in full.

**Taxes.** Chef shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

#### **Delivery and Acceptance.**

**Acceptance.** Chef will make the Software available to Customer electronically. Software will be deemed to be delivered to Customer's billing address unless Customer provides written notice of an alternative delivery address. The Software will be deemed accepted immediately upon delivery. Acceptance (if any) of Deliverables will be specified in an Order Form.

#### **Term and Renewal; Termination.**

**Term of Agreement.** The term of this Agreement (the “Term”) will commence on the Effective Date and will continue until terminated as provided herein. Except as otherwise provided in [Section 8\(c\)](#) below, termination of this Agreement will not affect any outstanding Order Form, and this Agreement will remain in effect until all Professional Services and Deliverables to be provided thereunder have been completed and/or the applicable License Term has expired per the terms of such Order Form.

**Early Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Chef shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

#### **Effect of Termination.**

Upon termination of this Agreement, Customer will discontinue all representations that it is a Customer of Chef. Termination of the Agreement will not terminate an Order Form unless the basis for termination also prevents full performance under such Order Form and the non-breaching party includes notice of termination of such Order Form in its notice of termination of the Agreement.

Upon termination of an Order Form, the following will apply in respect of that specific Order Form only:

the parties will cooperate to affect an orderly, efficient, effective and expeditious termination of the parties' obligations under that Order Form;

Chef will have no obligation to perform any Services under the terminated Order Form after the effective date of the termination; Customer will pay to Chef any fees, allowed reimbursable expenses, compensation or other amounts payable for Services performed under the terminated Order Form prior to the effective date of the termination;

all licenses granted by Chef thereunder will automatically cease as of the effective date of termination of such Order Form, and if Customer has no other applicable Software License, Customer must uninstall any installed Software, cease using all Software and destroy or return all copies of the Software to Chef; and certify in writing that all known copies thereof, including backup copies, have been destroyed or disabled in all forms and types of media as of the effective date of termination; and

upon Customer's termination of an Order Form as provided in [Section 8\(b\)](#), Chef will, subject to [Section 10](#) and [Section 11](#) of this Agreement, pay to Customer the following:

a pro rata portion of applicable License Fees following the effective date of termination through the expiration of the applicable License Term; and

Professional Services fees designated as “fixed fee” that have not been performed as of the effective date of termination.

Upon termination of this Agreement and completion, termination or expiration of all outstanding Order Forms, each party will promptly return to the other all of the other party’s Confidential Information within its possession or control and will certify in writing that it has complied with its obligations to return all such Confidential Information.

The following shall survive termination of this Agreement for any reason: any and all liabilities accrued before the effective date of termination; and the provisions of this Agreement concerning proprietary rights, indemnity, disclaimers of warranty, limitation of liability, payment of fees and governing law.

**Professional Services.** Chef will perform the Professional Services detailed in any Order Form. Order Forms will set forth a description of the work to be performed, fees, time schedules and other special terms and conditions applicable to the particular project. Each Order Form will become effective only upon acceptance by both parties hereto as evidenced by signature of an authorized representative of each party on the applicable Order Form. Chef will perform the Professional Services using its employees, subcontractors or agents, as Chef in its sole discretion deems appropriate. Chef will remain responsible to Customer for the actions of its employees, subcontractors or agents when so used.

**Customer Responsibilities.** Customer understands its business needs and has determined independently that the Deliverables and Professional Services will meet its needs.

**Intellectual Property Ownership.** Should the Professional Services set forth in an Order Form result in any reports, work product or other tangible items identified in an Order Form as a deliverable (“Deliverables”), unless otherwise provided in an Order Form, Chef grants to Customer a worldwide, non-exclusive, non-transferable, non sub-licensable license to use the Deliverables for Customer’s internal use. Other than the limited license to the Deliverables contained herein or as otherwise set forth in an Order Form, Chef will own and retain all right, title and interest, express or implied, in and to any Deliverables created during the course of providing the Professional Services and to all other works of authorship of any kind or nature prepared, created or conceived by Chef in the performance of the Professional Services, exclusive of any Confidential Information of Customer incorporated therein. Chef will not own or have any right, title or interest in or to the Confidential Information of Customer, whether by assignment, license or otherwise.

**Residuals/Items of General Knowledge.** Chef may use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its professional services practice in the course of providing the Professional Services, including information publicly known or available or that could reasonably be acquired in similar work performed for another customer of Chef. In no event will Chef be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables, provided this is done without use of Customer’s Confidential Information.

#### **Warranty.**

**Software Warranty.** Chef warrants that the Software will perform in all material respects as specified in its accompanying Documentation under normal use for the duration of the Warranty Period. This warranty extends only to Customer. To the maximum extent permitted by applicable law, Customer’s exclusive remedy for a breach of this limited warranty is to return any allegedly defective Software, and Chef, at its option, will replace it or refund any fee paid for the Software, provided that Customer gives Chef written notice of the noncompliance within the Warranty Period. Chef’s sole obligation under the limited warranty set forth in this [Section 10\(a\)](#) is to use its reasonable efforts to correct or replace any non-conforming Software once Chef has been made aware of such non-conformance or, in Chef’s sole discretion, to terminate this Agreement (in which event, Customer will immediately stop using the Software) and refund the License Fees paid by Customer to Chef up through the effective date of such termination.

**Services Warranty.** Chef warrants to Customer for a period of sixty 60 days after Customer acceptance of Services or Deliverables or initial receipt of or access to the Software, as applicable (the “Warranty Period”) that: (i) the Services will be performed in a good and workmanlike manner; and (ii) the Deliverables will conform in all material respects to applicable specifications identified in an Order Form. Chef’s sole obligation under the limited warranty set forth in this [Section 10\(b\)](#) is to use commercially reasonable efforts to correct any Services or Deliverables that do not comply with the warranties set forth in this [Section 10\(b\)](#) (e.g., by reperformance of any noncomplying Services or modifying any noncomplying Deliverables); provided that Customer gives Chef written notice of the noncompliance within the Warranty Period. If, after the expenditure of commercially reasonable efforts, Chef is unable to correct the noncompliance, Chef may choose to refund an equitable portion (e.g., based upon the value of Customer’s actual use of, or any benefits received by Customer) of the fee paid by Customer for such Deliverables or Services, whereupon the same will be deleted from the Deliverables or Services and no longer considered a part thereof.

**Exclusions.** The warranties under [Sections 10\(b\)](#) and [10\(a\)](#) do not apply to any noncompliance resulting from any: (i) use not in accordance with this Agreement or any applicable Order Form, including Customer operation or use of the Software or Deliverables other than in accordance with applicable documentation or design or on hardware not recommended, supplied or approved by Chef; (ii) modification, damage, misuse or other action of Customer or any third party; (iii) combination with any goods, services or other items provided by Customer or any third party; or (iv) combination of the Software with any distribution or binary not provided by Chef, even if the distribution or binary is derived from the same source code as the Chef Software. Further, Chef does not warrant that the Software or Deliverables or any other items furnished by Chef under this Agreement or any Order Form are free from non-material bugs, errors, defects or deficiencies.

**Disclaimer. EXCEPT FOR THE LIMITED WARRANTY IN SECTIONS 10(a) AND 10(b) ABOVE, THE SOFTWARE, DELIVERABLES, AND ANY SERVICES PROVIDED UNDER**

**THIS AGREEMENT ARE PROVIDED “AS IS”, WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, WARRANTIES CONCERNING THE USE, INTEROPERABILITY, OR PERFORMANCE OF THE SOFTWARE. CHEF DISCLAIMS ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT. CHEF DOES NOT WARRANT THAT THE SOFTWARE, DELIVERABLES, OR SERVICES WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED.**

#### **Indemnification.**

**Indemnification by Chef.** Chef will indemnify Customer and will pay any costs or damages that may be finally awarded in respect of any third party claims, proceedings, costs or damages, including actual attorneys’ fees and court costs and expenses in any such third party action, proceeding or case, and agreed settlements to the extent that the Software or Deliverables infringe any United States patent, or any copyright, trademark or other proprietary right of such third party; provided that Customer: (i) promptly notifies Chef of the claim; (ii) gives Chef all necessary information regarding the claim; (iii) reasonably cooperates with Chef; and (iv) allows Chef to control the defense and all related settlement negotiations; provided that, if any settlement requires a non-monetary obligation of an indemnified party (other than ceasing use of the Software or Deliverables), then such settlement will require the Customer’s prior written consent, which consent will not be unreasonably withheld. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

**Injunction.** If an injunction is sought or obtained against Customer’s use of Software or Deliverables as a result of a third party infringement claim or in Chef’s opinion is likely to be enjoined, Chef may, at its sole option and expense, (i) procure for Customer the right to continue using the affected Software or Deliverable, (ii) replace or modify the affected Software with substantially equivalent software functionality so that it does not infringe, or, if either (i) or (ii) is not commercially feasible in Chef’s opinion, (iii) terminate the License and promptly refund Customer a pro-rata portion of any prepaid License Fees based on the remainder of the License Term.

**Exclusions.** Chef will have no liability for any infringement claim (a) based on modifications to the Software or Deliverables made by a party other than Chef or third party acting on behalf of Chef, if a claim would not have occurred but for such modifications, (b) based on the use of other than the then-current, unaltered version or release of the Software or Deliverables, unless the infringing portion is also in the then-current, unaltered version or release; (c) based on the use, operation or combination of the Software or Deliverables with non-Chef programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination; (d) attributable to any Third Party Components; (e) based on Customer’s use of the Software or Deliverables other than in accordance with this Agreement or the applicable Documentation; or (f) based on combination of the Software with any distribution or binary not provided by Chef, even if the distribution or binary is derived from the same source code as the Chef Software .

**Sole Remedy.** THE TERMS OF THIS SECTION 11 CONSTITUTE THE ENTIRE LIABILITY OF CHEF, AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY INDEMNIFICATION CLAIMS OF ANY KIND.

**Reserved.**

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

**Indirect Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE PROVIDED SPECIFICALLY IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF OR IN ANY WAY RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SOFTWARE, DOCUMENTATION, DELIVERABLES, OR THE SERVICES PROVIDED BY CHEF HEREUNDER INCLUDING, WITHOUT LIMITATION, DAMAGES OR OTHER LOSSES FOR LOSS OF USE, LOSS OF BUSINESS, LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, COMPUTER FAILURE OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

**Aggregate Liability.** IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER TO CHEF UNDER THIS AGREEMENT.

**General.** THESE LIMITATIONS APPLY EVEN IF THIS SECTION 12 IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS MAY NOT ALLOW THE

EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY. IN SUCH EVENT, THE LIABILITY OF THE PARTIES WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

Exclusion - Violations of Law. The limits in Section 12(a) and Section 12(b) above do not apply to damages incurred by a party due to the other party's violation of applicable laws. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Confidentiality and Privacy. Customer and Chef will maintain the confidentiality of Confidential Information. The receiving party of any Confidential Information of the other party agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party will protect the secrecy of and prevent disclosure and unauthorized use of the disclosing party's Confidential Information using the same degree of care that it takes to protect its own confidential information and in no event will use less than reasonable care. The terms of this Confidentiality section will survive termination of this Agreement. Upon termination or expiration of this Agreement, the receiving party will, at the disclosing party's option, promptly return or destroy (and provide written certification of such destruction) the disclosing party's Confidential Information, save once copy for archival and dispute resolution purposes.

Data Protection. If the General Data Protection Regulation ("GDPR") applies to Customer then the following terms will apply:

Definitions: In this Section 14, the following terms will have the following meanings:

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Controller", "Processor", "Data Subject", "Personal Data", "Processing" (and "Process") and "Special Categories of Personal Data" will have the meanings given in Applicable Data Protection Law;

"Applicable Data Protection Law" will mean: (i) prior to 25 May 2018, the EU Data Protection Directive (Directive 95/46/EC); and (ii) on and after 25 May 2018, the EU General Data Protection Regulation (Regulation 2016/679).

"Standard Contractual Clauses" means the contractual clauses set out in Exhibit 1 to this Agreement.

#### Processing of Data:

Applicability. This Section 14 will apply only to the extent Customer is established within the EEA or Switzerland and/or to the extent Chef processes Personal Data of Data Subjects located in the European Economic Area ("EEA") or Switzerland on behalf of Customer.

Relationship of the parties: The Customer (the "Controller") appoints Chef as a processor to Process the Personal Data that is the subject of the Agreement (the "Data") for the purposes described in this Agreement and any Order Form (or as otherwise agreed in writing by the parties) (the "Permitted Purpose"). Chef will comply with the obligations that apply to it under Applicable Data Protection Law. The Ordering Activity is not bound by the GDPR.

Prohibited data: The Customer will not disclose any Special Categories of Data to Chef for processing.

Purpose Limitation: Chef will process the Data as a Processor as necessary to perform its obligations under this Agreement and any Order Form, and in accordance with the documented instructions of Customer (the "Permitted Purpose"), except where otherwise required by any EU (or any EU Member State) law applicable to Chef. The duration of the Processing, the nature and purpose of the Processing, the types of Data and categories of Data Subjects Processed under this Agreement are further specified in Appendix 1 to the Standard Contractual Clauses.

International transfers: Chef will not transfer the Data (nor permit the Data to be transferred) outside of the EEA unless it has taken such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law. Such measures may include (without limitation) transferring the Data to a recipient in a country that the European Commission has decided provides adequate protection for personal data, to a recipient that has achieved binding corporate rules authorization in accordance with Applicable Data Protection Law, or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission. The following transfer mechanisms listed below will apply, in the following order of precedence, to any transfers of Data under this Agreement from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of Data Protection Laws and Regulations of the foregoing territories, to the extent such transfers are subject to such Data Protection Laws and Regulations; (1) EU-U.S. and Swiss-U.S. Privacy Shield Framework self-certifications (if applicable); (2) The Standard Contractual Clauses set forth in Exhibit 1 to this Agreement.

Confidentiality of Processing: Chef will ensure that any person it authorizes to process the Data (an "Authorized Person") will protect the Data in accordance with Chef's confidentiality obligations under this Agreement.



**Security:** Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Chef will implement technical and organizational measures to protect the Data (1) from accidental or unlawful destruction, and (2) loss, alteration, unauthorized disclosure of, or access to the Data (a "Security Incident").

**Sub-Processing:** The Customer consents to Chef engaging third party sub processors to process the Data for the Permitted Purpose provided that: (1) Chef maintains an up-to-date list of its sub processors; (2) Chef imposes data protection terms on any sub processor it appoints that require it to protect the Data to the standard required by Applicable Data Protection Law; and (3) Chef remains liable for any breach of this Clause that is caused by an act, error or omission of its sub processor. The Customer may object to Chef's appointment or replacement of a sub processor, provided such objection is based on reasonable grounds relating to data protection. In such event, Chef will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Customer. If Chef is unable to make available such change within a reasonable period of time, which will not exceed thirty (30) days, Customer may terminate the applicable Order Form(s) with respect only to those Services which cannot be provided by Chef without the use of the objected-to new Sub-processor by providing written notice to Chef. Chef will refund Customer any prepaid fees covering the remainder of the term of such Order Form(s) following the effective date of termination with respect to such terminated Services, without imposing a penalty for such termination on Customer.

**Cooperation and Data Subjects' Rights:** Customer is not required to respond to any request from a Data Subject under any Applicable Data Protection Law unless required by a Federal Law of the United States. Chef will provide reasonable and timely assistance to the Customer to enable the Customer to respond to: (1) any request from a Data Subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (2) any other correspondence, inquiry or complaint received from a Data Subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to Chef, Chef will promptly inform the Customer providing full details of the same.

**Data Protection Impact Assessment:** If Chef believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of Data Subjects, it will inform the Customer and provide reasonable cooperation to the Customer (at the Customer's expense) in connection with any data protection impact assessment that may be required under Applicable Data Protection Law.

**Security Incidents:** If Chef becomes aware of a confirmed Security Incident (as defined in [Section 14\(b\)\(vii\)](#) above), it will inform the Customer without undue delay and will provide reasonable information and cooperation to the Customer so that the Customer can fulfill any data breach reporting obligations it may have under (and in accordance with the timescales required by) Applicable Data Protection Law. Chef will further take such any reasonably necessary measures and actions to remedy or mitigate the effects of the Security Incident and will keep the Customer of all material developments in connection with the Security Incident.

**Deletion or Return of Data:** Upon termination or expiration of the Agreement, Chef will (at the Customer's election) destroy or return to the Customer all Data in its possession or control. This requirement will not apply to the extent that Chef is required by applicable law to retain some or all of the Data, or to Data it has archived on back-up systems, which Data Chef will securely isolate and protect from any further processing except to the extent required by such law.

**Audit:** The Customer acknowledges that Chef is regularly audited by independent third party auditors. Upon request, Chef will supply a summary copy of its audit report(s) to the Customer, which reports will be subject to the confidentiality provisions of this Agreement. Chef will also respond to any written audit questions submitted to it by the Customer, provided that the Customer will not exercise this right more than once per year.

#### **Software Usage Tracking.**

If and when Customer adds additional License Units to its License, Customer will pay to Chef for such additional License Units added to any License. Upon Chef's request (such request not to be made more than twice during any 12 month period without good cause), Customer agrees to promptly deliver to Chef (i) any usage files and reports generated by the Software to permit Chef to verify the number of License Units actually used by Customer during the applicable License Term; and/or (ii) a certification signed by one of Customer's officers regarding the number of License Units actually used by Customer during the applicable License Term. Notwithstanding the foregoing, Customer agrees to reasonably cooperate with Chef to verify the number of License Units actually used by Customer during the applicable License Term. If Chef confirms that Customer has exceeded the number of License Units for the applicable License Term, in addition to any other remedies available under this Agreement or applicable law, Customer agrees to pay the then-current License Fees in accordance with the GSA Schedule Pricelist for the additional License Units used by Customer. If the Ordering Activity exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the higher use amount.

Unless Customer chooses to disable telemetry features in the Software, Customer consents to Chef receiving data and information directly from the Software for the sole purpose of obtaining information regarding Customer's use of the Software (i.e., when Customer installs an update or upgrade), as well as any Software bugs, errors, and other similar technical support issues. Chef will only use such data and information ("Software Usage and Technical Support Data") for its own business purposes, including but not limited to the purposes of (i) providing the Support Services; and (ii) to gather information about how Customer uses the Software, which may be combined with information about how others use the Software, in order to help Chef better understand trends and Customers' needs in



order to better consider new features, and (iii) improving the Software and Customer's use experience. Chef will use Software Usage and Technical Support Data solely in aggregate, anonymized form and solely for Chef's own business purposes. For instructions on how to disable Chef's access to the Software Usage and Technical Support Data, please refer to the Software Documentation or contact Chef Support.

**Export Compliance.** As required by the laws of the United States and other countries, Customer represents and warrants that Customer: (a) understands that the Software and its components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (b) is not located in a prohibited destination country under the EAR or U.S. sanctions regulations; (c) will not export, re-export, or transfer the Software to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (d) will not use or transfer the Software in connection with any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by an applicable arms embargo, unless authorized by the relevant government agency by regulation or specific license; and (e) understands that countries including the United States may restrict the import, use, or export of encryption products (which may include the Software and the components) and agrees that Customer will be solely responsible for compliance with any such import, use, or export restrictions.

**FCPA, and No Unlawful Payments.** Neither the Customer nor any of its subsidiaries nor, to the Customer's knowledge, any other person associated with or acting on behalf of the Customer or any of its subsidiaries, including, without limitation, any director, officer, agent, employee or affiliate of the Customer or any of its subsidiaries ("Representatives") has (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity or to influence official action; (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (c) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment; (d) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder; or (e) Reserved. Further, Customer will, and will cause its Representatives to, comply with, as applicable the FCPA, including maintaining and complying with all policies and procedures to ensure compliance with these laws.

**Additional Obligations.** Each Party will comply with all applicable local, state, national, and international laws and regulations with respect to its rights and obligations under this Agreement. Customer further agrees that its purchase under this Agreement is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Chef regarding future functionality or features of the Software.

**U.S. Government.** The Software is "Commercial Computer Software" as defined under FAR 52.227-14. For all other government entities, use, duplication, or disclosure of the Software and Documentation by the U.S. Government is subject to restrictions set forth in 52.227-14, as applicable.

**General.**

Excusable delays shall be governed by FAR 52.212-4(f).

Neither party may assign this Agreement except upon the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's voting securities or the assets governed by this Agreement in accordance with the procedures for securing such approval are set forth in FAR 42.1204. Any attempt to assign this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

Customer consents to Chef's use of the Customer name for marketing purposes to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. All waivers must be in writing and signed by both parties.

All notices permitted or required under this Agreement will be in writing and will be delivered in person, by confirmed facsimile, overnight courier service or mailed by first class, registered or certified mail, postage prepaid. Such notice will be deemed to have been given upon receipt.

This Agreement will be governed by the Federal laws of the U.S.A.

The parties expressly agree that the UN Convention for the International Sale of Goods (CISG) or the Uniform Computer Information Transactions Act (UCITA) will not apply.

Any amendment or modification to the Agreement must be in writing signed by both parties.

In the event of a conflict between this Agreement and other applicable documents between the Parties, such documents will apply in the following descending order of precedence: (i) Order Form; (ii) this Agreement; (iii); other applicable agreements. In the event of a conflict between any terms of this Agreement or terms of an Order Form and the terms and conditions attached to or otherwise forming part of any Purchase Order issued by Customer (collectively, "Purchase Order Terms"), the terms of the negotiated Purchase Order will control or supersede the Agreement and/or Order Form. This Agreement supersedes the terms of any shrinkwrap or click-through license agreement included in any package or downloadable version of the Software.

Each of the parties has caused this Agreement to be executed by its duly authorized representatives as of the Effective Date.

Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Cigent Technology, Inc.  
2211 Windman Way, Suite 150  
Fort Myers, FL 33901

## Cigent End-User Agreement

This End User Agreement (this “Agreement”, also referred to elsewhere as “EULA”) is a legal agreement between the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Customer” or “Ordering Activity”) and Cigent Technology, Inc., a Delaware corporation (“Cigent”). This Agreement governs orders placed by Customer (defined below) to access and use Cigent’s On-Premise Software, Cloud Services and/or Professional Services (and any updates and modifications thereto).

BY ISSUING AN ORDER TO CIGENT (OR ITS AUTHORIZED CHANNEL PARTNER), CUSTOMER AGREES TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE AN INDIVIDUAL (“YOU”) ACTING ON BEHALF OF CUSTOMER, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT HAVE AUTHORITY TO BIND CUSTOMER, OR IF YOU OR CUSTOMER DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU AND CUSTOMER MAY NOT USE THE PRODUCTS.

This Agreement consists of, collectively, this base agreement, the terms and conditions detailed in the Product Addendum and the applicable Policies attached hereto as Exhibit 1. In the event of any conflict between the terms and conditions set forth in the base Agreement and those set forth in the Product Addendum, the terms and conditions of such Product Addendum shall control.

## DEFINITIONS

Unless otherwise indicated in this Agreement, the following terms, when capitalized, shall have the following meaning: “**Professional Services**” means, as applicable, Professional Services and Maintenance and Support Services. “**Channel Partner**” means, as applicable, the authorized reseller, distributor, or other authorized third party that markets and sells the Products. “**Cloud Services**” means the Web- based application services made generally available by Cigent on a subscription basis and identified on the applicable Order. “**Customer**” means the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document executing this Agreement and to the extent specified on any Order hereunder its affiliates (including parents, subsidiaries and other entities controlling or under common control with any of such entities) or its authorized third party service providers; provided however, that, in each case, Customer shall be solely responsible for ensuring

compliance with the applicable terms and conditions of the Agreement and Customer shall remain liable for any breach of such terms and conditions by its affiliates and third party service providers. **“Customer Data”** means all Customer-specific and Customer-identifiable data submitted to or collected by the Products by or on behalf of Customer. **“Delivery”** means the date Cigent provides access to the keys to Customer for On-Premise Software, or the date Cigent provides Customer with log-in access to the Cloud Services. **“Documentation”** means, as applicable, the functional specifications, user guides, “help” pages, installation instructions, descriptions or technical requirements created and provided by Cigent generally to its customers, either in documentary form or via Product information websites. **“Endpoint”** means all Customer device(s) on which the Endpoint Software (defined below) is installed and in accordance with the Documentation, including, but not limited to, laptops, desktops, tablets, point of sale devices and servers. **“Feedback”** means suggestions, enhancement requests, recommendations or other input provided to Cigent regarding the Products. **“Fees”** means amounts payable for the Products to which the Customer subscribes under this Agreement in accordance with the GSA Schedule Pricelist. **“Maintenance and Support”** means the maintenance and support services detailed in the Cigent Maintenance and Support Policy located on the Policies Page (defined below). **“On-Premise Software”** means: (i) Cigent’s proprietary software products as specified on Order(s); and/or (ii) Cigent’s proprietary endpoint software required for use with certain Products, and which is installed on Customer Endpoints (“Endpoint Software”). **“Order”** means an order form issued by Customer for the purchase of the applicable Products, or a Customer or Channel Partner purchase order, as applicable. **“Policies”** means the policies and documents applicable to Cigent and the Products, that are attached hereto. **“Product Addendum”** means the product addendum attached hereto as Exhibit 1 and incorporated herein by reference, which contains product-specific terms and conditions. **“Product(s)”** means, as applicable, the Cloud Services, On-Premise Software, and Professional Services, as applicable, to which Customer subscribes under this Agreement. **“Professional Services”** means, if applicable, training, implementation or Product-related services specified on the Order(s) or detailed in a Statement of Work. **“Subscription Term”** means the period of time Customer is authorized to use Products, as identified on an Order. **“Statement of Work”** means, if applicable, any written, mutually signed work statement that references this Agreement or an Order and which details activities and terms relating to Professional Services.

## ORDERS; FEES; TAXES; PAYMENT TERMS.

## –Orders

Customer shall place Orders directly with Cigent or with a Channel Partner, as applicable. The terms relating to Fees, taxes and payment terms detailed in this Section 2 apply solely to Orders placed directly with Cigent. Corresponding terms for Orders placed with a Channel Partner shall be agreed to by and between Customer and such Channel Partner.

## –Fees

The Fees for Products shall be set forth in the Order in accordance with the GSA Schedule Pricelist.

## –Taxes

Provider shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

## –Payment Terms

The Fees for each Order are payable net thirty (30) calendar days from the receipt date of invoice unless otherwise as specified in the applicable Order and in accordance with the GSA Schedule Pricelist. Unless otherwise agreed to in writing by Cigent or the Channel Partner, all payments hereunder shall be made in U.S. dollars and are free from all setoffs.

## PRIVACY AND SECURITY

### –Privacy and Security

As further described in Cigent's Privacy Policy which is located on the Policies Page attached hereto, Cigent will take commercially reasonable and appropriate technical and organizational measures designed to protect Customer Data against unauthorized access, accidental loss or damage, and unauthorized destruction. The security provided by Cigent shall be in accordance with Cigent's information security policies included on the Policies Page and good industry practices relating to protection of the type of data typically processed by Cigent. Cigent's European Union General Data Protection Regulation Policy is located on the Policies Page.

## –Data Processing

The parties acknowledge that Customer Data may contain personal data (as defined under applicable data protection laws) and Cigent shall process such data in accordance with the documented instructions of Customer and Customer Data is handled in accordance with applicable Government data security requirements regarding the collection, processing and protection of personal data, and in accordance with this Agreement. Customer hereby consents to Cigent’s processing of Customer Data, including personal data, for the purposes of carrying out its obligations under this Agreement, and for other lawful purposes in accordance with applicable laws and regulations. Customer is responsible for obtaining any required consents from individual data subjects relating to the use of the Products.

## –Disclosure of Personal Data

Cigent will not disclose personal data outside of Cigent or its controlled subsidiaries except: (i) as Customer directs; (ii) as described in this Agreement; or (iii) as required by law. The Product may include optional functionality provided by third party processors. In the event Customer chooses to utilize such functionality, Customer will be provided advance notification in the Product of the processing details. Following such notification, Customer may choose to: (a) refrain from utilizing the applicable functionality, in which case such processing will not occur; or (b) proceed with the functionality, in which case Cigent will be authorized to process in accordance with the details provided. Cigent is responsible for its third party processor compliance with Cigent’s obligations in the Agreement and shall ensure that such third parties are bound by written agreements that require them to provide at least the level of data protection required of Cigent by the Agreement.

## –Threat Intelligence Data Collection

Certain Cigent Products may collect data relating to malicious or potentially malicious code, attacks, and activities on Customer Endpoints (“Threat Intelligence Data”). Threat Intelligence Data is collected by Cigent for analysis and possible inclusion in a threat intelligence feed utilized by certain Products. Prior to inclusion in any threat intelligence feed, Threat Intelligence Data will be: (i) reduced to a unique file hash or to queries or general behavioral descriptions that can be used to identify the same or similar malicious or potentially malicious code in Customer’s systems and other Cigent customer systems; and/or (ii) be anonymized and made un-attributable to any particular



Customer or individual. Cigent may distribute Threat Intelligence Data to its customers at its discretion as part of its threat intelligence data feed. Customer agrees that Threat Intelligence Data is not Customer Data, and Cigent may retain, use, copy, modify, distribute and display the Threat Intelligence Data for its business purposes, including without limitation for developing, enhancing, and supporting products and services, and for use in its threat intelligence feed provided such Customer Data is handled in accordance with applicable Government data security requirements.

## RIGHTS; CUSTOMER RESTRICTIONS

### –Rights in Cigent Products

Cigent reserves all rights to the Products and all intellectual property relating thereto not specifically granted in this Agreement. All Products under this Agreement are provided under subscription and not sold, and shall remain the sole and exclusive property of Cigent.

### –Feedback

If Customer or any users provide Cigent with any Feedback, Cigent may use and exploit such Feedback at its discretion without attribution of any kind. All Feedback is provided by Customer without warranties. Customer shall have no obligation to provide Feedback. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

### –Rights in Customer Data

As between Customer and Cigent, except as otherwise set forth in this Agreement, all right, title and interest in and to the Customer Data is owned exclusively by Customer.

### –Customer Restrictions

Except as may otherwise be explicitly provided for in this Agreement, Customer shall not, and shall take reasonable steps to ensure its Administrative Users (defined below) do not: (i) sell, transfer, rent, copy (other than for archival or backup purposes), reverse engineer (except as allowed by and in compliance with applicable law), reverse compile, modify, tamper with, or create derivative works of the Products, (ii) use the Products to operate a service bureau, outsourcing, sublicensing, or similar business for the benefit

of third parties; (iii) use the Products other than in connection with Customer's internal business; (iv) remove any copyright and trademark notices incorporated by Cigent in the Products; (v) cause or permit others to access or use the Products in order to build or support, and/or assist a third party in building or supporting, software or services competitive to Cigent; (vi) perform or disclose any of the following security testing on the Products (including any Cloud Services environment or associated infrastructure): network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing or penetration testing; or (vii) use the Products to: (a) perform any activity that is unlawful, or that interferes with any use of the Products or the network, systems and/or facilities of Cigent or its service providers; (b) store, process, publish or transmit any infringing or unlawful material, or material that constitutes a violation of any party's privacy, intellectual property or other rights; or (c) perform any activity intended to circumvent the security measures of Cigent or its service providers. Customer is responsible for all administrative access by its personnel and, if applicable, its service providers ("Administrative Users") through its login credentials, for controlling against unauthorized access, and for maintaining the confidentiality of usernames and passwords. If Customer becomes aware of any breach of this Section 4.4, Customer will notify Cigent and remedy the situation immediately, including, if necessary, limiting, suspending or terminating an Administrative User's access to the Products.

## REPRESENTATIONS AND WARRANTIES

### –Mutual Representation and Warranties

Each party represents and warrants to the other that: (i) it has the legal right and authority to enter into this Agreement and perform its obligations hereunder; and (ii) it will not introduce into the Products any virus, worm, Trojan horse, time bomb, or other malicious or harmful code (excluding, however, any legitimate mechanism to disable operation of the Products after the expiration of a Subscription Term).

### –Threat Intelligence Feeds

The information provided via any threat intelligence feed is provided on an "AS-IS" and "AS-AVAILABLE" basis only.

### –Endpoint Software

For Products that utilize Endpoint Software, Cigent warrants that the Endpoint Software will conform in all material respects to the specifications detailed in the Documentation at the time of Delivery and, if Customer is entitled to receive Maintenance and Support Services, any Updates provided for the Endpoint Software will be compatible with the then-current Cloud Services or version of On-Premise Software, as applicable.

### –Professional Services Limited Warranty

Cigent warrants that the Professional Services will be performed in a professional and workmanlike manner consistent with industry standards for similar types of services. For any breach of the foregoing limited warranty, Customer's exclusive remedy shall be to terminate the applicable Professional Services and receive and refund any prepaid but unused Fees applicable to the non-compliant Professional Services.

### –Cigent Products

The warranty for specific Cigent Products is detailed in the Product Addendum. The limitation on warranties in Section 5.6 below, the exclusion of certain warranties in Section 5.7 below, and the disclaimer of actions set forth in Section 5.8 below, also apply to any warranties set forth in the Product Addendum.

### –LIMITATION ON WARRANTIES

Cigent warranties are for the benefit of Customer only and are void if: (i) the Products are integrated by Customer with third party products, unless integrated in accordance with the applicable Documentation; (ii) the Products are altered by anyone other than Cigent or an authorized representative of Cigent; (iii) the Products are improperly installed, maintained or accessed by anyone other than Cigent or an authorized representative of Cigent; (iv) Customer is utilizing a version of the On-Premise Software no longer supported by Cigent; or (v) the Products are used in violation of the applicable Documentation or Cigent's instructions or this Agreement.

### –EXCLUSION OF CERTAIN WARRANTIES

Except for warranties detailed in the Product Addendum, the foregoing warranties are in lieu of and exclude all other express and implied warranties, including but not limited to, warranties of merchantability, title, fitness for a particular purpose, non-infringement, error free operation or non-intrusion due to hacking or other similar means of unauthorized access. No written or oral representation, made by Cigent personnel or

otherwise, which is not contained in this Agreement or identified in the Purchase Order, Statement of Work, or similar document, will be deemed to be a warranty by Cigent or give rise to any liability of Cigent whatsoever. Customer acknowledges that it is impossible under any available technology for any products to identify and eliminate all malware or potential threats.

## –DISCLAIMER OF ACTIONS CAUSED BY AND/OR UNDER THE CONTROL OF THIRD PARTIES

Cigent does not and cannot control the flow of data to or from Cigent's network and other portions of the internet, and accordingly Cigent disclaims any and all warranties and liabilities resulting from or related to a failure in the performance of internet services provided or controlled by a third party other than any contractor or agent of Cigent hereunder.

## LIMITATION OF LIABILITY

### –NO CONSEQUENTIAL DAMAGES

Except for in relation to: (i) a breach of Section 9 (Confidentiality); (ii) a party's violation of the other party's intellectual property rights; or (iii) a party's indemnification obligation in this Agreement; notwithstanding any provision of this Agreement to the contrary, in no event shall either party or its suppliers, officers, directors, employees, agents, shareholders, or contractors ("Related Parties") be liable to the other party for consequential, incidental, special, punitive or exemplary damages (including but not limited to lost revenues, profits or data, or costs of business interruptions other economic loss) arising from or in connection with any cause including but not limited to breach of warranty, breach of contract, tort, strict liability, failure of essential purpose or any other economic losses, even if the other party is advised of the possibility of such damages. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS

REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

### –LIMIT ON LIABILITY

Except for liability arising from: (i) a breach of Section 9 (Confidentiality) below; (ii) a party's violation of the other party's intellectual property rights; (iii) a party's indemnification obligation in this Agreement; or (iv) a party's fraud, willful misconduct or violation of Section 10.9; the maximum cumulative liability of a party and its related parties for any and all claims in connection with this Agreement or the subject matter hereof, including but not limited to claims for breach of warranty, breach of contract, tort, strict liability, failure of essential purpose or otherwise, shall in no circumstance exceed the fees paid to Cigent for the applicable Product(s) giving rise to the liability.

### INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY

Cigent shall have the right to intervene to: (i) defend and indemnify Customer and its officers, directors, employees and agents from and against all claims and causes of action arising out of an allegation that the Products (hereinafter the "Indemnified Product[s]") infringe a third party copyright, trademark, patent, or other intellectual property right; and (ii) pay the resulting cost and damages finally awarded against Customer by a court of competent jurisdiction or the amount stated in a written settlement signed by Cigent, as long as Customer gives Cigent: (a) prompt written notice of such claim or action; (b) the right to control and direct the investigation, preparation, defense, and settlement of the action; and (c) reasonable assistance and information with respect to the claim or action. If a final injunction is obtained against Customer's right to continue using the Indemnified Product or, if in Cigent's opinion an Indemnified Product is likely to become the subject of a claim, then Cigent may, through negotiated agreement, either: (1) obtain the right for Customer to continue to use the Indemnified Product; or (2) replace or modify the Indemnified Product so that it no longer infringes but functions in a materially equivalent manner. If Cigent determines that neither of these alternatives is reasonably available, then Cigent may terminate this Agreement and refund any prepaid unused Fees applicable to the infringing Indemnified Product. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. This section shall not apply to infringement or misappropriation claims arising in whole or in part from: (A) designs,

specifications or modifications originated or requested by Customer; (B) the combination of the Indemnified Products or any part thereof with other equipment, software or products not supplied by Cigent if such infringement or misappropriation would not have occurred but for such combination; or (C) Customer's failure to install an update or upgrade, where same would have avoided such claim. THE FOREGOING STATES CIGENT'S ENTIRE OBLIGATION AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ACTUAL OR POTENTIAL THIRD PARTY INFRINGEMENT CLAIMS OR CAUSES OF ACTION.

## TERMINATION

### –Termination for Cause

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Cigent shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

### –Effect of Termination

Upon the effective date of termination of the Agreement or an Order: (i) Cigent will immediately cease providing the applicable Cloud Services and/or Professional Services; (ii) Customer will immediately cease use of any On-Premise Software and remove such On-Premise Software from its systems; and (iii) any and all of Customer's current and, in the case of termination for cause by Cigent, payment obligations under this Agreement immediately become due for Fees incurred prior to and including the termination date. In the event of termination for cause by Customer, Cigent will refund any prepaid, unused Fees pro rata from the date of termination.

## CONFIDENTIALITY

### –Confidential Information

As used in this Agreement, "Confidential Information" means all information of either party that is not generally known to the public, whether of a technical, business or other nature, that is disclosed by one party to the other party or that is otherwise learned by



the recipient in the course of its activities with the disclosing party, and that has been identified as being proprietary and/or confidential or that the recipient reasonably ought to know should be treated as proprietary and/or confidential under the circumstances of disclosure.

When the end user is the Federal Government, neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings.

Cigent recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor. The Customer agrees to give Cigent adequate prior notice of the request and before releasing Cigent’s Confidential Information to a third party, in order to allow Cigent sufficient time to seek injunctive relief or other relief against such disclosure

### –Exceptions

The obligations of either party pursuant to this Section 9 shall not extend to any information that: (i) recipient can demonstrate through written documentation was already known to the recipient prior to its disclosure to the recipient; (ii) was or becomes known or generally available to the public (other than by act of the recipient); (iii) is disclosed or made available in writing to the recipient by a third party having a bona fide right to do so; (iv) is independently developed by recipient without the use of any Confidential Information; or (v) is required to be disclosed by process of law, provided that the recipient shall notify the disclosing party promptly upon any request or demand for such disclosure.

## MISCELLANEOUS

### –Notices

Any notice under this Agreement must be in writing and sent by certified letter, receipted commercial courier or e-mail transmission (acknowledged in like manner by the intended recipient) to the respective addresses shown on the Order(s), and shall be deemed given on the date received by the recipient, except that Cigent may provide notice of changes to Policies, if required, via written announcement on its customer portal, which shall be deemed given on the date of such announcement. Any party may from time to time change such address or individual by giving the other party notice of such change in accordance with this Section.

## –Export Control

Customer acknowledges that any Products and Confidential Information provided under this Agreement may be subject to U.S. export laws and regulations. Customer agrees that it will not use, distribute, transfer, or transmit the Products or Confidential Information in violation of U.S. export regulations. Without limiting the foregoing: (i) each party warrants and represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports; and (ii) Customer shall not permit individuals to access or use the Products in violation of any U.S. or United Nations export embargo, prohibition or restriction.

## –Usage

Upon request, Customer agrees to certify to its compliance with the quantity and usage restrictions set forth in this Agreement and any Order for On-Premise Software, or to allow Cigent or its approved designee to inspect Customer's data processing systems and records to verify such compliance. Cigent may review Customer's usage of the Cloud Services to determine Customer's compliance with the quantity and usage restrictions of this Agreement and any Order. Cigent will promptly notify Customer if Cigent (or a Customer certification) determines that Customer's usage of the Products exceeds purchased quantities, and if so, Customer shall promptly pay to Cigent additional Fees applicable to such prior over-usage, and either: (i) immediately discontinue any such overuse; or (ii) purchase such additional quantities to cover Customer's actual usage going forward, at Cigent's then current charges.

## –Applicable Law

This Agreement shall be governed by the Federal laws of the United States of America., excluding: (i) reserved; (ii) the United Nations Convention on Contracts for the International Sale of Goods; and (iii) the Uniform Computer Information Transactions Act (UCITA) as adopted by any state

## –Assignment

Neither party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party (not to be unreasonably withheld). The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for

securing such approval are set forth in FAR 42.1204 Any assignment in contravention of this provision shall be null and void. All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

### –Non Waiver

The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

### –Relationship of the Parties

Cigent is an independent contractor. The provisions of this Agreement shall not be construed to establish any form of partnership, agency or other joint venture of any kind between Customer and Cigent, nor to constitute either party as the agent, employee or legal representative of the other.

### –Force Majeure

Excusable delays shall be governed by FAR 52.212-4(f).

### –Compliance with Laws

Cigent will comply with all laws and regulations applicable to it and its provision of the Products. Cigent is not responsible for compliance with any laws or regulations applicable to Customer or Customer's industry that are not generally applicable to information technology service providers. Cigent does not determine whether Customer Data includes information subject to any specific law or regulation. Customer must comply with all laws and regulations applicable to it and its use and possession of the Products.

### –Severability

Any provision of this Agreement that is unenforceable shall not cause any other remaining provision to be ineffective or invalid.

### –Modification of Agreement

Except as set forth herein, no addition to or modification of this Agreement shall be binding on either of the parties hereto unless reduced to writing and executed by authorized representatives of each of the parties.

### –Modification of Cloud Services and Policies

Notwithstanding anything to the contrary in this Agreement, from time to time at its sole reasonable discretion Cigent may make upgrades, changes and/or improvements to: (i) the Cloud Services, in order to enhance the Cloud Services generally and/or remedy any issues with the Cloud Services; or (ii) the Policies, in order to address changes to Products or applicable laws or regulations. Notwithstanding the foregoing, except as is required as a result of changes to applicable laws or regulations, Cigent will not modify any Cloud Services or Policies in any way designed to: (a) materially degrade the Cloud Services or Policies; or (b) add additional material obligations for Customer.

### –Survival

All provisions of this Agreement that reasonably may be interpreted or construed as surviving termination of this Agreement shall survive the termination of this Agreement.

### –Counterparts; Electronic Signature

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The parties hereby consent to electronic signature as a binding form of execution of this Agreement and related documents.

### –Evaluation and Beta Use Terms and Conditions

Cigent may, at its sole discretion and upon mutual written agreement of the parties, grant Customer the right to use the Products for evaluation or beta testing purposes in accordance with the terms of this Agreement. Notwithstanding anything to the contrary anywhere in this Agreement, the following terms and conditions shall also apply to (and supersede any conflicting terms in the event of a conflict) Customer's evaluation or beta use of the Products: (i) the Products may be used solely for Customer's internal assessment of the capabilities, performance, and suitability of the Products and in no event for production use; (ii) the Products ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, and Cigent disclaims all warranties, support obligations, and other liabilities and obligations for Customer's evaluation or beta use of the

Products; and (iii) Customer agrees to defend, indemnify and hold harmless Cigent from all claims, damages, and losses, howsoever arising and whether direct, indirect, or consequential, including all legal fees and expenses, arising from Customer's evaluation or beta use of the Products.

### –Ultrahazardous Activities

The Products are not designed or intended for use in any hazardous environment requiring fail-safe performance or operation in which the failure of the Products could lead to death, personal injury, or property damage, including without limitation the design or operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems (or the on-line control of equipment in any such environment.) Customer hereby agrees that it will not use the Products in such environments.

### –Entire Agreement; English Language Controls

This Agreement comprises all the terms, conditions and agreements of the parties hereto with respect to the subject matter hereof and supersedes all other negotiations, proposals, or agreements of any nature whatsoever, unless otherwise specifically provided. Any contradictory or pre-printed terms and conditions that Customer may provide in connection with an Order shall be deemed null and void. This Agreement and all Orders, notices, or other documents given or to be given under this Agreement will be written in the English language only.

## EXHIBIT 1: PRODUCT ADDENDUM

### Part 1: Additional Terms and Conditions Specific to Cloud Services

#### 1. Cloud Services

This Product Addendum Part 1 applies for all Cigent Cloud Services.

#### Grant of Rights for Cloud Services

During the applicable Subscription Term, Cigent will make the then-current version of the Cloud Services available to Customer, and hereby grants Customer the right to access and use the Cloud Services for the number of Endpoints identified in an Order.

For clarity, the Cloud Services may include and require the use of the EndpointSoftware.

## Cloud Services Warranty

Cigent warrants that the Cloud Services will conform in all material respects to the specifications detailed in the applicable Documentation during the Subscription Term. If the Cloud Services do not comply with this warranty, Cigent will (at its option), as Customer's sole and exclusive remedy: (i) within a reasonable period of time repair, replace, or modify the Cloud Services so that they comply with this warranty, or (ii) terminate this Agreement or applicable Order and refund any prepaid but unused Fees applicable to the non-compliant Cloud Services.

## Service Level Warranty

Cigent warrants that the Cloud Services will be available in accordance with the Cigent Service Level Agreement ("SLA"), which is attached as an addendum. The SLA states Customer's sole and exclusive remedy for any breach of this Service Level Warranty.

## Suspension

In the event of a breach or suspected breach of any of the restrictions in Section 4.4 of the body of the Agreement, Cigent reserves the right to temporarily suspend Customer's Cloud Services if reasonably necessary to prevent harm to Cigent, Customer, other customers, and/or Cigent's partners, vendors and suppliers, with such notice and for such period as may be reasonable in the context of the prospective harm.

## Cigent for Networks

In the event Customer purchases a subscription to Cigent for Networks, this Product Addendum Part 1 applies in its entirety, and: (i) Customer hereby consents to the transfer of Customer Data, including, if applicable, personal data, as necessary, for the purposes of processing such data in accordance with this Agreement; and (ii) references to "Endpoints" shall be deemed references to "CPUs" as applicable.

## Part 2: Additional Terms and Conditions Specific to On-Premise Software

### On-Premise Software



This Product Addendum Part 2 applies for all Cigent On-Premise Software.

## Grant of Rights for On-Premise Software

Customer is granted for the Subscription Term specified in the applicable Order(s) a worldwide, non-exclusive, non-assignable (except pursuant to a permitted assignee under the Agreement), non-transferable right to: (i) install and use (in accordance with the Documentation and for internal business purposes only) the applicable On-Premise Software (including Endpoint Software) on the number of servers and/or Endpoints specified in the applicable Order(s); and (ii) copy and run the applicable On-Premise Software for testing and disaster recovery purposes.

## On-Premise Software Warranty

Cigent warrants that for a period of ninety (90) days from Delivery, the On-Premise Software will conform in all material respects to the specifications detailed in the Documentation. If the On-Premise Software does not comply with this warranty, Cigent will (at its option), as Customer's sole and exclusive remedy: (i) within a reasonable period of time repair, replace, or modify the applicable On-Premise Software so that it complies with this warranty, or (ii) terminate this Agreement or applicable Order and refund any prepaid but unused Fees applicable to the non-compliant On-Premise Software Product (if any).

## Updates and Upgrades

Cigent may release patches, bug fixes, updates, upgrades, maintenance and/or servicepacks ("Updates") for the On-Premise Software from time to time, which may be necessary to ensure the proper function and security of the Products. Cigent is not responsible for performance, security, warranty breaches, support or issues encountered in connection with the Products that result from Customer's failure to accept and apply Updates within a reasonable timeframe.

CISCO SYSTEMS, INC.  
170 WEST TASMAN DRIVE  
SAN JOSE, CA 95134

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Cisco Systems, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is

triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**CISCO SYSTEMS, INC.**

**CISCO SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

September 24, 2013 as provided on Cisco.com: <http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN.html>

IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. IT IS VERY IMPORTANT THAT YOU CHECK THAT YOU ARE PURCHASING CISCO SOFTWARE OR EQUIPMENT FROM AN APPROVED SOURCE AND THAT YOU, OR THE ENTITY YOU REPRESENT (COLLECTIVELY, THE "CUSTOMER") HAVE BEEN REGISTERED AS THE END USER FOR THE PURPOSES OF THIS CISCO END USER LICENSE AGREEMENT. IF YOU ARE NOT REGISTERED AS THE END USER YOU HAVE NO LICENSE TO USE THE SOFTWARE AND THE LIMITED WARRANTY IN THIS END USER LICENSE AGREEMENT DOES NOT APPLY. ASSUMING YOU HAVE PURCHASED FROM AN APPROVED SOURCE, DOWNLOADING, INSTALLING OR USING CISCO OR CISCO-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT. CISCO SYSTEMS, INC. OR ITS AFFILIATE LICENSING THE SOFTWARE ("CISCO") IS WILLING TO LICENSE THIS SOFTWARE TO YOU ONLY UPON THE CONDITION THAT YOU PURCHASED THE SOFTWARE FROM AN APPROVED SOURCE AND THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS END USER LICENSE AGREEMENT PLUS ANY ADDITIONAL LIMITATIONS ON THE LICENSE SET FORTH IN A SUPPLEMENTAL LICENSE AGREEMENT ACCOMPANYING THE PRODUCT, MADE AVAILABLE AT THE TIME OF YOUR ORDER, OR POSTED ON THE CISCO WEBSITE AT [www.cisco.com/go/terms](http://www.cisco.com/go/terms) (COLLECTIVELY THE "AGREEMENT"). TO THE EXTENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS END USER LICENSE AGREEMENT AND ANY SUPPLEMENTAL LICENSE AGREEMENT, THE SUPPLEMENTAL LICENSE AGREEMENT SHALL APPLY.

BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, YOU ARE REPRESENTING THAT YOU PURCHASED THE SOFTWARE FROM AN APPROVED SOURCE AND BINDING YOURSELF TO THE AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM AN APPROVED SOURCE, AND APPLIES ONLY IF YOU ARE THE ORIGINAL AND REGISTERED END USER PURCHASER. FOR THE PURPOSES OF THIS END USER LICENSE AGREEMENT, AN "APPROVED SOURCE" MEANS (A) CISCO; OR (B) A DISTRIBUTOR OR SYSTEMS INTEGRATOR AUTHORIZED BY CISCO TO DISTRIBUTE / SELL CISCO EQUIPMENT SOFTWARE AND SERVICES WITHIN YOUR TERRITORY TO END USERS; OR (C) A RESELLER AUTHORIZED BY ANY SUCH DISTRIBUTOR OR SYSTEMS INTEGRATOR IN ACCORDANCE WITH THE TERMS OF THE DISTRIBUTOR'S AGREEMENT WITH CISCO TO DISTRIBUTE / SELL THE CISCO EQUIPMENT, SOFTWARE AND SERVICES WITHIN YOUR TERRITORY TO END USERS.

THE FOLLOWING TERMS OF THE AGREEMENT GOVERN CUSTOMER'S USE OF THE SOFTWARE (DEFINED BELOW), EXCEPT TO THE EXTENT: (A) THERE IS A SEPARATE SIGNED CONTRACT BETWEEN CUSTOMER AND CISCO GOVERNING CUSTOMER'S USE OF THE SOFTWARE, OR (B) THE SOFTWARE INCLUDES A SEPARATE "CLICK-ACCEPT" LICENSE AGREEMENT OR THIRD PARTY LICENSE AGREEMENT AS PART OF THE INSTALLATION OR DOWNLOAD PROCESS GOVERNING CUSTOMER'S USE OF THE SOFTWARE. TO THE EXTENT OF A CONFLICT BETWEEN THE PROVISIONS OF THE FOREGOING DOCUMENTS, THE ORDER OF PRECEDENCE SHALL BE (1) THE SIGNED CONTRACT, (2) THE CLICK-ACCEPT AGREEMENT OR THIRD PARTY LICENSE AGREEMENT, AND (3) THE AGREEMENT. FOR PURPOSES OF THE AGREEMENT, "SOFTWARE" SHALL MEAN COMPUTER PROGRAMS, INCLUDING FIRMWARE AND COMPUTER PROGRAMS EMBEDDED IN CISCO EQUIPMENT, AS PROVIDED TO CUSTOMER BY AN APPROVED SOURCE, AND ANY UPGRADES, UPDATES, BUG FIXES OR MODIFIED VERSIONS THERETO (COLLECTIVELY, "UPGRADES"), ANY OF THE SAME WHICH HAS BEEN RELICENSED UNDER THE CISCO SOFTWARE TRANSFER AND RELICENSING POLICY (AS MAY BE AMENDED BY CISCO FROM TIME TO TIME) OR BACKUP COPIES OF ANY OF THE FOREGOING.

**License**

Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business purposes the Software and the Documentation for which Customer has paid the required license fees to an Approved Source. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available by an Approved Source with the Software in any manner (including on CD-Rom, or on-line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file.

Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card or such other limitations as are set forth in the applicable Supplemental License Agreement or in the applicable purchase order which has been accepted by an Approved Source and for which Customer has paid to an Approved Source the required license fee (the "Purchase Order").

Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation permits installation on non-Cisco equipment) for communication with Cisco equipment owned or leased by Customer and used for Customer's internal business purposes. No other licenses are granted by implication, estoppel or otherwise.

For evaluation or beta copies for which Cisco does not charge a license fee, the above requirement to pay license fees does not apply.

**General Limitations.** This is a license, not a transfer of title, to the Software and Documentation, and Cisco retains ownership of all copies of the Software and Documentation. Customer acknowledges that the Software and Documentation contain trade secrets of Cisco or its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Except as otherwise

expressly provided under the Agreement, Customer shall only use the Software in connection with the use of Cisco equipment purchased by the Customer from an Approved Source and Customer shall have no right, and Customer specifically agrees not to: transfer, assign or sublicense its license rights to any other person or entity (other than in compliance with any Cisco relicensing/transfer policy then in force), or use the Software on Cisco equipment not purchased by the Customer from an Approved Source or on secondhand Cisco equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense or use shall be void; make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same; reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction or except to the extent that Cisco is legally required to permit such specific activity pursuant to any applicable open source license; publish any results of benchmark tests run on the Software; use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Cisco; or disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets.

To the extent required by applicable law, and at Customer's written request, Cisco shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Cisco's applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Cisco makes such information available.

#### **Software, Upgrades and Additional Copies**

NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE TO AN APPROVED SOURCE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CISCO EQUIPMENT SUPPLIED BY AN APPROVED SOURCE FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

#### **Proprietary Notices**

Customer agrees to maintain and reproduce all copyright, proprietary, and other notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in the Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of Cisco.

#### **Term and Termination**

The Agreement and the license granted herein shall remain effective until terminated. Customer may terminate the Agreement and the license at any time by destroying all copies of Software and any Documentation. Customer's rights under the Agreement will terminate immediately without notice from Cisco if Customer fails to comply with any provision of the Agreement. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control. All confidentiality obligations of Customer, all restrictions and limitations imposed on the Customer under the section titled "General Limitations" and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement. In addition, the provisions of the sections titled "U.S. Government End User Purchasers" and "General Terms Applicable to the Limited Warranty Statement and End User License Agreement" shall survive termination of the Agreement.

Customer Records. Customer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, Customer shall promptly pay to Cisco the appropriate license fees, plus the reasonable cost of conducting the audit.

#### **Export, Re-Export, Transfer and Use Controls**

The Software, Documentation and technology or direct products thereof (hereafter referred to as Software and Technology), supplied by Cisco under the Agreement are subject to export controls under the laws and regulations of the United States ("U.S.") and any other applicable countries' laws and regulations. Customer shall comply with such laws and regulations governing export, re-export, import, transfer and use of Cisco Software and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco and Customer each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. Information regarding compliance with export, re-export, transfer and use may be located at the following URL: [www.cisco.com/web/about/doing\\_business/legal/global\\_export\\_trade/general\\_export\\_contract\\_compliance.html](http://www.cisco.com/web/about/doing_business/legal/global_export_trade/general_export_contract_compliance.html)

#### **U.S. Government End User Purchasers**

The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Customer may provide to Government end user or, if the Agreement is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in the Agreement. Use of either the Software or Documentation or both constitutes agreement by the Government that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.

#### **Identified Components; Additional Terms**

The Software may contain or be delivered with one or more components, which may include third-party components, identified by Cisco in the Documentation, readme.txt file, third-party clickaccept or elsewhere (e.g. on [www.cisco.com](http://www.cisco.com)) (the "Identified Component(s)") as being subject to different license agreement terms, disclaimers of warranties, limited warranties or other terms and conditions (collectively, "Additional Terms") than those set forth herein. You agree to the applicable Additional Terms for any such Identified Component(s).



### Limited Warranty

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**Cisco Systems, Inc. Supplemental EULAs (SEULAs) provided at the request of the General Services Administration Schedule Program and are authorized by Cisco solely for the use of GSA Schedule Customer orders.**

Cisco Supplemental EULAs (SEULAs) as provided on September 24, 2013

Pg Coverage	Specific SEULA topic	Reference
Cisco Meraki Cloud Networking	Cisco Meraki Cloud Networking	<a href="#">DOC</a>
Cloud and Systems Management	<a href="#">Cisco Active Network Abstraction</a>	<a href="#">DOC-19972</a>
10 Cloud and Systems Management	<a href="#">Cisco Cloud Portal</a>	<a href="#">DOC-67346</a>
10 Cloud and Systems Management	<a href="#">Cisco Workplace Portal</a>	<a href="#">DOC-67346</a>
12 Cloud and Systems Management	<a href="#">Cisco Configuration Engine 3.0 Media and Developer Kit</a>	<a href="#">DOC-13883</a>
13 Cloud and Systems Management	<a href="#">Cisco Connected Grid Network Management System</a>	<a href="#">DOC-68737</a>
14 Cloud and Systems Management	<a href="#">Cisco Intelligent Automation for Cloud</a>	<a href="#">DOC-68556</a>
14 Cloud and Systems Management	Cisco Intelligent Automation for Compute	<a href="#">DOC-68556</a>
14 Cloud and Systems Management	<a href="#">Cisco Intelligent Automation for SAP</a>	<a href="#">DOC-68556</a>
16 Cloud and Systems Management	Cisco Prime LMS 4.1	<a href="#">DOC-58713</a>
16 Cloud and Systems Management	<a href="#">Cisco Prime Infrastructure</a>	<a href="#">DOC-58713</a>
18 Cloud and Systems Management	<a href="#">Cisco Prime Central</a>	<a href="#">DOC-58855</a>

14 Cloud and Systems Management	<a href="#">Cisco Process Orchestrator</a>	<a href="#">DOC-68556</a>
14 Cloud and Systems Management	<a href="#">Cisco Server Provisioner</a>	<a href="#">DOC-68556</a>
14 Cloud and Systems Management	<a href="#">Cisco Tidal Enterprise Scheduler</a>	<a href="#">DOC-68556</a>
14 Cloud and Systems Management	<a href="#">Cisco Tidal Performance Analyzer</a>	<a href="#">DOC-68556</a>
20 Cloud and Systems Management	(Cisco Cloud Portal, Workplace Portal and Cisco Service Connector)	<a href="#">DOC-68700</a>
22 Cloud and Systems Management	<a href="#">Cisco Tidal Intelligent Automation</a>	<a href="#">DOC-31651</a>
24 Cloud and Systems Management	<a href="#">Cisco Unified Provisioning Manager</a>	<a href="#">DOC-21311</a>
24 Cloud and Systems Management	<a href="#">Cisco Unified Operations Manager</a>	<a href="#">DOC-21311</a>
24 Cloud and Systems Management	<a href="#">Cisco Unified Service Monitor</a>	<a href="#">DOC-21311</a>
24 Cloud and Systems Management	<a href="#">Cisco Unified Service Statistics Manager</a>	<a href="#">DOC-21311</a>
26 Collaboration	<a href="#">Cisco Magento Managed Services</a>	<a href="#">DOC</a>
29 Collaboration	<a href="#">Cisco UC Virtualization Hypervisor and Cisco UC Virtualization Foundation</a>	<a href="#">DOC</a>
31 Collaboration	<a href="#">Cisco Unified Communications Manager 7.X NFR Kit</a>	<a href="#">DOC-19231</a>
33 Collaboration	<a href="#">Cisco Unified Communications Manager 8.X NFR Kit</a>	<a href="#">DOC-16947</a>
35 Collaboration	<a href="#">Cisco Unified Video Conferencing</a>	<a href="#">DOC-29311</a> 35
Collaboration	<a href="#">Cisco Unified Videoconferencing Manager</a>	<a href="#">DOC-29311</a>
37 Routers	<a href="#">CSR 1000V</a>	<a href="#">DOC-62134</a>
39 Security	<a href="#">Cisco AnyConnect Secure Mobility Client</a>	<a href="#">DOC-1</a>
Security	<a href="#">Cisco ASA 5585-X CX-10 Web Security Essentials</a>	<a href="#">DOC-61013</a>
Security	<a href="#">Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Application Visibility &amp; Control</a>	<a href="#">DOC-2</a>
Security Essentials	<a href="#">Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Web Security</a>	<a href="#">DOC-3</a>
Security	<a href="#">Cisco ISE Wireless</a>	<a href="#">DOC-4</a>
Security	<a href="#">Cisco ISE Wireless Upgrade</a>	<a href="#">DOC-5</a>
Security	<a href="#">Cisco ISE Advance</a>	<a href="#">DOC-6</a>
Security	<a href="#">Cisco ISE Migration</a>	<a href="#">DOC-7</a>
Security	<a href="#">Cisco ISE All-in-One</a>	<a href="#">DOC-8</a>
56 Security	<a href="#">Cisco Content Security Software (formerly Cisco IronPort Email and Web Security Appliances and Security Management Application)</a>	<a href="#">DOC</a>
59 Security	<a href="#">Cisco ASA 1000V Cloud Firewall</a>	<a href="#">DOC-11</a>
61 Security	<a href="#">Cisco Integrated Security Appliance (ISA)</a>	<a href="#">DOC-12</a>
63 Security	<a href="#">Cisco ACS (all-in-one version)</a>	<a href="#">DOC-14</a>
35 TelePresence	<a href="#">Cisco TelePresence Commercial Express</a>	<a href="#">DOC-29311</a>
65 TelePresence	<a href="#">Cisco TelePresence Multipoint Switch 1.5</a>	<a href="#">DOC-14958</a>
35,65 TelePresence	<a href="#">Cisco TelePresence Manager</a>	<a href="#">DOC-29311</a>
65 TelePresence	<a href="#">Cisco TelePresence Primary Codec</a>	<a href="#">DOC-14958</a>
35,65 TelePresence	<a href="#">Cisco TelePresence Express Multipoint Switch</a>	<a href="#">DOC-29311</a>
65 TelePresence	<a href="#">Cisco TelePresence Express Manager System</a>	<a href="#">DOC-14958</a>
TelePresence	<a href="#">Cisco TelePresence Multipoint Switch</a>	<a href="#">DOC-26211</a>
TelePresence	<a href="#">CTS Management</a>	<a href="#">DOC-20211</a>
Video	<a href="#">Cisco Video Control Plane and CDN Manager</a>	<a href="#">DOC-66875</a>
71 Video	<a href="#">Cisco Videoscape Media Managed Services and Videoscape Media Suite Software</a>	<a href="#">DOC-31551</a>
71 Video	<a href="#">Cisco Videoscape Media Suite CMS</a>	<a href="#">DOC-31151</a>
71 Video	<a href="#">Cisco Videoscape Media Suite Entitlement</a>	<a href="#">DOC-31151</a>
71 Video	<a href="#">Cisco Videoscape Media Suite Publisher</a>	<a href="#">DOC-31151</a>
71 Video	<a href="#">Cisco Videoscape Media Suite Streaming Player</a>	<a href="#">DOC-31151</a>
73 WebEx	<a href="#">Cisco WebEx Meeting Server</a>	<a href="#">DOC</a>
77 WebEx	<a href="#">Cisco WebEx Social</a>	<a href="#">DOC</a>

Cisco Meraki Cloud Networking

Cisco Meraki Cloud Networking

DOC**Meraki LLC**

660 Alabama Street  
San Francisco, CA 94110  
**Last Updated May 30, 2013**

**SUPPLEMENTAL END USER LICENSE AGREEMENT**

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The terms “Customer,” “you,” “your,” and “yours” refer to you, the end GSA customer, the authorized entity permitted to use the Products, whether obtained directly from Meraki or through one of our authorized resellers. The terms “Meraki” “we,” “us,” and “our” refer to Meraki, LLC, a Delaware limited liability company with offices at 500 Terry Francois Street, San Francisco, California, 94158. . For any material modifications to this Agreement, such modifications will be effective if they are stated in a writing, signed by both parties.

**ARTICLE 1 DEFINITIONS**

For purposes of this Agreement, the following terms have the corresponding definitions listed below.

“**Agent Software**” means Meraki’s downloadable software client that is installed on a computer or mobile device as part of the Systems Manager application.

“**Apps License**” has the meaning given to it in Section 3.2, below.

“**Customer Content**” means content prepared by you for use with the Products, whether or not provided to Meraki, including logos, splash pages, network configurations, and preferences.

“**Device Management Functionality**” means the actions that may be performed by Customer or by Meraki on a mobile device or other device (e.g., a laptop computer) managed by our Systems Manager product, including: (i) list, access, copy, move, and delete files; (ii) track and record device location over time; (iii) take and record screenshots (on computers only); (iv) set and enforce policies; and (v) install and remove apps (on mobile devices only).

“**Documentation**” means any user instructions, manuals, Specifications, or other documentation provided by Meraki\_ at <http://meraki.cisco.com> that relates to the use of the Products, including any Modifications.

“**Distributor**” has the meaning given to it in Section 3.7, below.

“**End Users**” means those persons who obtain access to your Network.

“**Feedback**” has the meaning given to it in Section 5.1, below.

“**Firmware**” means our proprietary software embedded in or otherwise running on the Hardware.

“**Firmware License**” has the meaning given to it in Section 3.1, below.

“**Governing Documents**” has the meaning given to it in Section 8.1, below.

“**Hardware**” means the Meraki hardware products listed on an Order.

“**Hosted Software**” means our proprietary, web-based software platform, including the interface known as the “Dashboard” and any Agent Software, but specifically excluding the Web Apps.

“**Hosted Software License**” has the meaning given to it in Section 3.1, below.

“**Intellectual Property Rights**” means all (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, (b) trademarks, service marks, trade name and logo rights, and similar rights, (c) trade secret rights and other rights in inventions, know-how and confidential or proprietary information, (d) patent rights, (e) domain names and Internet keywords, (f) other intellectual property or other proprietary rights, whether arising by operation of law, contract, license, or otherwise, and (g) registrations, initial applications, renewals, extensions, provisionals, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

“**Licenses**” means, collectively, the Firmware License, the Hosted Software License, and the Apps License.

“**Mobile Apps**” means the Agent Software for mobile devices.

“**Modification**” or “**Modifications**” means all changes incorporated into or used with the Software or Documentation, including enhancements, standard releases, and patches.

“**Network**” means your local area network, created in whole or in part by use of our Products.

“**Order**” means a purchase order submitted by you either directly to Meraki or to one of our authorized resellers with respect to the purchase of the hardware products, software products, and related licenses listed on such Order.

“**Products**” means, collectively, the Hardware, the Software, the Documentation, and the Support Services.

“**Purchase Price**” means the aggregate price you paid for the Products listed on the applicable Order.

“**RMA**” has the meaning given to it in Section 7.2, below.

“**Service Level Agreement**” means the Service Level Agreement included as Attachment 1, which governs the terms of the Service Level Warranty.

“**Service Level Warranty**” has the meaning given to it in Section 7.1, below.

“**Software**” means, collectively, the Firmware, the Hosted Software, and the Web Apps.

“**Specifications**” has the meaning given to it in Section 4.1, below.

“**Systems Manager**” means the Web App currently known as Systems Manager.

“**Systems Manager Data**” means the data collected through the Device Management Functionality and otherwise through Systems Manager.

“**Support Services**” means the customer support services described below in Attachment 2.

**"Term"** means the term of the Hosted Software License(s) indicated on the Order or as subsequently modified in connection with the purchase of additional Hosted Software Licenses so that the Term with respect to all such licenses expires at the same time in accordance with the provisions of Section 6.1, below.

**"Traffic Information"** means, collectively, information about devices that connect to the Network, such as MAC address, device type, operating system, geolocation information, and information transmitted by devices when attempting to access or download data or content (e.g., hostnames, protocols, port numbers, and IP addresses) via the Network.

**"Warranty Period"** means, with respect to any item of Hardware, the greater of one year or the warranty period set forth in the applicable Specifications, commencing, in either case, on the date the applicable Hardware is shipped to Customer in fulfillment of the Order.

**"Web Apps"** means the web-based applications (available to you at <http://meraki.cisco.com>) currently known as "Mapper," "Stumbler," and "Systems Manager."

## ARTICLE 2 SERVICES

**2.1. Meraki Responsibilities.** If you have purchased a Hosted Software License, we will provide you with access to the Hosted Software commencing as of the date your Order ships through the expiration of the Term, subject to the terms of this Agreement.

**2.2. Customer Responsibilities.** You are responsible for your use of the Products in full compliance with this Agreement and for all activities engaged in by you and your End Users while using your Network, including without limitation: (i) promptly updating the registration information of the primary account holder for the Hosted Software if it changes or is no longer current, accurate and complete; (ii) using commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Software, and notifying Meraki promptly of such unauthorized access or use; (iii) being responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all activities of your End Users and providing any support services your End Users may need; (iv) obtaining and maintaining all Hardware and other communications equipment needed to access the Hosted Software or Web Apps and for paying all required third-party access charges (v) being responsible for, and assuming the risk of, any problems resulting from the content, completeness, accuracy, and consistency of all Customer Content; and (vi) complying with all applicable local, state, federal, and foreign laws in using the Hosted Software, or Web Apps.

## ARTICLE 3 LICENSES

**3.1. Firmware License and Hosted Software License.** Subject to the terms and conditions of this Agreement, Meraki grants you a non-sublicensable, non-transferable (except as otherwise provided herein) and non-exclusive license, for the duration of the Term, to (i) use the Firmware only for internal purposes, in object code form, as embedded in, or for execution on, the Hardware (the **"Firmware License"**), and (ii) access the Hosted Software via a web browser and use the Hosted Software solely for internal business purposes (the **"Hosted Software License"**).

**3.2. Apps License.** If you access any of the Web Apps, including the download and/or installation of any related Agent Software, or download any Mobile App, then, subject to the terms and conditions of this Agreement, Meraki grants you an individual, personal, non-sublicensable, non-exclusive, and non-transferable (except as otherwise provided herein) license to use the Web Apps or Mobile App, as applicable, for your personal or internal business purposes (the **"Apps License"**).

### 3.3 Reserved.

**3.4. Modifications.** If, during the Term, Meraki integrates any Modifications into the Firmware, Hosted Software, or Web Apps, each such Modification and all related Documentation, will be deemed to be part of the Firmware, Hosted Software, or Web Apps and made available to the Government only under the terms of the applicable Firmware License, Hosted Software License, or Apps License.

**3.5. License to Customer Content.** You hereby grant us a non-sublicensable and non-exclusive license to reproduce, distribute, or use any Customer Content for the duration of the License(s) applicable to the Products you are using in connection with our delivery of the Products and services contemplated by this Agreement. You understand and agree that Meraki may use and disclose, in an aggregated format only, any and all data that is derived or collected from your use of the Products for the purpose of generally improving the Products and to otherwise operate, manage, maintain, improve, or promote Meraki's products and services, provided that such aggregated data would not reasonably be identifiable as originating with or associated with you or any End User.

**3.6. Restrictions.** In exchange for the grant of the applicable license or licenses set forth above, you agree you will not, and will not permit others to, whether directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software; (ii) modify, translate, or create derivative works based on the Software; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Software; (iv) use or attempt to use the Firmware on third party hardware components; or (v) remove any proprietary notices or labels on the Software.

**3.7. Special Terms Regarding Apple.** Mobile Apps may be distributed by Meraki via a third party (**"Distributor"**), including Apple, Inc. You acknowledge that this Agreement is entered into solely between you and Meraki. This Agreement is not intended to provide for usage rules for Mobile Apps that are less restrictive than the Usage Rules set forth for Licensed Applications in, or that otherwise conflict with, the App Store Terms of Service as of the date that you accept the App Store Terms of Service (which you acknowledge you have had the opportunity to review).

## ARTICLE 4 HARDWARE

**4.1. Use.** The specifications for any Hardware you have purchased are set forth on the relevant Meraki data sheets (which can be found on <http://meraki.cisco.com>) (the **"Specifications"**). You will use the Hardware only in accordance with the Specifications and subject to the terms of this Agreement, including this ARTICLE 4.

**4.2. Restrictions.** You will not, and will not permit others to, whether directly or indirectly: (i) disassemble or attempt to reverse engineer the Hardware; (ii) remove or erase the Firmware from the Hardware, or otherwise try to disable or alter the Firmware functionality; (iii) load any other software onto the Hardware; (iv) make any alterations, updates, enhancements, additions or improvements to the Hardware without the prior written approval of Meraki; or (v) remove any logo, trademark, or service mark of Meraki from any item of Hardware. Any alterations, updates, enhancements, additions, or improvements so approved will be the sole property of Meraki. If any alterations, updates, enhancements, additions or improvements interfere with the normal operation, maintenance, or support of the Hardware (including by increasing the cost of maintenance or support or creating a safety hazard), you will promptly remove the same and restore the Hardware to its normal condition.

## ARTICLE 5 OWNERSHIP

**5.1. Meraki Property.** Except as provided in Section 5.2, below, as between you and Meraki, Meraki owns (i) all right, title, and interest, including all Intellectual Property Rights therein, in and to the Software and Documentation, and (ii) all Intellectual Property Rights in the Hardware. Nothing in this Agreement will be construed as transferring or changing our Intellectual Property Rights or interests in the Products in any respect. In addition, we will own any and all right, title, and interest in and to any feedback, suggestions, information, or materials you convey to us will be controlled by applicable



provisions of the Copyright Act, 17 U.S.C. § 103 and the FAR clause at 52.227-14 related to the Products in connection with your use of the Products (“Feedback”). You hereby assign to Meraki all right, title, and interest in such Feedback and will execute any documents and take any additional actions Meraki deems necessary to evidence, record, or perfect the foregoing assignment.

**5.2. Customer Property.** Except as provided in Section 3.5, above, as between you and Meraki, you own the Customer Content and all Intellectual Property Rights therein. Nothing in this Agreement will be construed as transferring or changing your ownership rights or interests in the Customer Content in any respect.

**5.3. Reservation of Rights.** Other than the rights expressly granted to you in this Agreement, we reserve all rights with respect to the Products and any and all related rights, including any derivative works and any media, mode, or method of distribution or transmission of the Products, whether available now or developed in the future.

**5.4. Privacy and Data Collection.** Our Privacy Policy hereby incorporated into this Agreement as Attachment 3. Please read the Privacy Policy carefully for information relating to our collection, use, and disclosure of personal information. We collect Traffic Information and may from time to time make available functionality that allows the Government to limit or restrict the types of Traffic Information we collect. Additionally, for devices with Agent Software installed, we transmit certain geolocation information about those devices and the networks on which they are running to Google Inc. (“Google”), which provides us with related geolocation information that we store and make available to network administrators as described in our Privacy Policy. Google’s Privacy Policy, and not Meraki’s, governs Google’s handling of the information that we provide to Google. We use Traffic Information to make data available to you regarding, and to allow you to exercise certain controls with respect to, the traffic on your Network. We use Systems Manager Data to provide support and conduct product development activities. You represent and warrant to us that you have obtained or will obtain valid consent from each End User to add that End User’s device to the Network, to permit you and Meraki to collect, use, and disclose Traffic Information as described in this Section 5.4, and, to the extent you use Systems Manager, to use Systems Manager as described above (including, without limitation, accessing and deleting files on devices) and to permit you and Meraki to collect, use, and disclose Systems Manager Data as described in this Section 5.4. You hereby consent to our collection, use, and disclosure of Traffic Information and, to the extent you use Systems Manager, to our use of the Device Management Functionality and its collection, use, and disclosure of Systems Manager Data, in each case as described in this Section 5.4.

**5.5. Publicity.** Neither we, nor you, will use the other’s name, trademark, or trade name without the prior written consent of the other party.

## ARTICLE 6 TERM AND TERMINATION

**6.1. Term.** This Agreement will be effective with respect to your use of the Products until the expiration of the License(s) applicable to the Products you are using, unless earlier terminated under the FAR. To the extent that you purchase additional Hosted Software License(s) subsequent to the date of the first Order, the duration of each Hosted Software License you have purchased will be adjusted such that all of your Hosted Software Licenses terminate on the same date.

The new co-termination date is calculated as a function of (i) the remaining time on your existing Hosted Software License(s) at the time of purchase, (ii) the duration of the Hosted Software License(s) purchased, and (iii) the one-year list price of each such Hosted Software License. This function produces a time value attributable to each Hosted Software License purchased that, when added together with the time value attributable to all new Hosted Software Licenses in a given purchase, yields what we call the “Incremental Dollar Days” associated with the new purchase. In addition, based on the one-year list price of all Hosted Software Licenses in your Network and the number of each type of Hosted Software License purchased, we determine the amount of Hosted Software License value that your Network consumes each day, what we call the “Daily License Usage Rate.” By dividing the Incremental Dollar Days by the Daily License Usage Rate, and adding the resulting number of days to the remaining time on your existing Hosted Software Licenses we arrive at the adjusted co-termination date following any new purchase. For further information regarding our licensing and co-termination policies please visit <http://meraki.cisco.com/support/#policies:licensing>.

**6.2. Termination.** Termination may only be effected by the procedures set forth in the FAR.

**6.3. Effect of Termination.** Upon the termination of this Agreement for any reason, your access to and right to use the Products will terminate, and all Licenses will terminate. Upon expiration of a Hosted Software License, your Apps License will survive and you may continue to access and use the Web Apps and Mobile Apps, subject to the terms and conditions of this Agreement. Upon termination of this Agreement, each party will return (or destroy) any Confidential Information of the other party in its possession. The following provisions of this Agreement will survive any termination of the Agreement: Sections 5.1, 5.2, 5.3, 5.4, and 6.3, and ARTICLE 8.

## ARTICLE 7 MERAKI WARRANTIES

**7.1. Service Warranties.** Meraki will make reasonable efforts to provide the Hosted Software and Web Apps available in accordance with the service level warranty set forth in the Service Level Agreement included as Attachment 1 (the “Service Level Warranty”). The remedy set forth in the Service Level Agreement is your sole and exclusive remedy with respect to the subject matter of the Service Level Agreement, and our sole and exclusive liability, in contract, tort, or otherwise, for any breach of the Service Level Warranty.

**7.2. Hardware Warranties.** We represent and warrant to you, the entity who obtained the Hardware from Meraki or its authorized reseller, but not to any End Users or other third parties, as follows: (i) for the Warranty Period, the Hardware will be free from material defects in materials and workmanship; (ii) all items of Hardware are new or refurbished unless otherwise indicated on the face of the Order; and (iii) we have good title to the Hardware, free and clear of any liens, claims, or encumbrances. Hardware not meeting the warranties set forth above will be, at our option, (a) repaired, (b) replaced, or (c) Meraki will refund to you the depreciated amount of the Purchase Price allocable to the defective Hardware, calculated on a straight-line, five-year basis. All Hardware repaired or replaced under warranty will be warranted for the remainder of the Warranty Period. For any return permitted under Meraki’s return policy as provided in Attachment 4, you will request a Return Materials Authorization (“RMA”) number in writing with the reasons for the return request. The remedies described above are our sole liability and your sole remedy for any breach of the warranties contained in this Section 7.2. Meraki is not responsible for any Customer Content or any other non-Meraki data or information stored on any Hardware returned to Meraki for repair, whether under warranty or not.

## ARTICLE 8 MISCELLANEOUS

**8.1. Integration.** This Agreement, the EULA, the Order, and the Service Level Agreement (collectively, the “Governing Documents”) constitute the entire agreement between Meraki and Customer with respect to the subject matter of the Governing Documents and supersede all prior agreements, understandings, and arrangements, oral or written, between Meraki and Customer. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter of the Governing Documents have been made either by Meraki or Customer which is not expressly set forth in the Governing Documents. If there is a conflict between the terms of this Agreement and the EULA, the terms of this Agreement will apply.

**8.2. Force Majeure.** Neither you nor Meraki will be liable under this Agreement by reason of any failure or delay in the performance of its obligations on account of strikes (other than strikes of a party’s own employees), shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions (other than with respect to a party’s own employees), earthquakes, material shortages or any other causes that

are beyond the reasonable control of such party so long as the parties will use commercially reasonable efforts, including the implementation of business continuity measures, to mitigate the effects of such force majeure.

**8.3 Reserved.**

**8.4. Severability.** If any portion of this Agreement is held invalid by a court of competent jurisdiction, then such portion will be deemed to be of no force or effect, and this Agreement will be construed as if such portion had not been included herein.

**8.5. Assignment.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by either party, in whole or in part, without the prior written consent of the other party, in accordance with the provisions of the Anti-Assignment Act, 41 U.S.C. § 6305, and approval procedures set forth at FAR42.1204. Any attempted assignment in violation of this Section 8.5 will be void and without effect. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.



Cloud and Systems Management

Cisco Active Network AbstractionDOC-19972**IMPORTANT: READ CAREFULLY****Dear Customer,****Supplemental End User License Agreement**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by the GSA Schedule Holder and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a government employee or person acting on behalf of the government in his or her personal capacity.

YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS NETWORK MANAGEMENT SOFTWARE: Cisco Network Active Abstraction  
Additional Licensing Instructions:

Client Licensing: To activate additional users for the licenses purchased please contact your Cisco Account Manager or Sales Representative or send email to [ask-ana-licensing@cisco.com](mailto:ask-ana-licensing@cisco.com) with the requested information below:

GSA Customer Purchase Order

Your Contact Information

Your Cisco Sales Representative Name

NOTE: This alias is used only for license activation. For any questions or support issues, contact your Cisco Account Manager or representative.

**Installation and Use**

This license strictly prohibits Customer and any user from utilizing this Software for more than a single Customer network management environment. Reproduction and Distribution Customer may not reproduce nor distribute software

**2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS**

Please refer to the attached Cisco Systems, Inc. End User License Agreement

Cloud and Systems Management	<a href="#">Cisco Cloud Portal</a>	<a href="#">DOC-67346</a>
Cloud and Systems Management	<a href="#">Cisco Workplace Portal</a>	<a href="#">DOC-67346</a>

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IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

If you have licensed Cisco Workplace Portal, the following additional terms apply:

Cisco Workplace Portal is licensed for use with end user and workplace-related services including non-server computers, computer accessories, PDAs and handhelds, desktop software, mobility, unified communications, end user applications, email management, access to printing or files, office and wireless phones, voicemail, calling cards, video conferencing facilities and other workplace-related services for employees, agents, consultants and/or independent contractors of the Government.

Cisco Service Connectors and Adapters are not for use with the Cisco Workplace Portal. If you licensed Cisco Cloud Portal, the following additional terms apply:

Cisco Cloud Portal is licensed for use with cloud computing and data center-related services including computing, storage, networking, IaaS, PaaS, application hosting, database services, application development & maintenance, application installations & upgrades, dedicated application hosting, disaster recovery, network administration, application testing, and systems monitoring.

Cisco Cloud Portal is licensed for use only in the management of service catalogues and provisioning of computing and SW components that relate to a cloud computing and orchestration infrastructure maintained and managed by the licensee. Cisco Service Connector is licensed for the following functions: Core Functions Adapter, Windows Adapter (a single instance for the Windows server hosting the Cisco Process Orchestrator (CPO) Engine), email adapter, single instance of Active Directory (AD) Adapter (a single instance for the domain in which the server is installed), Core Automation Pack, Common Activities Automation

Pack, and the Tasks Automation Pack.

CPO elements included in Cisco Service Connector can only be used with the licensed components listed below: Cisco Service Connector Web Service Adapter -- Limited to 5 connections to Web Services for newScale Request Center for Cloud and third-party Orchestrators.

Cisco Service Connector Terminal Adapter -- Limited to 1 terminal or UNIX/Linux target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector VMware Adapter -- Limited to 5 connections to VMware vCenter for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector Microsoft Community Adapter -- Limited to 1 Windows target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector Database Adapter -- Limited to 1 database target for the database of newScale Request Center for Cloud. If additional licenses are required beyond these quantities, a separate purchase and installation of CPO is required. Cisco Service Connector and Adapters are restricted to use with Cisco Cloud Portal.

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**ADDITIONAL LICENSE RESTRICTIONS****Software Upgrades, Major and Minor Releases**

Cisco may provide Cisco Configuration Engine software updates. The software update and new version releases can be purchased through Cisco or a recognized partner or reseller.

The customer should purchase one software update for each Configuration Engine installation. If the customer is eligible to receive the software update or new version release through a Cisco extended service program, the customer should request to receive only one software update or new version release per valid service contract. **Reproduction and Distribution.** Customer may not reproduce nor distribute software.

**DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS**

Please refer to the attached Cisco Systems, Inc. End User License Agreement.

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**Product Name**

L CGNMS ADD 1 USR CG NMS Add 1 Operator 3 year GIS Map license  
 L CGNMS RNW 1 USR CG NMS Renew 1 Operator 3 year GIS Map license  
 R CGNMS CGRPT K9 CG NMS 1 Year Pilot Kit 1 Operator, 25 CGR1K Mgmt license  
 R CGNMS EP PT K9 CG NMS 1Yr Pilot Kit 1 Operator, 25 CGR1K, 20K EP Mgmt license  
 Connected Grid Network Management System (CG NMS) License

This license entitles the user to specific Cisco CG NMS product features for specific time duration. The specific Cisco CG NMS product features and the time duration are detailed as follows:

L CGNMS ADD 1 USR CG NMS Add 1 Operator 3 year GIS Map license  
 L CGNMS RNW 1 USR CG NMS Renew 1 Operator 3 year GIS Map license  
 R CGNMS CGRPT K9 CG NMS 1 Year Pilot Kit 1 Operator, 25 CGR1K Mgmt license  
 R CGNMS EP PT K9 CG NMS 1Yr Pilot Kit 1 Operator, 25 CGR1K, 20K EP Mgmt license

The user is entitled to receive updates as made available during the term of the license, provided that the user holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting CG NMS products.

Cloud and Systems Management	<a href="#">Cisco Intelligent Automation for Cloud</a>	<a href="#">DOC-68556</a>
Cloud and Systems Management	Cisco Intelligent Automation for Compute	<a href="#">DOC-68556</a>
Cloud and Systems Management	<a href="#">Cisco Intelligent Automation for SAP</a>	<a href="#">DOC-68556</a>
Cloud and Systems Management	<a href="#">Cisco Process Orchestrator</a>	<a href="#">DOC-68556</a>
Cloud and Systems Management	Cisco Server Provisioner	<a href="#">DOC-68556</a>
Cloud and Systems Management	<a href="#">Cisco Tidal Enterprise Scheduler</a>	<a href="#">DOC-68556</a>
Cloud and Systems Management	<a href="#">Cisco Tidal Performance Analyzer</a>	<a href="#">DOC-68556</a>

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**END USER LICENSE AGREEMENT FOR THE TIDAL SOFTWARE PRODUCTS:**

For purposes of this Supplement, the Software covered under this SEULA includes the following and each of their respective associated components and modules:

- Tidal Enterprise Scheduler
- Cisco Process Orchestrator
- Tidal Performance Analyzer
- Cisco Intelligent Automation for Compute
- Cisco Intelligent Automation for Cloud
- Cisco Intelligent Automation For Cloud Starter Edition
- Cisco Server Provisioner
- Cisco Intelligent Automation for SAP Definitions

For purposes of this Supplement, the following defined terms will apply:

Designated System shall mean the designated platform for which Customer originally licenses the Software from Cisco for installation and use. Such designated platform may include for instance, but is not limited to, a designation of the specific number of CPUs or system description or name as approved by Cisco. Movement and Usage Fees shall mean fees applicable as set solely by Cisco for the transfer and installation of Software on a system that is not a Designated System. Total Deployment Size shall mean the designated configuration for which The Cisco Intelligent Automation For Cloud Starter Edition Solution's total deployment size cannot exceed 160 blades collectively across a customer s installation. -Other Terms and Conditions, Movement and Usage. With respect to the license granted to Customer in the Agreement, such license is applicable only to the Designated System. Movement of Software to another system requires Customer providing prior written notice to obtain updated keys, and additional fees may apply. A fee schedule is available upon Customer s written request to Cisco. License. For the avoidance of doubt, the license granted to Customer for the Software in the license section shall be perpetual if designated as such by Cisco at time of Order for the Designated System, subject to payment of any applicable fees, including, but not limited to, any Movement and Usage fees described above. Total Deployment Size. For avoidance of doubt, no customer shall deploy the Cisco Intelligent Automation for Cloud Starter Edition Solution in a configuration that exceeds 160 blades in total deployment size across the ir enterprise.

Cloud and Systems Management	Cisco Prime LMS 4.1	<a href="#">DOC-58713</a>
Cloud and Systems Management	<a href="#">Cisco Prime Infrastructure</a>	<a href="#">DOC-58713</a>

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IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS SOFTWARE**

**IMPORTANT READ CAREFULLY:** This Supplemental End User License Agreement ( SEULA ) contains additional terms and conditions for the Software licensed under the End User License Agreement ( EULA ) between the Government and Cisco (collectively, the Agreement ). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on the Government access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. ACCORDING TO THE TERMS OF THE UNDERLYING GSA SCHEDULE CONTRACT.

**ADDITIONAL LICENSE RESTRICTIONS**

**Device Restricted Versions:** The Customer may install and run the Software on a single server to manage up to the cumulative device count specified in the Right To Use statement located on the Claim Certificate received as part of the software package. When used anywhere in this SEULA, a "device" means any device in the Customer's network environment which has its own IP address. Please refer to this guide for further device definition. Customers whose requirements exceed the license limit of devices must purchase additional incremental licenses. Device restrictions are enforced by license registration and through serial key installation. Limitations associated with the maximum number of devices that the application can support per server is specified below. The licensed device limit will always override the maximum number of devices supported per server unless the customer has purchased and registered the 5,000 or the 10,000 device license offering.

**Installation and Use**

The Software components are provided to Customer solely to install, update, supplement, or replace existing functionality of the applicable Network Management Software product. Some license terms, such as device count and proof of preexisting licenses may be electronically enforced. Customer may install and use the following Software components: Cisco Prime LAN Management Solution (Cisco Prime LMS): May be installed on one (1) server in Customer's network management environment. Installing the Software and applying a single serial license key to two (2) servers are supported in the 5,000 and 10,000 device restricted versions, but the cumulative total number of devices supported cannot exceed 5,000 and 10,000 respectively per serial license key. When two servers are used to host Cisco Prime LMS, each server should have a copy of the original license key installed on it. Customers should not modify the license file.

**Additional Information for 5,000 Device Restricted Version for LMS 4.2**

Users of Cisco Prime LMS 4.2 with 5,000 device restricted licensing may require Cisco Prime LMS to be run on separate servers in order to support a large number of devices or to meet certain performance criteria. One additional copy of Cisco Prime LMS may be installed on a secondary server provided the customer has purchased and registered the 5,000 device restricted version of the Cisco Prime LMS software. When installed on a secondary server, the cumulative total number of devices supported cannot exceed 5,000 per serial license key. Device support beyond 5,000 unique cumulative devices will require additional licenses and copies of Cisco Prime LMS to be purchased pursuant to a newly executed GSA Customer Purchase Order.

**Additional Information for 10,000 Device Restricted Version for LMS 4.2**

Users of Cisco Prime LMS 4.2 with 10,000 device restricted licensing often require Cisco Prime LMS to be run on separate servers in order to support a large number of devices or to meet certain performance criteria. One additional copy of Cisco Prime LMS may be installed on a secondary server provided that the customer has purchased and registered the 10,000 device restricted version of the Cisco Prime LMS software. When installed on a secondary server, the cumulative total number of devices supported cannot exceed 10,000 per serial license key. Device support beyond 10,000 unique cumulative devices will require additional licenses and copies of Cisco Prime LMS to be purchased pursuant to a newly executed GSA Customer Purchase Order.



**Additional Information for RHEL**

RHEL distribution that comes along with Cisco Prime LMS 4.2 is solely intended for use by Cisco Prime LMS application alone and customers may not use this for other purposes.

**Reproduction and Distribution**

Customer may not reproduce nor distribute software except to make copies to authorized employees, agents, and contractors for backup purposes only.

**DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS**

Please refer to the attached Cisco Systems, Inc. Software License Agreement

Cloud and Systems Management

Cisco Prime CentralDOC-58855**IMPORTANT: READ CAREFULLY****Dear Customer,**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government's access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**SUPPLEMENTAL LICENSE AGREEMENT****SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS NETWORK MANAGEMENT SOFTWARE:****CISCO PRIME CENTRAL**

**IMPORTANT-READ CAREFULLY:** This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government's access and use of the Software, you agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND ACCORDING TO THE TERMS OF THE UNDERLYING GSA SCHEDULE CONTRACT.

Cisco Prime Central requires a license to connect to and/or interoperate with other Cisco and third party systems or components, and is further subject to the limitations set forth below. Please see the Additional Information section of this document for any licenses which are included with your specific product purchase. If your requirements exceed the scope of any license expressly included with your product, you must purchase additional licenses from Cisco pursuant to a newly executed GSA Customer Purchase Order.

The following restrictions apply:

Cisco Prime Central Tier 1 and Tier 2 Gateway may not be used to connect Cisco Prime Central to third party systems, such as third party trouble ticketing systems, except as expressly set forth in the Additional Information section or through a separately purchased license.

Cisco Prime Central Tier 1 and Tier 3 Data Service Adapter instances may only be used to connect to other Cisco applications or components embedded within Cisco applications, and in addition, only if expressly licensed as set forth in the Additional Information section or through a separately purchased license.

Cisco Prime Central may not be integrated with an OSS system(s) using MTOSI interface except as expressly licensed as set forth in the Additional Information section or through a separately purchased license.

Cisco Prime Central may not be integrated with Cisco Domain Manager(s) except as expressly licensed as set forth in the Additional Information section or through a separately purchased license.

**Rights Included for Cisco Prime Central MTOSI License**

Cisco Prime Central MTOSI license includes the right to use one (1) MTOSI instance to integrate Cisco Prime Central to an OSS system using the MTOSI interface.

**Reproduction and Distribution**

Customer may not reproduce nor distribute software. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS Please refer to the Cisco Systems, Inc. Software License Agreement.

Cisco Tidal Enterprise Scheduler

Cloud and Systems Management ( Cisco Cloud Portal, Workplace Portal and Cisco Service Connector)

DOC-68700**IMPORTANT: READ CAREFULLY****Dear Customer,**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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If you have licensed Cisco Workplace Portal, the following additional terms apply:

Cisco Workplace Portal is licensed for use with end user and workplace-related services including non-server computers, computer accessories, PDAs and handhelds, desktop software, mobility, unified communications, end user applications, email management, access to printing or files, office and wireless phones, voicemail, calling cards, video conferencing facilities and other workplace-related services for the employees, agents, consultants and/or independent contractors. . Cisco Service Connectors and Adapters are not for use with the Cisco Workplace Portal. If you have licensed Cisco Cloud Portal, the following additional terms apply:

Cisco Cloud Portal is licensed for use with cloud computing and data center-related services including computing, storage, networking, IaaS, PaaS, application hosting, database services, application development & maintenance, application installations & upgrades, dedicated application hosting, disaster recovery, network administration, application testing, and systems monitoring.

Cisco Cloud Portal is licensed for use only in the management of service catalogues and provisioning of computing and SW components that relate to a cloud computing and orchestration infrastructure maintained and managed by the customer. Cisco Service Connector is licensed for the following functions: Core Functions Adapter, Windows Adapter (a single instance for the Windows server hosting the Cisco Process Orchestrator (CPO) Engine), email adapter, single instance of Active Directory (AD) Adapter (a single instance for the domain in which the server is installed), Core Automation Pack, Common Activities Automation Pack, and the Tasks Automation Pack.

CPO elements included in Cisco Service Connector can only be used with licensed components listed below:

Cisco Service Connector Web Service Adapter -- Limited to 5 connections to Web Services for newScale Request Center for Cloud and third-party Orchestrators.

Cisco Service Connector Terminal Adapter -- Limited to 1 terminal or UNIX/Linux target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector VMware Adapter -- Limited to 5 connections to VMware vCenter for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector Microsoft Community Adapter -- Limited to 1 Windows target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector Database Adapter -- Limited to 1 database target for the database of newScale Request Center for Cloud. If additional licenses are required beyond these quantities, a separate purchase and installation of CPO is required. Cisco Service Connector and Adapters restricted to use with Cisco Cloud Portal.

Cloud and Systems Management

Cisco Tidal Intelligent Automation

DOC-31651**IMPORTANT: READ CAREFULLY****Dear Customer,****Supplemental End User License Agreement**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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**END USER LICENSE AGREEMENT FOR THE TIDAL SOFTWARE PRODUCTS IMPORTANT: READ CAREFULLY****Software**

For purposes of this Supplement, the Software covered under this SEULA includes the following and each of their respective associated components and modules:

Tidal Enterprise Scheduler  
 Tidal Horizon  
 Tidal Intelligent Automation  
 Tidal Enterprise Orchestrator  
 Tidal Intersperse  
 Tidal Performance Analyzer  
 Tidal Transaction Analyzer  
 Tidal Intelligent Reporting  
 Tidal Enterprise Reporter  
 Cisco Intelligent Automation Cloud Automation

**Definitions**

For purposes of this Supplement, the following defined terms will apply:

"Designated System" shall mean the designated platform for which Customer originally licensed the Software from Cisco for installation and use. Such designated platform may include, but is not limited to, a designation of the specific number of CPUs or system descriptions or names as approved by Cisco.

"Movement and Usage Fees" shall mean fees applicable as set solely by Cisco for the transfer and installation of Software on a system that is not a Designated System.

"NFR" means not for resale, to be used for nonproduction, demonstration use only. Other Terms and

Conditions

"Movement and Usage". With respect to the license granted to the Customer in the Agreement, such license is applicable only to the Designated System. Movement of Software to another system requires Customer providing Cisco with prior written notice to obtain updated keys, and pursuant to a new GSA Customer Purchase Order. Additional fees may apply. A fee schedule is available upon Customer's written request to Cisco.

"License". The license granted to the Software in the license section shall be perpetual if designated as such by Cisco at time of Customer order for the Designated System, subject to payment of any applicable fees, including, but not limited to, any Movement and Usage fees described above.

"NFR Software". With respect to the License granted in the Agreement as to the use of any Software sold to Customer as NFR Software, the purchase of such Software is subject to the following additional restrictions:

NFR purchases are available to all Cisco registered partners (categories include Select, Premier, Silver and Gold level partners). Cisco authorized training partners may also participate, but use is limited to instructional purposes only. Cisco has the sole discretion to define a registered partner and status.

Purchase limit is one NFR kit per operational installation for demonstration, proof of concept or internal nonproduction use.

Software cannot be resold, traded, copied, transferred, sublicensed, or used in any manner other than as NFR

Cloud and Systems Management	Cisco Unified Provisioning Manager	<a href="#">DOC-21311</a>
Cloud and Systems Management	Cisco Unified Operations Manager	<a href="#">DOC-21311</a>
Cloud and Systems Management	Cisco Unified Service Monitor	<a href="#">DOC-21311</a>
Cloud and Systems Management	Cisco Unified Service Statistics Manager	<a href="#">DOC-21311</a>

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(This section shall replace the "License" section in the EULA)

License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for the purpose of delivering Managed Services, the Software and the Documentation for which Customer has paid the required license fees. "Managed Services" means the performance by Customer of providing services for third parties (Subscribers) which will require communicating with and managing Cisco equipment not owned or leased by the Customer. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software that Cisco makes available with the Software in any manner (including on CD Rom, or on line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer s copy of the Software online at Cisco's website to obtain the necessary license key or license file.

Customer s license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card. Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation or the applicable Supplemental License Agreement permits installation on non Cisco equipment) for communication with Cisco equipment not owned or leased by Customer in connection with Customer s provision of Managed Services to Subscriber. No other licenses are granted by implication, estoppel or otherwise. Upon termination of Managed Services to Subscriber, Customer is required to remove all deployed Software deployed by Customer to Subscriber s network and servers.

Customer s license to use the Software is contingent upon Customer deploying or otherwise making available the Software and any Documentation in compliance with and subject to the Software Subscriber License Responsibilities listed below.

**Software Subscriber License Responsibilities**

The following license terms and responsibilities, substantially as stated here, will be accepted and agreed to, in writing or as otherwise provided in the EULA, by the Subscribers of Managed Services:

Subscriber agrees to be bound by the following terms and conditions. In the absence of a signed agreement, use of the Software by Subscriber or by Customer on Subscriber s behalf, or receipt by Subscriber of any direct or indirect benefit derived there-from, shall constitute acceptance by Subscriber of the following terms:

1. Subscriber is granted a limited license from Cisco and its suppliers and licensors to use the Software solely in connection with the Managed Services and to the extent such Software is deployed by Customer on Subscriber s network or servers. 2. Upon termination of services to Subscriber, Customer is required to remove, and cooperate with Customer s efforts to remove, all deployed Software from the Subscriber s network and servers.

Subscriber may use the Software only in connection with the receipt of Managed Services from Customer, and for the purposes described in the Software s supporting Documentation if any.

Subscribers may only use the Software pursuant to these terms and Customer s license with Cisco and its suppliers and licensors, and Subscriber agrees to be governed by such terms and license including without limitation, the General Terms Applicable to the Limited Warranty Statement and End User License Agreement;

Subscriber may receive, or have deployed on its network or servers, updates, patches, error corrections or new or modified versions of the Software (collectively referred to as "Releases") from time to time. Releases are deemed part of the Software subject to the terms herein and the license with Cisco and its suppliers and licensors.

Subscribers acknowledge that all right, title and interest in and to the Software, the ideas and expressions contained therein, all updates and enhancements, all physical forms, regardless of where resident, whether permanent or transient, including authorized and unauthorized copies, any and all modifications made by Cisco, its suppliers and licensors, the software s supporting documentation, and all copyrights, patents, trademarks, service marks or other intellectual property or proprietary rights relating to the above are, and shall remain with Cisco and its suppliers and licensors.

Subscriber is granted only a limited right of use as set forth herein;

Subscribers will not distribute, provide or make available, either directly or indirectly, to any person, organization or entity, any part of the Software, including but not limited to the code and the software s supporting documentation in any form except as directed by Customer in support of the delivery of Managed Services;. 8. Subscribers will not place any portion of the Software into the public domain; And,

9. Subscribers will not copy, alter, translate, decompile, disassemble, reverse engineer or create derivative works of the Software, except that the Subscriber may make copies as required for the authorized use of the Software, may make copies of the supporting documentation as needed, and may make one additional copy of the Software for back up or archival purposes.

Collaboration

Cisco Magento Managed Services

[DOC](#)

## SUPPLEMENTAL LICENSE AGREEMENT

### SUPPLEMENTAL LICENSE AND SERVICES AGREEMENT FOR CISCO SYSTEMS' MAGENTO MANAGED SERVICES ("MAGENTO SERVICES") AND MAGENTO SOFTWARE ("MAGENTO SOFTWARE").

**IMPORTANT—READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AND SERVICES AGREEMENT ("SLSA") CONTAINS ADDITIONAL LIMITATIONS RELATING TO THE MAGENTO SERVICES AND MAGENTO SOFTWARE PROVIDED TO CUSTOMER UNDER THE END USER LICENSE AGREEMENT ("EULA") BETWEEN CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLSA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLSA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE MAGENTO SERVICES OR MAGENTO SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLSA SHALL TAKE PRECEDENCE.**

### **CUSTOMER'S RIGHT TO USE THE MAGENTO SERVICES IS LIMITED SOLELY TO THOSE SKU COMPONENTS OF THE MAGENTO SERVICES PURCHASED BY CUSTOMER PURSUANT TO A VALID PURCHASE ORDER. CUSTOMER MAY USE THE MAGENTO SERVICES ONLY DURING THE PERIOD FOR WHICH SERVICES WERE PURCHASED BY CUSTOMER UNDER THE APPLICABLE SKU PURSUANT TO A VALID PURCHASE ORDER. ALL OTHER USES ARE STRICTLY**

**PROHIBITED.** When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by The Schedule Holder and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SLSA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity."

### **IF CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE MAGENTO SERVICES OR MAGENTO SOFTWARE.**

#### **LICENSE; ADDITIONAL RESTRICTIONS**

**License.** Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a limited, nonexclusive, non-transferable, worldwide license to access and use the Magento Services and the Documentation to provide the Network Services its customers, subject to the production server and development server limitations set forth in the Purchase Order. The foregoing license does not transfer or convey to Customer or any third party any right, title or interest in or to Magento Services, the Magento Software or Documentation or any associated intellectual property rights, but only a limited right of use revocable in accordance with the terms of the Agreement.

**Restricted Use.** Customer is purchasing the rights to access and use the then-current version of the Magento Software; Customer's license specifically excludes any subsequent Major Releases of the Magento Software. No other updates, upgrades, or other Magento Software releases are licensed by Cisco to Customer hereunder.

Major Release means a release of Magento Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Magento Software version number [(x).x.x]. Cisco does not warrant Major Releases will be compatible with prior software releases.

Minor Release means an incremental release of Magento Software that provides maintenance fixes and additional Magento Software functions. Cisco designates Minor releases as a change in the tenths digit of the Magento Software version number [x.(x).x].

#### **CUSTOMER RESPONSIBILITIES**

(a) In performing the Magento Services, Cisco may instruct the Customer to perform certain tasks or checks relating to Customer's network. Customer will, at its expense, perform all such checks and tests. Customer will also provide Cisco, or its authorized representative, reasonable access, at no cost to Cisco, to Customer's networking equipment in connection with the Magento Services. Customer shall not be required to furnish specialized equipment or know-how. Any rework or additional work resulting from modification of the Magento Services requested by Customer (and accepted by Cisco) or any act or omission of Customer, including providing inaccurate information to Cisco will only occur pursuant to the parties executing a new Purchase Order. (b) Customer is responsible for obtaining all approvals required by any third parties in order for Cisco to perform any Magento Service under this Agreement. Cisco will not be responsible or otherwise liable for any failure to perform the Magento Services to the extent caused by Customer's failure to obtain such third party approvals or if any third party otherwise prevents Cisco from performing the Magento Services.

Customer will not resell the Magento Software or Magento Services or create or offer derivative versions of the Magento Software or Magento Services, either directly or indirectly through a third party.

Customer will be responsible for its compliance with all privacy, data control or use laws and regulations relating to its use of the Magento Services, including without limitation any data contained in any reports provided by Cisco hereunder. Customer acknowledges the potential privacy and other issues associated with the collection and use of such data. Customer warrants and covenants that it will comply with all laws (including, without limitation, copyright laws, privacy laws and import and export laws) applicable to Customer or its use of the Magento Services. In addition, Customer is responsible for obtaining any permits or approvals relating to its use of the Magento Services, including without limitation any permits or approvals relating to transactions requiring its customer's credit card information or other personally identifiable information.

Customer will not use the Magento Services to send spam, viruses or malware.

Customer understands the Magento Services are hosted by Cisco via a network utilized by Customer and other Cisco customers; Customer will not intentionally or unintentionally access data not owned by Customer or otherwise related to Customer's use of the Magento Services, or log into, or attempt to log into, a server or account which Customer is not authorized to access.

Customer will not attempt to probe, scan or test the vulnerability of a system or breach security or authentication measures without proper authorization.



Customer will be responsible for handling all communication, technical support to and business relations with its customers, including without limitation responding to inquiries and technical questions.

Customer will be responsible for determining whether or not any reported defects or issues may be replicated and that they are isolated to the Magento Services or Magento Software.

Customer is responsible for any catastrophic security events that result from any unauthorized configuration of the Magento Service components by Customer's personnel.

The failure of Customer to comply with Customer's responsibilities set forth above may be deemed a material breach of. Any termination shall be in accordance with FAR 12.302(b) and 52.233-1.

**Customer Warranties.** Customer represents, warrants and covenants that (i) it shall only use the Magento Services and Magento Software to provide Magento Services to its End Users only as permitted by any Capacity limitations set forth in the Purchase Order. If Customer wishes to utilize the Magento Software beyond the Capacity set forth in the Purchase Order, Customer shall be obligated to place a new Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

**Content.** Customer is and shall be solely responsible for the creation, renewal, updating, deletion, editorial content, control and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by Customer, and/or uploaded or routed to, passed through and/or stored on or within the Magento Services, or otherwise provided to Cisco in any medium or transmitted or routed using the Magento Services ("Customer Content"). Customer owns all right, title, and interest in the Customer Content, or possesses or shall possess all legally valid rights in the Customer Content necessary for the uses of the Customer Content contemplated herein. Customer shall not transmit or route to Cisco or the Magento Services, or otherwise direct via the Magento Services, any Customer Content that (a) infringes any copyright, trade secret, or other intellectual property right, (b) contains libelous, defamatory, or obscene material under any applicable law, or (c) otherwise violates any federal laws or regulations relating to content or content distribution. Customer shall be responsible for utilizing Magento Services in accordance with the Documentation. If Customer has actual knowledge that any Customer Content infringes the intellectual property or other rights of a third party or violates any applicable federal laws or regulations (including, without limitation, laws and regulations relating to indecency or obscenity), Customer shall remove such Customer Content from Customer's origin server. Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for Customer to operate and maintain its services to meet Customer's purposes and objectives. During the Term, Customer grants to Cisco a limited, non-exclusive license to use the Customer Content solely for Cisco to perform the Magento Services as contemplated hereunder. In the case where at no material fault of Cisco, the Magento Services or Magento Software, a third party software component, including but not limited to, WMDRM Server or Windows Media Player ("WMP") or Microsoft PlayReady creates a digital rights management (DRM) security breach due to a failure or hacking of such component, Cisco shall notify Customer as soon as is practical after receiving a confirmed notice from the provider of such components or discovering such a DRM security breach itself. If, after receiving such DRM breach notice, Customer continues to allow its content to be accessed with any software or services operated in conjunction with the Magento Services or Magento Software during the period where there is no fix for such DRM security breach, or Customer decides not to implement such fix (which may require restricting End Users to using certain versions of third party applications), then Customer acknowledges and agrees Cisco will not have any liability to Customer for any costs, damages or legal fees related to a DRM security breach. Neither this SLA nor any rights or obligations under this SLA shall be assigned by a party without the other's prior written consent, in accordance with the provisions of the Anti-Assignment Act 41 USC 6305 and FAR 42.1204.

#### **ADDITIONAL SERVICES**

During the period Customer has purchased Magento Services, Cisco's Software Application Support (SAS) service obligations are provided in Attachment 5. Customer is not eligible to receive Software Application Support Plus Upgrades (SASU) services, if any, included on such URL. Professional Services relating to the Magento Services or Magento Software purchased by Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed upon by the parties.

Collaboration Cisco UC Virtualization Hypervisor and Cisco UC Virtualization Foundation [DOC](#)**IMPORTANT: READ CAREFULLY**

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software product that is used with Cisco's Unified Communications products, including features, functionality and solutions enabled in such Software (collectively, "Software Product") licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA, but not defined, will have the meaning assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on the Government's access and use of the Software Product, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE PRODUCT TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE PRODUCT, AND (B) YOU MAY RETURN THE SOFTWARE PRODUCT (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE PRODUCT AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

For the purpose of this SEULA, we define the following terms:

"Cisco UC Product" means the following products:

**Call Processing and System****Management Applications**

Cisco Unified Communications Manager  
 Cisco Unified Communications Manager  
 IM & Presence  
 Cisco Unified Communications Manager  
 Basic Paging Server  
 Cisco Unified Communications Manager  
 Session Manager Edition  
 Cisco Emergency Responder  
 Cisco Unified Attendant Consoles  
 Cisco Unified Communications  
 Management Suite (including  
 Operations Manager, Service Manager,  
 Service Statistics Monitor and  
 Provisioning Manager)  
 Cisco Prime Collaboration Suite  
 Cisco Survivable Remote Site  
 Telephony Manager  
 Cisco InterCompany Media Engine

**Messaging and Presence Applications**

Cisco Unity

Cisco Unity Connection

Cisco Unified Presence

**Contact Center Applications**Cisco Unified Contact Center Express  
 (including Work Force Management,  
 Work Force Optimization, Quality

Management, Compliance Recording)

Cisco Unified IP IVR

Cisco Unified Contact Center Enterprise

(including Packaged Contact Center

Enterprise and Email/Web Interaction  
 Manager)

Cisco Unified Intelligence Center

Cisco Unified Contact Center

Management Portal

Cisco Unified Customer Voice Portal

Cisco MediaSense

Cisco SocialMiner

Cisco Remote Expert Solution

(including Remote Expert Manager and  
Interactive Experience Manager)

**Conferencing, Collaboration and  
Social**

Cisco Webex

Cisco Unified MeetingPlace

Cisco TelePresence and Tandberg suites

Cisco Video Communications Server

Cisco Quad

Additionally, any bundled solutions including the applications listed above, including without limitation, Cisco Unified Communications Manager Business Edition 6000, are also licensed to run with the virtual machines.

"Software Product" includes the following two products: Cisco UC Virtualization Hypervisor and Cisco UC Virtualization Foundation.

In addition to the Agreement, the following supplemental terms apply:

1. You may use the VMware Products solely to operate and run in conjunction with the applicable CISCO UC Product or approved third party applications; they cannot be used in any manner independently from the CISCO UC Product or such third party applications. For purposes of this SEULA, "Approved Third Party Applications" include applications from Vendors enrolled in the "Collaboration" or "Complementary to Collaboration" categories within Cisco Solutions Plus or Cisco Developer Network Programs that are not listed in the Cisco Business Edition 6000 Co-residency Policy Document available at: [http://www.cisco.com/en/US/products/ps11369/prod\\_white\\_papers\\_list.html](http://www.cisco.com/en/US/products/ps11369/prod_white_papers_list.html) All use shall terminate and cease when the use of the Cisco UC Product or Approved Third Party Applications terminates.

Collaboration

Cisco Unified Communications Manager 7.X NFR Kit

DOC-19231**IMPORTANT: READ CAREFULLY****Dear Customer,****Supplemental End User License Agreement**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement (EULA) between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government's access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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**SUPPLEMENT TO CISCO END USER LICENSE AGREEMENT ("EULA") FOR SW UNIFIED COMMUNICATIONS SYSTEM 7.1(3) NOT FOR RESALE**

This package contains a bundle of Cisco Unified Communications products (the "Cisco UC NFR Bundle") made available under these terms only to qualified Cisco resellers and channel partners. In addition to the EULA terms set forth in Attachment 8 and any other Supplemental End User License Agreement ("SEULA") terms (collectively, the EULA and the SEULA terms are referred to as the "Software Agreement") accompanying or otherwise applicable to the software products enclosed (the "Software"), the following additional supplemental SEULA terms apply to the Software and are hereby incorporated as part of the Software Agreement:

The Cisco UC NFR Bundle Software is provided to you as a Cisco reseller or channel partner for your internal demonstration and testing purposes only. The Cisco UC NFR offering may only be used in internal lab or demonstration environments by the acquiring reseller or partner. The Software is not intended for and should never be used in production and may not be resold. You agree that Cisco and its suppliers shall not be held liable for any damages arising from use of the Software. If a new release of a Software product included with the Cisco UC NFR Bundle is made available by Cisco and/or as a version of the included Software products is announced by Cisco to be at end of life, your license to use for testing and demonstration purposes of that product will terminate. , Components of this Software are "NFR" or not for resale. You agree not to distribute the Software to a third party. The NFR Software does not include support and is not eligible for upgrades.

You are not obligated to provide Cisco with comments or suggestions regarding this Software. However, should you provide any comments or suggestions for the modification, correction, improvement or enhancement of the Software ("Feedback") then you (including the company or companies you represent) grant to Cisco a non exclusive, irrevocable, worldwide, royalty free, fully paid up license in and to any and all intellectual property rights in the Feedback, including the right to sublicense to Cisco licensees and customers (with the right to grant further sublicenses), the right to use and disclose such Feedback in any manner Cisco choose and to display, perform, copy, have copies, make, have made, use, sell, offer to sell, export and otherwise distribute or dispose of products embodying such Feedback but without any obligation to reference or disclose the source of such Feedback.

Collaboration

Cisco Unified Communications Manager 8.X NFR Kit

DOC-16947**IMPORTANT: READ CAREFULLY****Dear Customer,****Supplemental End User License Agreement**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

SUPPLEMENT TO CISCO END USER LICENSE AGREEMENT ("AGREEMENT") FOR SW UNIFIED COMMUNICATIONS SYSTEM 7.1(2) NOT FOR RESALE

In addition to the Software Agreement, the following supplemental terms ("Supplement") apply to the Software licensed to you and are hereby incorporated as part of the Agreement: The Software is provided for your internal demonstration and testing purposes only. The Software is not intended for and should never be used in production. You agree that Cisco and its suppliers shall not be held liable for any damages arising from use of the Software in a production environment. For the avoidance of doubt, components of this Software are NFR or not for resale. At no time does the license herein permit you to distribute the Software to a third party. You are not obligated to provide Cisco with comments or suggestions regarding this Software. However, should you provide any comments or suggestions for the modification, correction, improvement or enhancement of the Software ("Feedback") then you (including the company or companies you represent) grant to Cisco a non exclusive, irrevocable, worldwide, royalty free, fully paid up license in and to any and all intellectual property rights in the Feedback, including the right to sublicense to Cisco licensees and customers (with the right to grant further sublicenses), the right to use and disclose such Feedback in any manner Cisco choose and to display, perform, copy, have copies, make, have made, use, sell, offer to sell, export and otherwise distribute or dispose of products embodying such Feedback but without any obligation to reference or disclose the source of such Feedback. In the event of a conflict between this Supplement and the Agreement, the Supplement shall control.

Collaboration	Cisco Unified Video Conferencing	<a href="#">DOC-29311</a>
Collaboration	<a href="#">Cisco Unified Videoconferencing Manager</a>	<a href="#">DOC-29311</a>
TelePresence	Cisco TelePresence Commercial Express	<a href="#">DOC-29311</a>

**IMPORTANT: READ CAREFULLY****Dear Customer,****Supplemental End User License Agreement**

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence..

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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For the purpose of this SEULA, we define the following terms:

“Authorized Service Provider” is a service provider that has an agreement with Cisco that explicitly authorizes support for the Restricted Features.

“Intra-company Use” is a use of the Software Product which occurs within the same company/entity and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same companies/entities. “Inter-company Use” is a use of the Software Product which occurs between two or more companies/entities and which traverses a service provider network for the purpose of interconnecting and communicating to other companies/entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter-company Use also includes providing features of the Software Product in a commercially available service offering. “Restricted Features” means one or more of the following features: (i) Inter-company Multipoint encryption; and (ii) Intercompany HD/SD Inter-Operability.

In addition to the Agreement, the following supplemental terms apply:

The Restricted Features are available or potentially enabled in this Software Product but may only be used for Intra-company Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTER-COMPANY USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. IF YOU WERE TO USE THE RESTRICTED FEATURES FOR INTER-COMPANY USE, YOUR USE OF THE RESTRICTED FEATURES PRIOR TO SUCH AUTHORIZATION WOULD CONSTITUTE A BREACH OF THE AGREEMENT. Unless your use is through an Authorized Service Provider, you are not authorized to use the Restricted Features for Inter-company Use until the Restricted Features have been noted as a generally available feature set in the updated release notes for the Software Product, as posted by Cisco on cisco.com. Notwithstanding the foregoing, your Intra-company Use of the Restricted Features shall not be restricted by this paragraph.

The CTS-Manager calendaring feature for scheduling TelePresence calls may only be used for Intra-company Use. The CTS-Manager calendaring feature may not be used with more than one calendaring application. Customers in a shared office space with multiple tenants using their own calendaring solution must deploy one CTS-Manager per tenant.

The Commercial Express product contains software provided by VMware, Inc. or its affiliates, and use of VMware software is subject to the terms of the VMware ESX/ESXi End User License Agreement Attachment 10.



Routers

CSR 1000V

DOC-62134**IMPORTANT: READ CAREFULLY****Dear Customer,**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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**Definitions**

CPU means a central processing unit that encompasses part of a Server.

Evaluation Term means a sixty-day period during which the Software may be used solely for trial or evaluation purposes, free of additional charge.

Instance means a single copy of the Software. Each copy of the Software loaded into memory constitutes a single Instance. License Term means the period of time during which you are authorized to use the Software to deliver information technology services to your internal or external customers.

The License Term varies depending on the license fee paid.

Server means a single physical computer or device on a network that manages or provides network resources for multiple users. Each Server must meet or exceed the following CPU requirements: Intel Nehalem, AMD Barcelona and a clock frequency of 1.8GHz.

Software means the CSR 1000V, successor versions, or other virtual software products that Cisco determines shall be governed under this SEULA. To run, the Software requires VMWare ESXi version 5.0 or higher.

Term means the License Term and any Evaluation Term.

Virtual Machine means a software container that can run its own operating system and execute applications like a Server. Service Provider means a company that provides information technology services to external end user customers.

**Additional License Terms and Conditions**

Cisco hereby grants You the right to install and use a single Instance of the Software during the Term. Upon expiration of the License Term, an Evaluation Term commences unless and until You renew the License Term by payment of the required license fees. Following expiration of the Evaluation Term, the Software communication interfaces shut down until all functionality ceases.

The Software may be deployed on a Server in a Virtual Machine. Each unique Instance of the Software requires payment of the applicable license fees.

You may not run multiple Instances of the Software without payment of the applicable license fees.

Subject to the terms and conditions herein and payment of applicable license fees, You may use the Software as a Service Provider or to deliver hosted information technology services to your employees, agents, consultants and/or independent contractors., or to employees and contractors of your affiliated companies.

Description of Other Rights and Obligations. Please refer to the Cisco Systems, Inc. End User License Agreement.

Security

Cisco AnyConnect Secure Mobility ClientDOC-1**Cisco End User License Agreement, AnyConnect Secure Mobility Client, Release 3.0**

IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. DOWNLOADING, INSTALLING OR USING CISCO OR CISCO-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT. CISCO SYSTEMS, INC. OR ITS SUBSIDIARY LICENSING THE SOFTWARE INSTEAD OF CISCO SYSTEMS, INC. ("CISCO") IS WILLING TO LICENSE ITS SOFTWARE TO YOU, ("GSA CUSTOMER") ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS END USER LICENSE AGREEMENT PLUS ANY ADDITIONAL LIMITATIONS ON THE LICENSE SET FORTH IN A SUPPLEMENTAL LICENSE AGREEMENT ACCOMPANYING THE PRODUCT (COLLECTIVELY THE "AGREEMENT"). TO THE EXTENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS END USER LICENSE AGREEMENT AND ANY SUPPLEMENTAL LICENSE AGREEMENT, THE SUPPLEMENTAL LICENSE AGREEMENT SHALL APPLY.

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THE FOLLOWING TERMS OF THE AGREEMENT GOVERN CUSTOMER'S ACCESS AND USE OF EACH CISCO OR CISCO-SUPPLIED SOFTWARE ("SOFTWARE").

**License**

Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business purposes the Software and the Documentation for which Customer has paid the required license fees. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD-ROM, or on-line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file. Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card or such other limitations as are set forth in the applicable Supplemental License Agreement or in the applicable Purchase Order which has been accepted by Cisco and for which Customer has paid to Cisco the license fee as required by the "GSA Customer Purchase Order").

Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation permits installation on non-Cisco equipment) for communication with Cisco equipment owned or leased by Customer and used for Customer's internal purposes. No other licenses are granted by implication, estoppel or otherwise. For evaluation or beta copies for which Cisco does not charge a license fee, the above requirement to pay license fees does not apply.

**General Limitations**

This is a license, not a transfer of title, to the Software and Documentation, and Cisco retains ownership of all copies of the Software and Documentation. Customer acknowledges that the Software and Documentation contain trade secrets of Cisco or its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Except as otherwise expressly provided under the Agreement, Customer shall have no right, and Customer specifically agrees not to: transfer, assign or sublicense its license rights to any other person or entity (other than in compliance with any Cisco relicensing/transfer policy then in force), or use the Software on unauthorized or secondhand Cisco equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense or use shall be void; make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same; reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction; publish any results of benchmark tests run on the Software; use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Cisco; or disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets. To the extent required by applicable law, and at Customer's written request, Cisco shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Cisco's applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Cisco makes such information available.

**Software, Upgrades and Additional Copies**

For purposes of the Agreement, "Software" shall include (and the terms and conditions of the Agreement shall apply to) computer programs, including firmware, as provided to Customer by Cisco or an authorized Cisco reseller, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of any of the foregoing. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS

CUSTOMER, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CISCO EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY. NOTHING CONTAINED HEREIN SHALL RESTRICT THE CUSTOMER'S RIGHT TO PROVIDE COPIES TO ITS DULY AUTHORIZED EMPLOYEES, AGENTS, CONSULTANTS AND/OR INDEPENDENT CONTRACTORS SOLELY FOR BACKUP PURPOSES.

#### **Proprietary Notices**

Customer agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in the Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of Cisco. NOTHING CONTAINED HEREIN SHALL RESTRICT THE GOVERNMENT'S RIGHT TO PROVIDE COPIES TO ITS DULY AUTHORIZED EMPLOYEES, AGENTS, CONSULTANTS AND/OR INDEPENDENT CONTRACTORS SOLELY FOR BACKUP PURPOSES.

#### **Term and Termination**

The Agreement and the license granted herein shall remain effective until terminated. The parties may terminate the Agreement only in accordance with the procedures set forth in the FAR. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control. All confidentiality obligations of Customer and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement. In addition, the provisions of the sections titled "U.S. Government End User Purchasers" and "General Terms Applicable to the Limited Warranty Statement and End User License Agreement" shall survive termination of the Agreement.

#### **Government Records**

Customer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement as long as Cisco complies with Customer's security requirements. In the event such audit discloses non-compliance with this Agreement, the parties shall negotiate a new GSA Customer Purchase Order to bring the Customer into compliance.

#### **Export, Re-Export, Transfer and Use Controls**

The Software, Documentation and technology or direct products thereof (hereafter referred to as Software and Technology), supplied by Cisco under this Agreement are subject to export controls under the laws and regulations of the United States (U.S.) and any other applicable countries' laws and regulations. Customer shall comply with such laws and regulations governing export, re-export, transfer and use of Cisco Software and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco and Customer each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. Information regarding compliance with export, re-export, transfer and use may be located at the following URL: [http://www.cisco.com/web/about/doing\\_business/legal/global\\_export\\_trade/general\\_export/contract\\_compliance.html](http://www.cisco.com/web/about/doing_business/legal/global_export_trade/general_export/contract_compliance.html) and is provided for informational purposes only.

#### **U.S. Government End User Purchasers**

The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Customer may provide to Government end user or, if the Agreement is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in the Agreement. The Government agrees that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and accepts the rights and restrictions herein.

#### **Limited Warranty**

Subject to the limitations and conditions set forth herein, Cisco warrants that commencing from the date of shipment to Customer (but in case of resale by an authorized Cisco reseller, commencing not more than ninety (90) days after original shipment by Cisco), and continuing for a period of the longer of (a) ninety (90) days or (b) the warranty period (if any) expressly set forth as applicable specifically to software in the warranty card accompanying the product of which the Software is a part (the "Product") (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. The date of shipment of a Product by Cisco is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at Cisco's option, repair, replacement, or refund of the purchase price of the Software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to Cisco or the party supplying the Software to Customer, if different than Cisco, within the warranty period. Cisco or the party supplying the Software to Customer may, at its option, require return of the Software and/or Documentation as a condition to the remedy. In no event does Cisco warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Cisco does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

#### **Restrictions**

This warranty does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Cisco or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Cisco, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. The Software warranty also does not apply to (e) any temporary Software modules; or (f) any Software for which Cisco does not receive a license fee.

**Disclaimer OF Warranty**

EXCEPT AS SPECIFIED IN THIS WARRANTY SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY CISCO, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

The foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Cisco's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**General Terms Applicable to the Limited Warranty Statement, End User License Agreement, and Supplemental License Agreement Controlling Law, Jurisdiction**

If you acquired the Software in the United States, the Agreement and Hardware and Software warranties ("Warranties") are controlled by and construed under the Federal laws of the United States of America, notwithstanding any conflicts of law provisions. For all countries referred to above, the parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods.

If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement and Warranties shall remain in full force and effect. Except as expressly provided herein, the Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation. The Agreement has been written in the English language, and the parties agree that the English version will govern.

**Supplemental End User License Agreement for Cisco Systems AnyConnect Secure Mobility and other SSL VPN-related Client Software**

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between You ("You" as used herein means ("GSA Customer"), and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

For purposes of this SEULA, the Product name and the Product description You have ordered is any of the following ("Software"):

Cisco AnyConnect Secure Mobility Client  
 Cisco AnyConnect VPN Client  
 Cisco AnyConnect Profile Editor  
 Cisco AnyConnect Host Scan (HostScan)  
 Cisco AnyConnect Diagnostics and Reporting Tool (DART)  
 Cisco SSL VPN Client  
 Cisco VPN Client  
 Cisco Secure Desktop  
 Smart Tunnels  
 Port Forwarding  
 Additional SSL VPN delivered applets

**Definitions**

For purposes of this SEULA, the following definitions apply:

"Endpoint" means a computer, smartphone or other mobile device used in conjunction with any of the Software. "Network Access Manager Module" means a separate module in the Cisco AnyConnect Secure Mobility Client with IEEE 802.1X authentication functionality to manage wired and wireless network connections.

"Non-personal Information" means technical and related information that is not personally identifiable, including, but not limited to, the operating system type and version, origin and nature of identified malicious system threats, and the Software modules installed on an Endpoint device.

"Personal Information" means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

"Telemetry Module" means a separate module in the Cisco AnyConnect Secure Mobility Client to provide Personal Information and Non-personal Information from Endpoint devices to Cisco's web security infrastructure.

"Web Security Module" means a separate module in the Cisco AnyConnect Secure Mobility Client with functionality that redirects web traffic to the Cisco ScanSafe hosted web security infrastructure, for customers that have subscribed to Secure Mobility for ScanSafe and used in conjunction with Cisco ScanSafe Web Filtering and/or Cisco ScanSafe Web Security services.

#### **Additional License Terms and Conditions**

##### **Installation and Use on Unlimited Number of Endpoint Devices**

Cisco hereby grants You the right to install and use any of the Software listed above in this SEULA on an unlimited number of Endpoint devices, provided that, except with respect to the Network Access Manager Module as described in Section 2 below, each of those Endpoint devices must use the Software only to connect to Cisco equipment. These license grants are subject to export restrictions in the EULA and to the network equipment license restrictions in Section 3 below. You may make one copy of the Software for each such Endpoint device and a reasonable number of backup copies for the purpose of installing the Software on that Endpoint device.

##### **Cisco AnyConnect Network Access Manager Module**

The Network Access Manager Module, as described in the Cisco AnyConnect Secure Mobility Client Administrator Guide, may be used by You in conjunction with non-Cisco wired and wireless equipment for the purpose of connecting to non-Cisco network equipment. Support services (including Technical Assistance or TAC support) are only available if You have an active support contract for Cisco Products used in conjunction with the Network Access Manager Module. Support services will not be provided directly to your end users by Cisco.

##### **Cisco Network Equipment and Hosted Service License Entitlements and Restrictions**

Your use of the Software or specific features thereof with Cisco network equipment shall be subject to license entitlements and restrictions for the applicable Cisco network equipment or hosted services. Please consult Your administrator guide for the applicable Cisco network equipment or hosted services for the relevant license entitlements and restrictions.

##### **Distribution to Third Party Business Partners and Customers**

You may copy and distribute the Software to your duly authorized employees, agents, consultants, and/or independent contractors (collectively referred to as "employees") solely and exclusively for the purposes of accessing your Cisco equipment, provided that You shall remain responsible for compliance with the EULA and this SEULA by such employees. Each such distribution of the Software to a third party must be accompanied by a copy of the EULA and this SEULA.

##### **No Support to Third Party Business Partners or Customers**

Cisco will not provide end-user support (including Technical Assistance or TAC support) to any third party business partner or customer that receives the Software in accordance with Section 4 hereof. You shall be responsible for providing all support to each such third party.

##### **Effect of Termination on Third Party Business Partners or Customers**

In the event of termination of the Agreement, If applicable, You must use commercially reasonable efforts to notify the third party business partner or customer to whom You have distributed the Software that their rights of access and use of the Software have also ceased.

##### **Data, Information and Privacy**

**Telemetry Module**—If You install the Telemetry Module, You consent to Cisco's collection, use, processing and storage of Personal Information and Non-personal Information as described below. This Personal Information and Non-personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purpose of providing You technical networking support and improving our products and services. Cisco may share this information with select third parties in an anonymous aggregated form. None of this Personal Information and Non-personal Information will be used to identify or contact You, and use of the Personal Information and Non-personal Information shall be subject to Cisco's Privacy Statement, Attachment 6. You may withdraw this consent to collection, use, processing and storage of Personal Information and Non-personal Information at any time either by turning the Telemetry Module off or by uninstalling the Telemetry Module. Configuration and uninstallation instructions for the Telemetry Module are available in Your Cisco AnyConnect Secure Mobility Client Administrator Guide.

**Web Security Module**—If You agree to this Agreement and install and utilize the Web Security Module to communicate with the Cisco ScanSafe Web Filtering and/or Cisco ScanSafe Web Security Services, You consent to Cisco's collection, use, processing and storage of Personal Information as described below. This Personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purpose of providing You technical networking support and improving our products and services. None of this Personal Information will be used to identify or contact You, and use of the Personal Information shall be subject to Cisco's Privacy Statement, Attachment 6. You may withdraw this consent to collection, use, processing and storage of Personal Information at any time by configuring the Cisco ScanSafe Web Filtering Service to anonymize Your end user data. Configuration instructions for the Cisco ScanSafe Web Filtering Service are available in Your Cisco ScanSafe Web Filtering Service Administrator Guide.



Security

Cisco ASA 5585-X CX-10 Web Security Essentials

DOC-61013**IMPORTANT: READ CAREFULLY****Dear Customer,**

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In addition to the limitations set forth in the EULA on your access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. -YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS ASA CX SOFTWARE: IMPORTANT: READ CAREFULLY**

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Software shall include Cisco s ASA CX Application Visibility and Control and ASA CX Web Security Essentials software and services.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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1. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive, nontransferable and sublicenseable (to Customer s end users) license to use for Customer s (and/or Customer s end users ) internal business purposes the Software and Documentation for which Customer has paid the required license and/or subscription fee. The license shall be a term based subscription license to the service indicated as a SKU in the GSA Customer's Purchase Order. The length of the license term (or subscription) shall be as indicated in the GSA Customer's Purchase Order. Documentation means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD Rom, or online). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer s copy of the Software online at Cisco's website to obtain the necessary license key or license file.



Security Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Application Visibility & Control [DOC-2](#)

Supplemental End User License Agreement

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Security Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Web Security Essentials  
Supplemental End User License Agreement  
**IMPORTANT: READ CAREFULLY**

DOC-3

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ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**Product Name**

ASA5585-20-AW3Y ASA 5585-X CX-20 AVC and Web Security Essentials 3Year

**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS ASA CX SOFTWARE: IMPORTANT: READ CAREFULLY**

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Security

Cisco ISE Wireless

DOC-4

Supplemental End User License Agreement

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This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**Product Name**

L-ISE-AD5Y-W-100= Cisco ISE 100 Endpoint 5 Year Wireless Subscription License

**Identity Services Engine (ISE) Wireless License**

The Cisco Identity Services Engine (ISE) Wireless Package License entitles the user to use the Base and Advanced features and services for Wireless Endpoints only and to receive updates as made available during the term of the subscription, provided that you holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

**Features and Functionality**

The Identity Services Engine Wireless License Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

**Licensing**

A valid ISE Wireless license allows a wireless endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the user to support up to number of wireless endpoints that is equal to the license quantity purchased, i.e. the quantity of wireless endpoints supported is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 wireless endpoints). Additional licenses can be purchased to support more wireless endpoints. The purchased license quantity will be listed in the sales order. The Identity Services Engine Wireless Package License is a 5 year subscription license and subject to the termination provisions stated in the FAR. In order to be able to deploy the ISE across different types of endpoints or access technologies (wired, wireless and vpn), customers have to purchase the Wireless Upgrade license. The Wireless Upgrade license allows for the ISE to be deployed with wired, wireless and vpn endpoints. The pre-requisite for installing the Wireless Upgrade license is having the Wireless license installed on the ISE.

The endpoint count of the Wireless Upgrade license has to be the same as the pre-installed Wireless license.

**Support**

Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using the Base license. For the SMARTnet option, the ISE software is considered the operating system so updates include the following: maintenance releases, minor updates and major updates.

Security

Cisco ISE Wireless Upgrade

DOC-5**Supplemental End User License Agreement**  
**IMPORTANT: READ CAREFULLY****Dear Customer,**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**Product Name**

L-ISE-W-UPG-100= ISE 100 Endpoint 5 Year Wireless Upgrade Subscription Lic

**Identity Services Engine (ISE) Wireless Upgrade License**

The Cisco Identity Services Engine (ISE) Wireless Upgrade License entitles the user to use the Base and Advanced features and services for All Endpoints and not just limited to Wireless Endpoints only and to receive updates as made available during the term of the subscription, provided that the GSA Customer holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform. Features and Functionality

The Identity Services Engine Wireless Upgrade License provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

**Licensing**

A valid ISE Wireless Upgrade license allows any type of endpoint wired, wireless and vpn endpoint to be supported by the Identity Services Engine platform. The pre-requisite to install this license is the ISE Wireless License. This license entitles the user to support up to number of wired, wireless and vpn endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints). Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order. The Identity Services Engine Wireless Upgrade License is a subscription license whose term will expire at the same time as the pre-installed Wireless license and is subject to termination provisions stated in the FAR. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using the Base license. For the SMARTnet option the ISE software is considered the operating system, so updates include the following: maintenance releases, minor updates and major updates.

Security

Cisco ISE Advance

DOC-6

Supplemental End User License Agreement

**IMPORTANT: READ CAREFULLY****Dear Customer,**

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IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**Product Name**

L-ISE-ADV3Y-50K= Cisco ISE 50000 EndPoint 3Year Advanced Subscription License

**Identity Services Engine (ISE) Advanced Package License**

The Cisco Identity Services Engine (ISE) Advanced Package License entitles the Government to use the Advanced Package features, services, and to receive updates as made available during the term of the Subscription, provided that the Government holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

**Features and Functionality**

The Identity Services Engine Advanced Software Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

**Licensing**

A valid ISE Advanced license allows an endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the Government to support up to the number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with advanced features is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints). Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the Government Purchase Order. The Identity Services Engine Advanced Package license is subscription based and has either a 3 or 5 year term. The license is valid with proper purchase for the duration of the term. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Advanced Package Features and Services may cease operation. The purchased license term is listed on the sales order.

The Government's subscription term begins 24 hours after the PAK file is transmitted to the user. The PAK file will be transmitted electronically within 24 hours of Cisco's receipt of the Government Purchase Order. The term expires after the duration specified in the Government Purchase Order has been reached. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using Advanced Subscription Licenses. For the SMARTnet option the ISE software is considered the operating system so updates include the following: maintenance releases, minor updates and major updates. Please note that a Cisco ISE customer must have an active SMARTnet or SASU contract when using Advanced Subscription Licenses.

Security

Cisco ISE Migration

DOC-7

Supplemental End User License Agreement

**IMPORTANT: READ CAREFULLY****Dear Customer,**

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In addition to the limitations set forth in the EULA on the Government's access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**Product Name**

L-ISE-ADV-250-M= Cisco ISE 250 EndPoint Advanced + Base Migration License

**Identity Services Engine (ISE) Advanced Package License**

The Cisco Identity Services Engine (ISE) Advanced Package License entitles the Government to use the Advanced Package features, services, and to receive updates as made available during the term of the Subscription, provided that you holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

**Features and Functionality**

The Identity Services Engine Advanced Software Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

**Licensing**

A valid ISE Advanced license allows an endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the user to support up to the number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with advanced features is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints). Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order. The Identity Services Engine Advanced Package license is subscription based and has either a 3 or 5 year term. The license is valid with proper purchase for the duration of the term. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Advanced Package Features and Services may cease operation. The purchased license term is listed on the GSA Customer Purchase Order.

Your subscription term begins 24 hours after the PAK file is transmitted to the user. The PAK file will be transmitted electronically within 24 hours of Cisco's receipt of the GSA Customer Purchase Order. The term expires after the duration specified in the GSA Customer Purchase Order. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using Advanced Subscription Licenses. For the SMARTnet option the ISE software is considered the operating system, so updates include the following: maintenance releases, minor updates and major updates. Please note that a Cisco ISE customer must have an active SMARTnet or SASU contract when using Advanced Subscription Licenses.



Security

Cisco ISE All-in-One

DOC-8**Supplemental End User License Agreement for Identity Services Engine****IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software product licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on the Government’s access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**Product Name**

For purposes of this SEULA, the Product name you have ordered is any of the following:

- Cisco ISE 1 Year Wireless Subscription License
- Cisco ISE 3 Year Wireless Subscription License
- Cisco ISE 5 Year Wireless Subscription License
- Cisco ISE 1 Year Wireless Upgrade Subscription License
- Cisco ISE 3 Year Wireless Upgrade Subscription License
- Cisco ISE 5 Year Wireless Upgrade Subscription License
- Cisco ISE 1 Year Advance Subscription License
- Cisco ISE 3 Year Advance Subscription License
- Cisco ISE 5 Year Advance Subscription License
- Cisco ISE Advance Migration Licenses

**Identity Services Engine Term Licenses**

Provided that you holds a valid license for the application software and that there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform, you are entitled to use the following Cisco Identity Services Engine (ISE) features and services depending on the Product you have ordered:

**Cisco ISE Wireless Licenses**

For the Cisco ISE Wireless Subscription License: you are entitled to use the Base and Advance features and services for Wireless Endpoints only and to receive updates as made available during the term of the subscription. A valid ISE Wireless Subscription License allows a wireless endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the GSA Customer to support up to the number of wireless endpoints that is equal to the license quantity purchased, i.e. the quantity of wireless endpoints supported is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 wireless endpoints).

**Cisco ISE Wireless Upgrade Licenses**

For the Cisco ISE Wireless Upgrade Subscription License: you are entitled to use the Base and Advance features and services for all Endpoints (not just limited to Wireless Endpoints only), and to receive updates as made available during the term of the subscription. A valid ISE Wireless Upgrade Subscription License allows any type of endpoint wired, wireless and vpn endpoint to be supported by the Identity Services Engine Platform. The pre-requisite to install this ISE Wireless Upgrade Subscription License is the ISE Wireless Subscription License. A ISE Endpoint Wireless Upgrade Subscription License entitles the user to support up to number of wired, wireless and vpn endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints). The endpoint count of the ISE Endpoint Wireless Upgrade Subscription License has to be the same as the pre-installed ISE Endpoint Wireless Subscription; or Cisco ISE Advance Licenses.

For the Cisco ISE Advance Subscription License: you are entitled to use the Advance Package features, services, and to receive updates as made available during the term of the Subscription. The ISE Advance Subscription License allows all endpoints (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the GSA Customer to support up to number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with Advance features is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints).

**Cisco ISE Advance Migration Licenses**

For the Cisco ISE Advance Migration Licenses: you are entitled to use the Base and Advance features and services, and to receive updates as made available during the term of the Subscription. The ISE Advance Migration License allows all endpoints (e.g. laptop) to be supported by the Identity Services Engine platform. The Cisco ISE Advance Migration License includes a perpetual ISE Base License with a perpetual term and an ISE Advance License with a 3-year term. This license entitles the GSA Customer to support up

to number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with Base and Advance features is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints).

**Additional licenses**

Additional ISE Licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order.

**Term**

The ISE Term Licenses are subscription-based, and have either a 1-year, 3-year, or 5-year term, except that: (a) the term of the ISE Wireless Upgrade License will expire at the same time as the pre-installed ISE Wireless License; and (b) the ISE Advance Migration License includes a perpetual ISE Base License with a perpetual term and a ISE Advance License with a 3-year term. The ISE Term Licenses are subject to the termination provisions contained in the FAR. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Features and Services may cease operation.

**Features and Functionality**

The ISE License provides features that require a valid license to operate. These features are supported on Cisco ISE hardware and software platforms.

Security

Cisco Content Security Software  
(formerly Cisco IronPort Email and Web Security  
Appliances and Security Management Application)DOC**Supplemental End User License Agreement for Cisco Systems Content Security Software****IMPORTANT: READ CAREFULLY**

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In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

For purposes of this SEULA, the Product name and the Product description you have ordered is any of the Following Cisco Systems Email Security Appliance ("ESA"), Cisco Systems Web Security Appliance ("WSA") and Cisco Systems Security Management Application ("SMA") (collectively, "Content Security") and their Virtual Appliance equivalent ("Software"):

Cisco AsyncOS for Email  
 Cisco AsyncOS for Web  
 Cisco AsyncOS for Management  
 Cisco Email Anti-Spam, Sophos Anti-Virus  
 Cisco Email Outbreak Filters  
 Cloudmark Anti-Spam  
 Cisco Image Analyzer  
 Intel Security Public Sector, Inc. Anti-Virus  
 Cisco Intelligent Multi-Scan  
 Cisco RSA Data Loss Prevention  
 Cisco Email Encryption  
 Cisco Email Delivery Mode  
 Cisco Web Usage Controls  
 Cisco Web Reputation  
 Sophos Anti-Malware  
 Webroot Anti-Malware  
 Intel Security Public Sector, Inc. Anti-Malware  
 Cisco Email Reporting  
 Cisco Email Message Tracking  
 Cisco Email Centralized Quarantine  
 Cisco Web Reporting  
 Cisco Web Policy and Configuration Management  
 Cisco Advanced Web Security Management with Splunk  
 Email Encryption for Encryption Appliances  
 Email Encryption for System Generated Bulk Email  
 Email Encryption and Public Key Encryption for Encryption Appliances  
 Large Attachment Handling for Encryption Appliances  
 Secure Mailbox License for Encryption Appliances

**Definitions**

For purposes of this SEULA, the following definitions apply:

"GSA Customer Service" means the GSA Customer's email, Internet, security management services provided to employees and End Users for the purposes of conducting the GSA Customer's internal business.

"End User" means: (1) for the WSA and SMA, the employee, agent, consultant and/or independent contractor or other agent authorized by the GSA Customer to access the Internet and the SMA via the GSA Customer's Service; and (2) for the ESA, the email boxes of the employees, consultants, independent contractors, or other agents authorized by the GSA Customer to access or use the email services via the GSA Customer's Service.

"GSA Customer Purchase Order" means the purchase agreement, evaluation agreement, beta, pre-release agreement or similar agreement between the GSA Customer and Cisco or the GSA Customer and a Cisco reseller, or the valid terms of any GSA Customer Purchase Order accepted by Cisco in connection therewith, containing the purchase terms for the Software license granted by this Agreement.

"Personally Identifiable Information" means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

"Server" means a single physical computer or devices on a network that manages or provides network resources for multiple users.

"Services" means Cisco Software Subscription Services.

"Telemetry Data" means samples of the GSA Customer's email and web traffic, including data on email message and web request attributes and information on how different types of email messages and web requests were handled by the GSA Customer's Cisco hardware products. Email message metadata and web requests included in Telemetry Data are anonymized and obfuscated to remove any Personally Identifiable Information. "Term" means the length of the Software subscription you purchased, as indicated in the GSA Customer's Purchase Order.

"Virtual Appliance" means the virtual version of Cisco's email security appliances, web security appliances, and security management appliances.

"Virtual Machine" means a software container that can run its own operating system and execute applications like a Server.

## **Additional License Terms and Conditions**

### **LICENSE GRANTS AND CONSENT TO TERMS OF DATA COLLECTION**

#### **License of Software.**

The GSA Customer agrees to be bound by the terms of this Agreement, and so long as the GSA Customer is in compliance with this Agreement, Cisco hereby grants to The GSA Customer a nonexclusive, non-sublicensable, non-transferable, worldwide license during the Term to use the Software only on Cisco's hardware products, or in the case of the Virtual Appliances, on a Virtual Machine, solely in connection with the provision of the GSA Customer Company Service to End

Users. The number of End Users licensed for the use of the Software is limited to the number of End Users specified in the Ordering Documents. In the event that the number of End Users in connection with the provision of the Company Service exceeds the number of End Users specified in the Ordering Documents, Company shall contact an Approved Source to purchase additional licenses for the Software. The duration and scope of this license(s) is further defined in the Ordering Document. The GSA Customer Purchase Order supersedes the EULA with respect to the term of the Software license. Except for the license rights granted herein, no right, title or interest in any Software is granted to the GSA Customer by Cisco. Cisco's resellers or their respective licensors. The GSA Customer's entitlement to Upgrades to the Software is subject to any separate support contract that the GSA Customer may execute. This Agreement and the Services are co-terminus.

#### **Consent and License to Use Data.**

Subject to the Cisco Privacy Statement, Attachment 6.

The Government hereby consents and grants to Cisco a license to collect and use Telemetry Data from the Company. Cisco does not collect or use Personally Identifiable Information in the Telemetry Data. Cisco may share aggregated and anonymous Telemetry Data with third parties to assist us in improving the GSA Customer's user experience and the Software and other Cisco security products and services. The GSA Customer may terminate

Cisco's right to collect Telemetry Data at any time by disabling SenderBase Network Participation in the Software. Instructions to enable or disable SenderBase Network Participation are available in the Software configuration guide.

#### **Description of Other Rights and Obligations**

Please refer to the Cisco Systems, Inc. End User License Agreement and Privacy Statement, Attachments 8 and 6.

**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS VIRTUAL SOFTWARE PRODUCTS:****IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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**Definitions**

"CPU" means a central processing unit that encompasses part of a Server.

"Failover Pair" means a primary Instance and a standby Instance with the same Software configuration where the standby Instance can take over in case of failure of the primary Instance.

"Instance" means a single copy of the Software. Each copy of the Software loaded into memory is an Instance.

"Server" means a single physical computer or device on a network that manages or provides network resources for multiple users.

"Software" means Cisco's Adaptive Security Appliance 1000V Cloud Firewall Software, Nexus 1000V series switch products, Virtual Security Gateway products.

"Virtual Machine" means a software container that can run its own operating system and execute applications like a Server.

"Service Provider" means a company that provides information technology services to external end user customers.

**Additional License Terms and Conditions**

Cisco hereby grants you the right to install and use the Software listed above in this SEULA on single or multiple Cisco or non-Cisco Servers or as a Virtual Machine.

A unit license fee to Cisco or an authorized Cisco reseller shall be due for each Cisco or non- Cisco Server CPU on which the Software is installed, per Virtual Machine run by the Software, or per Instance, as determined by Cisco. Cisco also reserves the right to offer, in its sole discretion, versions of the Software that may not be subject to a unit license fee.

For the Adaptive Security Appliance 1000V Cloud Firewall Software, You are licensed to the number of Instances of the Software equal to the number of CPUs covered by the unit license fee, and if You deploy a Failover Pair, for an additional standby Instance for each primary Instance.

**Description of Other Rights and Obligations**

Please refer to the Cisco Systems, Inc. End User License Agreement, Attachment 8.

Security

Cisco Integrated Security Appliance (ISA)

DOC-12

Version 1.0

**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS INTEGRATED SECURITY APPLIANCE SOFTWARE:****IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**Definitions**

For purposes of this SEULA, the following definitions apply:

"Non-personal Information" means technical and related information that is not personally identifiable, including, but not limited to, the operating system type and version, origin and nature of identified malicious system threats, and the Software modules installed on an endpoint device.

"Personal Information" means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

**Additional License Terms and Conditions****Term License**

The Software is licensed for the one (1) or three (3) year license term, as set forth in the Software purchase order documentation.

**Version 1.0****Data, Information and Privacy**

If You agree to this Agreement, You consent to Cisco's collection, use, processing and storage of Personal Information and Non-personal Information, and the transfer of Personal Information and Non-personal Information to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, as described in Cisco's Privacy Statement included as Attachment 6.



Security

Cisco ACS (all-in-one version)

DOC-14**Supplemental End User License Agreement for  
Access Control System****IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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**Product Name**

For purposes of this SEULA, the Product the Government has ordered is any of the following:

ACS 1121 Appliance With 5.x SW And Base license  
 ACS 1121 Appliance And 5.x SW Upgrade from Previous Versions  
 ACS application & BASE license for SNS-3415-K9 appliance  
 Upgrade to ACS application on SNS-3415-K9 appl. w/ BASE license  
 ACS 5.2 VMWare Software And Base License  
 ACS 5.2 VMWare SW + Base License Upgrade from Previous Versions  
 ACS 5.2 VMWare SW + Base License (Electronic Delivery)  
 ACS 5.2 VMWare SW Upgrade (Electronic Delivery)  
 ACS 5.3 VMWare Software And Base License  
 ACS 5.3 VMWare SW + Base License Upgrade from Previous Versions  
 ACS 5.3 VMWare SW + Base License (Electronic Delivery)  
 ACS 5.3 VMWare SW Upgrade (Electronic Delivery)  
 ACS 5.4 VMWare Software And Base License  
 ACS 5.4 VMWare SW + Base License Upgrade from Previous Versions  
 ACS 5.4 VMWare SW + Base License (Electronic Delivery)  
 ACS 5.4 VMWare SW Upgrade (Electronic Delivery)

**1. ADDITIONAL LICENSE RESTRICTIONS**

Installation and Use of Cisco Secure Access Control System: The Cisco Secure Access Control System ("ACS") Software component of the Cisco Hardware Platform is preinstalled. CDs containing tools to restore this Software to the Hardware are provided to you for reinstallation purposes only. You may only run the supported Cisco Secure Access Control System Software Products on the Cisco Hardware Platform designed for its use. No unsupported software product or component may be installed on the Cisco Hardware Platform. Each Cisco Secure Access Control System is shipped with a Product Activation Key ("PAK") that must be registered with Cisco to obtain an appropriate base license file. The PAK and associated license file are intended for use on one and only one Cisco Secure Access Control System. Installation and Use of Cisco Secure Access Control System Software for Virtual Machine: The Cisco Secure Access Control System ("ACS") Software for Virtual Machine can run and is supported only on versions of Virtual Machine specified in the product documentation. Each copy of Cisco Secure ACS Software for Virtual Machine is shipped with a Product Activation Key ("PAK") that must be registered with Cisco to obtain an appropriate base license file. The PAK and associated license file are intended for use on with one and only one running Instance of Cisco Secure ACS Software.

**2. DEFINITIONS**

"Instance" means a single copy of the Software. Each copy of the Software loaded into memory is an Instance.

"Server" means a single physical computer or device on a network that manages or provides network resources for multiple users.

"Virtual Appliance" means the virtual version of Cisco's email security appliances, web security appliances, and security and identity management appliances.

"Virtual Machine" means a software container that can run its own operating system and execute applications like a Server.

TelePresence	<a href="#">Cisco TelePresence Multipoint Switch 1.5</a>	<a href="#">DOC-14958</a>
TelePresence	Cisco TelePresence Primary Codec	<a href="#">DOC-14958</a>
TelePresence	Cisco TelePresence Express Manager System	<a href="#">DOC-14958</a>

**IMPORTANT: READ CAREFULLY**

**Dear Customer,  
Supplemental End User License Agreement**

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

For the purpose of this SEULA, we define the following terms:  
 “Intragovernmental Features” are those features that are deployed within an enterprise and do not traverse a service provider network for the purpose of interconnecting and communicating to other enterprises. This does not include transport provided for communication within the enterprise allowing it to communicate to itself.

“Inter-company Features” are those features that provide support for communications between enterprises through a service provider network.

In addition to the Agreement, the following supplemental terms apply to Inter-company Features.  
 Multipoint encryption for Inter-company feature is available in the Software Product but you are not authorized to use it until you have been permitted to do so upon notice from Cisco.

TelePresence	Cisco TelePresence Manager	DOC-14958 DOC-29311
TelePresence	Cisco TelePresence Express Multipoint Switch	DOC-14958 DOC-29311

Please see the SEULAs starting above for (DOC-29311) and for (DOC-14958) for the SEULAs applicable to these offerings.

TelePresence

Cisco TelePresence Multipoint SwitchDOC-26211**IMPORTANT: READ CAREFULLY****Dear Customer,  
Supplemental End User License Agreement**

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In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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For the purpose of this SEULA, we define the following terms:

"Authorized Service Provider" is a service provider that has an agreement with Cisco explicitly authorizing support for the Restricted Features.

"Intra- Governmental Use" is a use of the Software Product which occurs within the government and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same companies/entities. "Inter company Use" is a use of the Software Product which occurs between two or more companies/entities and which traverses a service provider network for the purpose of inter connecting and communicating to other companies/entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter company Use also includes providing features of the Software Product in a commercially available service offering.

"Restricted Features" means one or more of the following features: (i) Inter company Multipoint encryption; and (ii) Inter company HD/SD Inter Operability.

In addition to the Agreement, the following supplemental terms apply:

The Restricted Features are available or potentially enabled in this Software Product but may only be used for Intra-Governmental Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTERGOVERNMENTAL USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. you are not authorized to use the Restricted Features for Inter-Governmental Use until the Cisco notifies the GSA Customer Restricted Features are generally available feature sets in the updated release notes for the Software Product. Notwithstanding the foregoing, your Intra-Governmental. Use of the Restricted Features shall not be restricted by this paragraph. The CTS Manager calendaring feature for scheduling TelePresence calls may only be used for Intra-Governmental Use. The CTS Manager calendaring feature may not be used with more than one calendaring application. Customers in a shared office space with multiple tenants using their own calendaring solution must deploy one CTS Manager per tenant.

TelePresence

CTS Management

DOC-20211**IMPORTANT: READ CAREFULLY****Dear Customer,  
Supplemental End User License Agreement**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government's access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

"Authorized Service Provider" is a service provider that has an agreement with Cisco that explicitly authorizes support for the Restricted Features.

"Intra-Governmental Use" is a use of the Software Product which occurs within the same Government entity and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same entities.

"Inter-Governmental Use" is a use of the Software Product which occurs between two or more Government entities and which traverses a service provider network for the purpose of interconnecting and communicating to other entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter-Governmental Use also includes providing features of the Software Product in a commercially available service offering.

"Restricted Features" means one or more of the following features: (i) Inter-Governmental Multipoint encryption; and (ii) Inter-Governmental HD/SD Inter-Operability.

In addition to the Agreement, the following supplemental terms apply:

The Restricted Features are available or potentially enabled in this Software Product, but may only be used for IntraGovernmental Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTER-GOVERNMENTAL USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. The Government is not authorized to use the Restricted Features for Inter-Governmental Use until Cisco notifies the GSA Customer that the Restricted Features are available feature sets. Notwithstanding the foregoing, the GSA Customer's Intra- Governmental Use of the Restricted Features shall not be restricted by this paragraph.

Video

Cisco Video Control Plane and CDN Manager

DOC-66875**IMPORTANT: READ CAREFULLY****Dear Customer,**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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**SUPPLEMENTAL LICENSE AGREEMENT**

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS VIDEO CONTROL PLANE AND CDN MANAGER ("SOFTWARE"); VIDEO BACK OFFICE, VIDEO CONTROL PLANE, CDN ANALYTICS, CDN PROVISIONS MANAGER IMPORTANT-READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AGREEMENT ("SLA") CONTAINS ADDITIONAL LIMITATIONS ON THE LICENSE TO THE SOFTWARE PROVIDED TO GSA CUSTOMER UNDER THE END USER LICENSE AGREEMENT ("EULA") BETWEEN GSA CUSTOMER AND CISCO. CAPITALIZED

TERMS USED IN THIS SLA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLA SHALL TAKE PRECEDENCE.

THE GSA CUSTOMER'S RIGHT TO USE THE SOFTWARE IS LIMITED SOLELY TO THOSE PRODUCTS COMPONENTS OF THE SOFTWARE (INCLUDING BUT NOT LIMITED TO THE VIDEO BACK OFFICE, VIDEO CONTROL PLANE, CDN ANALYTICS, CDN PROVISIONS MANAGER COMPONENTS) PURCHASED BY GSA CUSTOMER PURSUANT TO A VALID GSA CUSTOMER PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED.

WITH RESPECT TO THE SOFTWARE LICENSED UNDER THIS SLA, (A) "SERVICES" WILL APPLY SOLELY TO CISCO'S PERFORMANCE OF SERVICES RELATING TO THE SOFTWARE; AND (B) THE TERM "NETWORK" RELATING TO THE CISCO SEVERITY AND ESCALATION GUIDELINES, WILL BE DEFINED TO APPLY SOLELY TO THE SOFTWARE.

When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SLA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF GSA CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE SOFTWARE.

LICENSE; ADDITIONAL RESTRICTIONS License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a nonexclusive, non-transferable, worldwide, royalty-free license to use the Software and the Documentation to provide the delivery of online video services ("Video Services") to End Users, subject to the capacity limitations set forth in the description of the product associated with the product SKU (collectively, "Capacity") set forth in the GSA Customer Purchase Order. The foregoing license does not transfer or convey to GSA Customer or any third party any right, title or interest in or to the Software or Documentation or any associated intellectual property rights, but only a limited right of use, revocable in accordance with the terms of the Agreement.

Restricted Version and Use. GSA Customer may install and use the Software only within the Territory specified in the Agreement solely for the purpose of operating GSA Customer's service for the management and delivery of Video Services to End Users. GSA Customers are purchasing the rights to the then-current Major Release of the Software and its associated Minor Releases and GSA Customer's license specifically excludes any subsequent Major Releases of the Software. No other Updates, upgrades, or other Software releases are licensed by Cisco to GSA Customer hereunder.

Major Release means a release of Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Software version number [(x).x.x].

Minor Release means an incremental release of Software that provides maintenance fixes and additional Software functions.

Cisco designates Minor releases as a change in the tenths digit of the Software version number [x.(x).x].

**Customer Warranties**

GSA Customer represents, warrants and covenants that (i) it shall only use the Software to provide Video Services to its End Users only as permitted by any Capacity limitations set forth in the GSA Customer Purchase Order. If GSA Customer wishes to utilize the Software beyond the



Capacity set forth in the GSA Customer Purchase Order, GSA Customer shall be obligated to place a new GSA Customer Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

**Content**

As between Cisco and GSA Customer, GSA Customer is and will be solely responsible for the creation, renewal, updating, deletion, editorial content, control, maintaining any and all backup, and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by GSA Customer, in any medium, which is transmitted or delivered by GSA Customer using the Software ("GSA Customer Content"). GSA Customer owns all right, title, and interest in the GSA Customer Content, or possesses or will possess all legally valid rights in the GSA Customer Content necessary to use the GSA Customer Content. Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all GSA Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for GSA Customer to operate and maintain its services to meet GSA Customer's business purposes and objectives.

**ADDITIONAL SERVICES**

Professional Services and/or Support Services relating to the Software purchased by GSA Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed by the parties.

Video	Cisco Videoscape Media Managed Services and Videoscape Media Suite Software	<a href="#">DOC-31551</a>
Video	<a href="#">Cisco Videoscape Media Suite CMS</a>	<a href="#">DOC-31151</a>
Video	<a href="#">Cisco Videoscape Media Suite Entitlement</a>	<a href="#">DOC-31151</a>
Video	<a href="#">Cisco Videoscape Media Suite Publisher</a>	<a href="#">DOC-31151</a>
Video	<a href="#">Cisco Videoscape Media Suite Streaming Player</a>	<a href="#">DOC-31151</a>

**IMPORTANT: READ CAREFULLY**

**Dear Customer,  
Supplemental End User License Agreement**

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**SUPPLEMENTAL LICENSE AGREEMENT**

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS VIDEOSCAPE MEDIA SUITE SOFTWARE (“VMS SOFTWARE”): CMS, ENTITLEMENT, PUBLISHER, MEDIA STREAMING PLAYER, MEDIA DOWNLOAD APPLICATION  
 IMPORTANT-READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AGREEMENT (“SLA”) CONTAINS ADDITIONAL LIMITATIONS ON THE LICENSE TO THE VMS SOFTWARE PROVIDED TO GSA CUSTOMER UNDER THE END USER LICENSE AGREEMENT (“EULA”) BETWEEN GSA CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE VMS SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLA SHALL TAKE PRECEDENCE.

GSA CUSTOMER'S RIGHT TO USE THE VMS SOFTWARE IS LIMITED SOLELY TO THOSE SKU COMPONENTS OF THE VMS SOFTWARE (INCLUDING BUT NOT LIMITED TO THE CMS, ENTITLEMENT, PUBLISHER, STREAMING PLAYER OR DOWNLOAD APPLICATION COMPONENTS) PURCHASED BY GSA CUSTOMER PURSUANT TO A VALID GSA CUSTOMER PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED. WITH RESPECT TO THE VMS SOFTWARE LICENSED UNDER THIS SLA, (A) “SERVICES” WILL APPLY SOLELY TO CISCO'S PERFORMANCE OF SERVICES RELATING TO THE VMS SOFTWARE, INCLUDING ANY SERVICES PROVIDED BY CISCO PURSUANT TO EXHIBIT C; AND (B) THE TERM “NETWORK” RELATING TO THE CISCO SEVERITY AND ESCALATION GUIDELINES, WILL BE DEFINED TO APPLY SOLELY TO THE VMS SOFTWARE.

IF CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE VMS SOFTWARE.  
 LICENSE; ADDITIONAL RESTRICTIONS

**License.** Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a perpetual, nonexclusive, non-transferable, worldwide, royalty-free license to use the VMS Software and the Documentation to provide the delivery of online video services (“Video Services”) to End Users, subject to the User Capacity, Transaction Capacity or Title Capacity (collectively, “Capacity”) limitations set forth in the GSA Customer Purchase Order. The foregoing license does not transfer or convey to GSA Customer or any third party any right, title or interest in or to the VMS Software or Documentation or any associated intellectual property rights, but only a limited right of use, revocable in accordance with the terms of this Agreement.

**Restricted Version and Use.** GSA Customer may install and use the VMS Software only within the Territory specified in the Agreement solely for the purpose of operating GSA Customer's service for the management and delivery of Video Services to End Users. GSA Customers are purchasing the rights to the then-current Major Release of the VMS Software and its associated Minor Releases and GSA Customer's license specifically excludes any subsequent Major Releases of the VMS Software. No other Updates, upgrades, or other VMS Software releases are licensed by Cisco to GSA Customer hereunder. Major Release means a release of VMS Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the VMS Software version number [(x).x.x]. Minor Release means an incremental release of VMS Software that provides maintenance fixes and additional VMS Software functions. Cisco designates Minor releases as a change in the tenths digit of the VMS Software version number [x.(x).x].

**GSA Customer Warranties.** GSA Customer represents, warrants and covenants that (i) it shall only use the VMS Software to provide Video Services to its End Users only as permitted by any Capacity limitations set forth in the GSA Customer Purchase Order. If GSA Customer wishes to utilize the VMS Software beyond the Capacity set forth in the Purchase Order, GSA Customer shall be obligated to place a new GSA Customer Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

**Content.** As between Cisco and GSA Customer, GSA Customer is and will be solely responsible for the creation, renewal, updating, deletion, editorial content, control, maintaining any and all backup, and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by GSA Customer, in any medium, which is transmitted or delivered by GSA Customer using the VMS Software ("GSA Customer Content").

GSA Customer owns all right, title, and interest in the GSA Customer Content, or possesses or will possess all legally valid rights in the GSA Customer Content necessary to use the GSA Customer Content. GSA Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all GSA Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for GSA Customer to operate and maintain its services to meet GSA Customer's purposes and objectives. In the case where at no material fault of Cisco or the VMS Software, a third party software component, including but not limited to, WMDRM Server or Windows Media Player ("WMP") or Microsoft PlayReady creates a digital rights management (DRM) security breach due to a failure or hacking of such component, Cisco shall notify GSA Customer as soon as is practical after receiving a confirmed notice from the provider of such components or discovering such a DRM security breach itself. If, after receiving such DRM breach notice, GSA Customer continues to allow its content to be accessed with any software or services operated in conjunction with the VMS Software during the period where there is no fix for such DRM security breach, or GSA Customer decides not to implement such fix (which may require restricting End Users to using certain versions of third party applications), then GSA Customer acknowledges and agrees Cisco will not have any liability to GSA Customer for any costs, damages or legal fees related to a DRM security breach.

#### **ADDITIONAL SERVICES**

Professional Services and/or Support Services relating to the VMS Software purchased by GSA Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed by the parties.

WebEx

Cisco WebEx Meeting ServerDOC**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO WEBEX MEETINGS SERVER SOFTWARE:  
IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED USB DRIVE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Cisco WebEx Meetings Server (the "Software") is a software-based enterprise conferencing product that integrates audio, video and web conferencing in a single, on-premises solution.

License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a nonexclusive, nontransferable and sublicenseable (to GSA Customer's end users) license to use for GSA Customer's (and/or GSA Customer's end users') internal business purposes the Software and Documentation for which GSA Customer has paid the required license and/or subscription fee. The server component of the Software may be installed only on Cisco hardware that is:

(a) operated by GSA Customer, or (b) operated by a third party under the GSA Customer's direct control. GSA Customer may copy and distribute the client component of the Software to its duly authorized agents, consultants and/or independent contractors solely and exclusively in connection with allowing such third parties to attend meetings hosted by GSA Customer using the Software, provided that GSA Customer shall remain responsible for such third parties' compliance with the Agreement. "Documentation" means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on USB Drive or online). In order to use the Software, GSA Customer may be required to input a registration number or product authorization key and register GSA Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file.

Version 1.0

User Licenses.

"Employees" are the full and part-time employees, agents, consultants and/ or third-party independent contractors of GSA Customer.

Employees may include third-party contractors, only if (a) GSA Customer allows the third-party contractor to use the Software only for the benefit of GSA Customer, (b) GSA Customer does not charge the third-party contractor for the use of the Software, and (c) GSA Customer takes full liability for the actions of the third-party contractor, including, but not limited to the third-party contractor's misuse of the Software. A "User" is a GSA Customer Employee assigned an account by GSA Customer to use the Software to host meetings. A User may host an unlimited number of meetings ("Meeting(s)") using the Software; provided that a User may only host one (1) Meeting at a time. Each Meeting must be hosted by a User and is limited to the maximum number or participants as determined by the capacity of the Software licensed by GSA Customer.

Limited User Licenses. GSA Customer's license to use the Software shall be limited to, and GSA Customer shall not use the Software in excess of, such limitations as are set forth in the SEULA or in the applicable GSA Customer Purchase Order which has been accepted by Cisco and for

which GSA Customer has paid to Cisco the required fee (the "GSA Customer Purchase Order"). GSA Customer may only have as many users as allowed under any and all applicable GSA Customer Purchase Orders. GSA Customer understands and agrees that the Software will perform internal checks to compare the number of Users using the Software with the number of Users licensed by GSA Customer, and if it repeatedly finds more Users than authorized, Cisco will provide notice to the GSA Customer and provide the GSA Customer with the opportunity to negotiate additional GSA Customer Purchase Orders to bring the GSA Customer into compliance.

Content. GSA Customer agrees that it is solely responsible for the content of all visual, written or audible communications, files, documents, videos, recordings and any other material ("Content") used, displayed, uploaded, exchanged or transmitted on or through the Software. Under no circumstances will Cisco be liable to GSA Customer for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content.

Privacy. GSA Customer understands and agrees that, as part of Cisco providing support to GSA Customer, Cisco may request access to and use of technical or diagnostic information (e.g., server logs) that may contain Personal Information and Non-personal Information of GSA Customer and/or GSA Customer's meeting invitees ("Server Data"). If you provide such Server Data to Cisco, you consent to Cisco's collection, use, processing and storage of Personal Information and Nonpersonal Information as described below. This Personal Information and Non-personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purposes of providing GSA Customer support and improving our products and services. Cisco may share this information with select third parties in an anonymous aggregated form. None of this Personal Information and Non-personal Information will be used to identify or contact individual users, and use of the Personal Information and Non-personal Information shall be subject to Cisco's Privacy Statement, included as Attachment

GSA Customer may withdraw this consent to collection, use, processing and storage of Personal Information and Non-personal Information at any time by not providing Cisco access to the Server Data. Active steps are required each time by the System Administrator to provide Cisco access to the Server Data.

GSA Customer agrees that it will not use the Software to send unsolicited email outside GSA Customer's company or organization (e.g., "spam") in violation of applicable law, falsify any email header information when sending emails (e.g., "spoofing"), or attempt to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity (e.g., "phishing"). GSA Customer further agrees not to use the Software to communicate any message or material that is harassing, libelous, threatening, obscene, or that would violate the intellectual property rights of any party, give rise to civil liability, constitute a criminal offense, or is otherwise unlawful under any applicable law or regulation.

The Software may not be appropriate for use in all countries. GSA Customer agrees that GSA Customer will comply with all applicable laws and regulations in connection with GSA Customer's use of the Software, including, but not limited to: (a) with respect to personally identifiable information sent or received by GSA Customer, all applicable privacy laws and regulations, (b) laws relating to the recording of communications, including, when required, advising all participants in a recorded WebEx Meetings Server meeting or event that the meeting or event is being recorded, and (c) laws relating to the use of VoIP-based services, if applicable. It is the sole responsibility of GSA Customer to ensure it has the right to use all features of the Software. Cisco may modify or not make available the Software and/or certain Software features to comply with applicable laws and regulations. The Software is subject to U.S. and local export control laws and regulations. GSA Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of the Software and will obtain all required U.S. authorizations, permits, or licenses. The export obligations under this clause shall survive the expiration or termination of the Agreement.

The Software contains certain third party database products ("Third Party Database Products") that may impose additional restrictions on GSA Customer's use. GSA Customer shall not install or configure the Third Party Database Products separately and independently from the Software. GSA Customer shall not access the Third Party Database Products directly or through other database tools, but rather only through the Software. GSA Customer shall not navigate the underlying data schema of the Third Party Database Products. GSA Customer shall not access the Third Party Database Products or Version 1.0 establish the transfer of data without Cisco Application Programmer Interfaces APIs. GSA Customer shall not upgrade the Third Party Database Products separately, but only as a component of Third Party Database Products. Oracle Java SE Terms and conditions. (i) Trademarks and Logos. This SEULA does not authorize an end user licensee to use any Oracle America, Inc. name, trademark, service mark, logo or icon. The GSA Customer acknowledges that Oracle owns the Java trademark and all Java-related trademarks, logos and icons including the Coffee Cup and Duke ("Java Marks"). and agrees to: (a) comply with the Java Trademark Guidelines included as Attachment 7; (b) not do anything harmful to or inconsistent with Oracle's rights in the Java Marks; and (c) assist Oracle in protecting those rights, including assigning to Oracle any rights acquired by Customer in any Java Mark. (ii) Third Party Code. Additional copyright notices and license terms applicable to portions of the Oracle Java SE software are set forth in the THIRDPARTYLICENSEREADME.txt file. (iii) Commercial Features. Use of the Commercial Features for any commercial or production purpose require a separate license from Oracle.

Portions of the Software utilize Microsoft Windows Media Technologies. Copyright (c) 1999-2006 Microsoft Corporation.

WebEx

Cisco WebEx SocialDOC**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS WEBEX SOCIAL SOFTWARE:****IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

WebEx Social Software is an enterprise collaboration platform that may provide different functionality including, but not limited to: content/documents (content development, content management, portals, and Intranets); communication (voice/video, instant messaging, conferencing, and email); business process (business applications, vertical applications, customer care, and workflow); and social networking (profiles, teams, communities, networks).

License. Conditioned upon compliance with the terms and conditions of this Agreement, Cisco grants to GSA Customer a nonexclusive, nontransferable and sublicenseable (to GSA Customer's end users) license to use for GSA Customer's (and/or GSA Customer's end users') internal business purposes the Software and Documentation for which GSA Customer has paid the required license and/or subscription fee. "Documentation" means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD-Rom, or online). In order to use the Software, GSA Customer may be required to input a registration number or product authorization key and register GSA Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file.

GSA Customer's license to use the Software shall be limited to, and GSA Customer shall not use the Software in excess of, such limitations as are set forth in the SEULA or in the applicable GSA Customer Purchase Order which has been accepted by Cisco and for which GSA Customer has paid to Cisco the required fee (the "GSA Customer Purchase Order").

Content. GSA Customer agrees that it is solely responsible for the content of all visual, written or audible communications and any other material ("Content") displayed, uploaded, exchanged or transmitted on or through the Software. Under no circumstances will Cisco be liable to GSA Customer for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content.

Third Party Offerings. Certain uses of Software may allow Customer to evaluate and use thirdparty applications and/or services ("Third Party Offerings"). Third Party Offerings may involve the exchange of data with the Software. Cisco is not responsible for Customer's data outside of the Software or for modifications or deletions of Customer's data made by third parties or their Third Party Offerings.

6. Use of Twitter Services. GSA Customer's use of Twitter Services is governed by and Twitter Terms of Services

7. WebEx Social Software contains certain Oracle database products ("Oracle Products") that impose additional restrictions on GSA Customer's use. GSA Customer shall not install or configure Oracle Products separately and independently from WebEx Social Software. Except for Enterprise Manager, GSA Customer shall not access Oracle Products directly or through other database tools, but rather only through WebEx Social Software. GSA Customer shall not navigate the underlying data schema of Oracle Products. GSA Customer shall not access Oracle Products or establish the transfer of data without Cisco APIs. GSA Customer shall not upgrade Oracle Products separately, but only as a component of Oracle Products.

8. WebEx Social Software contains IBM Licensed Materials. Copyright IBM Corporation 2009. IBM Licensed Materials or their modifications may not be used for any purpose other than to enable WebEx Social Software.



**Attachments**

**Attachment 1**

This Service Level Agreement (this “**Agreement**”) sets forth Cisco Meraki’s obligations and our customers’ rights with respect to the performance of Cisco Meraki’s Hosted Software. All capitalized terms used but not otherwise defined in this Agreement have the meanings given to them in the End Customer Agreement above (the Meraki SEULA), or as otherwise entered into between Cisco Meraki and Customer (the “**Customer Agreement**”).

**Definitions.** For purposes of this Agreement, the following terms have the meaning ascribed to each term below:

“**Downtime**” means if the Hosted Software is unavailable to Customer due to failure(s) in the Hardware, Firmware, or Hosted Software, as confirmed by both Customer and Cisco Meraki.

“**Monthly Uptime Percentage**” means the total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.

“**Service Credit**” means the number of days that Cisco Meraki will add to the end of the Term, at no charge to Customer.

**Service Level Warranty.** During the Term, the Hosted Software will be operational and available to Customer at least 99.99% of the time in any calendar month (the “**Service Level Warranty**”). If the Monthly Uptime Percentage does not meet the Service Level Warranty in any calendar month, and if Customer meets its obligations under this Agreement, then Customer will be eligible to receive Service Credit as follows:

<b>Uptime</b>	<b>Days Credited</b>
< 99.99% - ≥ 99.9%	3
< 99.9% - ≥ 99.0%	7
< 99.0%	15

**Customer Must Request Service Credit.** In order to receive any of the Service Credits described above, Customer must notify Cisco Meraki within 30 days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer’s right to receive a Service Credit.

**Maximum Service Credit.** The aggregate maximum amount of Service Credit to be issued by Cisco Meraki to Customer for all Downtime that occurs in a single calendar month will not exceed 15 days. Service Credit may not be exchanged for, or converted into, monetary amounts.

**Exclusions.** The Service Level Warranty does not apply to any services that expressly exclude this Service Level Warranty (as stated in the documentation for such services) or any performance issues (i) caused by Force Majeure on the terms set forth in Section 9.3 of the Agreement, (ii) that resulted from Customer’s equipment or third party equipment, or both (not within the primary control of Cisco Meraki), or (iii) that otherwise resulted from Customer’s violation of Sections 3.5 or 4.2 of the Agreement.

**Exclusive Remedy.** This Agreement states Customer’s sole and exclusive remedy for any failure by Cisco Meraki to meet the Service Level Warranty.

## Attachment 2

Meraki Support Overview:

### Enterprise support at no additional cost

Cisco Meraki's simple, all-inclusive pricing includes enterprise-class phone support. We will help you deploy your first network or troubleshoot global network issues and other unforeseen emergencies at no additional cost.

### Deep expertise and fanatical service

Our support engineers have deep expertise in enterprise networking and wireless design. The Cisco Meraki support team sits alongside the engineers who build Cisco Meraki products, providing a wealth of expertise.

### Real time cloud-based support tools

Cisco Meraki support engineers use real time web-based tools to securely and quickly diagnose and troubleshoot your network, providing the speed and service of an on-site visit without the hassle.

### The best support call is the one you don't have to make

Cisco Meraki self-provisioning hardware, automatic firmware updates, automatic network optimization, intuitive user interface and built-in contextual help dramatically reduce support incidents, providing reliable and hassle free enterprise networking.

### Meraki Support Includes

Access to knowledge base

Case-based support viewable in dashboard

Firmware and software upgrades and updates

24x7 telephone support based out of San Francisco, London, Sydney technical assistance centers **Contact Support**

[Log in](#) to submit cases.

Telephone support

US/North America

(415) 432-1203

Europe

+44 20-78-71-2776

Australia / Asia-Pacific

New Zealand

Singapore

+61 285203058

+64 99749591

+65 31582108

Mexico

+52 5511638940

Brazil

+55 1130422855

Note

Starting on January 1, 2014, you will need your Cisco Meraki account number in order to access telephone support. This number is available on the help tab of the Meraki dashboard.

### Attachment 3

#### Meraki Privacy Policy

This privacy policy (this "**Policy**") describes the collection of personal information and certain other information by Meraki, LLC, a Delaware limited liability company and a wholly owned subsidiary of Cisco Systems, Inc. ("**Meraki**," "**we**," or "**us**") from users of our Web site at [meraki.cisco.com](http://meraki.cisco.com) (the "**Website**"), as well as all applications, widgets, software, tools, and other services provided by us and on which a link to this Policy is displayed (collectively, together with the Website, our "**Services**"). This Policy also describes our use and disclosure of such information. By using our Services, you consent to the collection, use, and disclosure of information in accordance with this Policy. This Policy is incorporated by reference into the [Meraki Terms of Use](#) and the [Meraki End Customer Agreement](#) and is subject to the provisions of the Meraki Terms of Use and the Meraki End Customer Agreement. The terms "**you**," "**your**," and "**user**" refer to the user visiting the Website or accessing or using the Services. Other capitalized terms used but not defined in this Privacy Policy have the meanings given to them in the Terms of Use.

Meraki has received TRUSTe's Privacy Seal signifying that this privacy policy and our practices have been reviewed for compliance with the TRUSTe program viewable on the validation page available by clicking the TRUSTe seal.

If you have an unresolved privacy or data use concern that we have not addressed satisfactorily, please contact TRUSTe.

TRUSTe's Dispute Resolution process is only available in English.

The TRUSTe certification covers our collection, use and disclosure of information we collect through our Services. The use of information collected through our Services shall be limited to the purpose of providing the service for which the customer has engaged Meraki.

Meraki complies with the U.S. – E.U. Safe Harbor framework and the U.S. - Swiss Safe Harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union member countries and Switzerland. Meraki has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. To learn more about the Safe Harbor program, and to view Meraki's certification included under Cisco Systems Inc.'s company certification, please visit <http://www.export.gov/safeharbor>

#### Personal Information

"**Personal Information**," as used in this Policy, is information that specifically identifies an individual, such as an individual's name, address, telephone number, or e-mail address. Personal Information also includes information, such as demographic information (e.g., date of birth, gender, geographic area, and preferences), when any of this information is linked to Personal Information that identifies that individual. Personal Information does not include "aggregate" or other non-personally identifiable information. Aggregate information is information that we collect about a group or category of products, services, or users that is not personally identifiable or from which individual identities are removed. We may use and disclose aggregate information, and other non-personally identifiable information, for various purposes at our sole discretion and without notice or liability to you.

#### Collection of Information

##### Collection of Voluntarily-Provided Information

We collect Personal Information that our users provide to us in a variety of ways on our Services. These include the following:

**E-mail Newsletters.** We may offer e-mail newsletters from time to time on our Services. If you sign up to receive a newsletter from us, we collect your e-mail address.

**User Accounts and Profiles.** Our Services may give you the ability to register for an account or to create and update a user profile. If we offer user account or profile functionality on the Services, we will collect the Personal Information that you provide to us in the course of registering for an account or creating or updating a user account or profile. This information may include, for example, name, postal address, telephone number, e-mail address, and related demographic information about you. We may indicate that some Personal Information is required for you to register for the account or to create the profile, while some is optional.

**Logging into Networks.** Certain networks using our Services may require users to establish or use login credentials. In connection with supporting this log-on functionality, we may collect information such as email addresses, telephone numbers, or user or administrator-created usernames, along with user-created or administrator-created passwords, to facilitate such log-on functionality and otherwise to provide our Services.

**Correspondence.** If you contact us by e-mail, using a contact form on the Services, or by other means, we collect the Personal Information contained within, and associated with, your correspondence.

**Contests and Sweepstakes.** We and other business partners may conduct or sponsor special contests, sweepstakes, and other promotions that users may enter or otherwise participate in on our Services or otherwise. Certain of these promotions may be co-branded with one of our advertisers or other business partners. In these instances, the collection of your Personal Information may occur directly by the third-party partner on its website or other online service and may be shared with us. The promotion will state the privacy policy or policies governing the collection of such personal information.

**Testimonials.** We display testimonials of satisfied customers on our site in addition to other endorsements. With your consent we may post your testimonial along with your name.

**Information Related to Data Collected for our Customers.** Meraki collects information under the direction of its customers, and has no direct relationship with the individuals whose personal data it processes. If you are an individual who makes use of services offered by one of our customers and would no longer like to be contacted by that customer, please contact the customer that you interact with directly. We may transfer personal information to companies that help us provide our Services. Transfers to subsequent third parties are covered by the service agreements with our customers.

##### Passive Information Collection

When you use or visit our Services, some information is collected automatically. For example, when you access our Services, we automatically collect your browser's Internet Protocol (IP) address, your browser type, the nature of the device from which you are visiting the Services (e.g., a personal computer or a mobile device), identifiers for any handheld or mobile device that you may be using, the Web site that you visited immediately prior to accessing any Web-based Services, the actions you take on our Services, and the content, features, and activities that you access and engage with on our Services. We also may collect information regarding your interaction with e-mail messages from Meraki, such as whether you opened, clicked on, or forwarded a message.

We may collect this information passively using technologies such as standard server logs, cookies, and clear GIFs (also known as "Web beacons"). We use passively-collected information to administer, operate, maintain and improve our Services and our other services and systems and to provide content that is tailored to you.

If we link or associate any information gathered through passive means with Personal Information, or if applicable laws require us to treat any information gathered through passive means as Personal Information, we treat the combined information as Personal Information under this Policy. Otherwise, we use and disclose information collected by passive means in aggregate form or otherwise in a non-personally identifiable form. Please be aware that in the course of your use of the Services, websites or other services provided by third parties ("**Third-Party Services**"), including marketing or website optimization vendors, may set cookies on your hard drive or use other means of passively collecting information about your use of their Third-Party Services or other services or content. To do this, they may use first-party cookies (which are set by the same domain your browser is receiving data from) or third-party cookies (which are set by a different domain). Meraki also may make non-personally identifiable information available to Third-Party Services, and these Third-Party Services may collect such information, to assist such parties in understanding our users' activities and usage patterns on the Services. If desired, you may use the [Google Analytics Opt-out Browser Add-on](#) to opt-out of having information collected by Google Analytics.

We do not have access to, or control over, the actions of Third-Party Services. Each provider of Third-Party Services uses information that it collects in accordance with its own privacy and security policies.

Additionally, please be aware that Google and other third-party vendors may place or recognize one or more unique cookies on your computer when you use the Services, and may record information to these cookies based upon your activities on our Services and on third-party websites and other Third-Party Services. Google and these other third-party vendors may use information about those activities to inform, optimize, and serve advertisements. In particular, we may use Google and other third-party vendors to engage in "remarketing," in which advertisements you see on third-party websites and services may be based on your prior visits to our Services.

To learn more about these practices, and to opt-out from Google's and other vendors' use of information collected on the Services through cookies for advertising purposes, you may visit [Google's Ads Preferences Manager](#), [TRUSTe's Preference Manager](#), or the [Network Advertising Initiative opt-out page](#). Please note that opting-out will not prevent advertisements from being served to you on the Internet; it will only result in advertisements that utilize cookies to serve advertisements on the specified advertising networks from which you opt-out no longer being targeted. We are not responsible for the activities of other parties that may not comply with your opt-out requests.

We also use Google Conversion Tracking, which tracks whether users engage in certain activities (e.g., filling out a form to receive more information about our products or services) after they view one of our advertisements on a Third-Party Service. Google uses cookies to track conversions and to report that information to us.

Finally, please also be aware that we use the Google Maps API as a source of maps, geographic data, and geolocation information for purposes of providing location-based information regarding terminal devices connected to networks managed by our Services and for providing related reporting and analysis. Google may collect information, including personal information, from those who view content provided through the Google Maps API, and Google handles such information in accordance with the [Google Privacy Policy](#).

#### *Network Usage Information Collected by Our Services*

Some of our Services collect information from terminal devices connected to networks that are managed by those Services. Those Services also collect information regarding the performance of, and certain other information regarding, such networks. This information includes, for example, MAC address, device type, operating system, geolocation information, and network traffic information (e.g., hostnames, protocols, port numbers, and IP addresses). This information is made available to administrators of networks managed by our Services through an online interface that we call the "dashboard". Additionally, if a Meraki customer elects to use our device management tool currently known as Systems Manager ("**Systems Manager**") and installs its software on, or configures the profile of, a mobile device or other device (e.g., a laptop computer) managed by Systems Manager, the customer or Meraki may undertake certain actions on the device, such as the following: (i) list, access, copy, move, and delete files; (ii) track and record device location over time; (iii) take and record screenshots; (iv) manage the device through remote desktop functionality; (v) set and enforce policies; and (vi) install/remove apps. Finally, for devices with Systems Manager installed or devices that utilize Global Positioning System (GPS) technology, we transmit certain geolocation information about those devices and the network(s) on which they are running to Google, which provides us with related geolocation information that we store and make available to network administrators through our dashboard as described above in this paragraph. Google handles the information that we provide to it in accordance with the [Google Privacy Policy](#).

#### *Information from Other Sources*

We may receive information about you, including Personal Information, from affiliated and unaffiliated third parties, and may combine this information with other Personal Information we maintain about you in order to ensure we have accurate information. If we do so, this Policy governs any combined information that we maintain in personally identifiable format.

#### **Use of Information**

We use Personal Information and other information we collect to do any of the following: provide services to our customers; provide information and otherwise respond to your requests, including sales inquiries, email requests, and shipping requests; enhance, improve, operate, maintain, and debug the Website, our other Services, and our other programs, services, Web sites, and systems; improve the effectiveness of our Website as a marketing tool and optimize the performance of the Website and our other Services; prevent fraudulent use of our Services and other systems; to prevent or take action against activities that are, or may be, in violation of the Meraki End Customer Agreement, the Meraki Terms of Use, or applicable law; to tailor content and other aspects of your experience on and in connection with the Services; maintain a record of our dealings with you; for other administrative purposes; and for any other purposes that we may disclose to you at the point at which we request your Personal Information, and pursuant to your consent.

We may also use Personal Information you provide to contact you regarding products, services, and offers, both from ourselves and third parties, that we believe you may find of interest. We allow you to opt-out from receiving marketing communications from us as described in the "Choice" section below.

#### **Disclosure of Information**

Except as described in this Policy, we will not disclose your Personal Information that we collect on the Services to third parties without your consent. We may disclose information to third parties if you consent to us doing so, as well as in the following circumstances:

##### *Service Providers*

We may disclose Personal Information to third-party service providers (e.g., payment processing and data storage and processing facilities) that assist us in our work. We limit the Personal Information provided to these service providers to that which is reasonably necessary for them to perform their functions, and we require them to agree to maintain the confidentiality of such Personal Information.

##### *Business Transfers*

Information about our users, including Personal Information, may be disclosed and otherwise transferred to an acquirer, successor, or assignee as part of any merger, acquisition, debt financing, sale of company assets, or similar transaction, as well as in the event of an insolvency,

bankruptcy, or receivership in which Personal Information is transferred to one or more third parties as one of our business assets. *To Affiliated Companies*

We may disclose Personal Information and other information to our parent company and to other corporate affiliates of ours. These affiliated third-party companies may use and disclose Personal Information and other information that we disclose to them in accordance with their privacy policies and procedures.

*To Channel Partners*

We may disclose Personal Information and other information to channel partners, such as resellers, of ours. These third parties may use such Personal Information and other information that we disclose to them for purposes such as marketing our products and services to you.

*To Protect our Interests*

We also may disclose Personal Information and other information if we believe that doing so is legally required or is in our interest to protect our property or other legal rights (including, but not limited to, enforcement of our agreements) or the rights or property of others, or otherwise to help protect the safety or security of our Services or other users of the Services.

**Choices Regarding Promotional Communications**

If you receive commercial e-mail from us, you may unsubscribe at any time by following the instructions contained within the e-mail. You may also opt-out from receiving commercial e-mail from us, and any other promotional communications that we may send to you from time to time (e.g., by postal mail) by sending your request to us by e-mail at [privacy@meraki.com](mailto:privacy@meraki.com) or by writing to us at the address given at the end of this policy. Additionally, if we offer user account functionality on the Services, we may allow you to view and modify settings relating to the nature and frequency of promotional communications that you receive from us.

Please be aware that if you opt-out of receiving commercial e-mail from us, it may take up to ten business days for us to process your opt-out request, and you may receive commercial e-mail from us during that period. Additionally, even after you opt-out from receiving commercial messages from us, you will continue to receive administrative messages from us regarding our Services.

**Your California Privacy Rights**

You may choose to opt-out of the sharing of your personal information with third parties for their direct marketing purposes at any time by e-mailing us at [opt-out@meraki.com](mailto:opt-out@meraki.com). Once we receive your opt-out request, we will no longer disclose your Personal Information to third-parties for their direct marketing purposes. Please be aware that this opt-out does not prohibit disclosures of Personal Information or other information made for non-direct marketing purposes.

**Access**

If we offer the ability to create user accounts or profiles on our Services, you may have the ability to access and update certain categories of Personal Information that you provide to us by logging in to your account and accessing your account settings. If you wish to access, amend, or delete any other Personal Information we hold about you, you may contact us at [privacy@meraki.com](mailto:privacy@meraki.com).

If you request access to your account including deletion requests on any of our Services (via a user settings page, by email, or otherwise) including requests to remove testimonials that contain Personal Information, we will respond to your access requests within 30 days. Please note that we may need to retain some of your Personal Information in order to satisfy our legal obligations, or where we reasonably believe that we have a legitimate reason to do so.

Please note that Meraki has no direct relationship with the individuals whose personal data we process on behalf of our customers. An individual who seeks access, or who seeks to correct, amend, or delete inaccurate data should direct his or her query to our customer (the data controller). If the customer requests Meraki to remove the data, we will respond to their request within 30 days.

We will retain personal data we process on behalf of our customers for as long as needed to provide services to our customer. Meraki will retain and use this personal information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements.

**Links**

The Services may contain links to other Web sites or other Third-Party Services that we do not own or operate. If you choose to visit or use any Third-Party Services or products or services available on or through such Third-Party Services, please be aware that this Policy will not apply to your activities or any information you disclose while using those Third-Party Services or any products or services available on or through such Third-Party Services. We are not responsible for the privacy practices of these Third-Party Services or any products or services on or through them. Additionally, the Services may contain links to Web sites and services that we operate but that are governed by different privacy policies. We encourage you to carefully review the privacy policies applicable to any Web site or service you visit other than the Services before providing any Personal Information on them.

**Children**

Children's safety is important to us, and we encourage parents and guardians to take an active interest in the online activities of their children. Our Services are not directed to children under the age of 13, and we do not knowingly collect Personal Information from children under the age of 13 without obtaining parental consent. If we learn that we have collected Personal Information from a child under the age of 13 on our Services, we will delete that information as quickly as possible. If you believe that we may have collected any such Personal Information on our Services, please notify us at [privacy@meraki.com](mailto:privacy@meraki.com).

**International Visitors**

Many of our servers and data centers are located in the United States. If you choose to use the Services from outside the U.S., then you should know that you may be transferring your Personal Information outside of your region and into the U.S. for storage and processing. By providing your Personal Information to us through your use of the Service, you agree to that transfer, storage, and processing in the U.S. Also, we may transfer your data from the U.S. to other countries or regions in connection with storage and processing of data, fulfilling your requests, and operating the Services. You should know that each region can have its own privacy and data security laws, some of which may be less stringent as compared to those of your own region.

**Security**

We use certain security measures in an effort to protect Personal Information from accidental loss, disclosure, misuse, and destruction. The security of your Personal Information and our customers' information is important to us. When you enter sensitive information (such as login credentials) we encrypt the transmission of that information using secure socket layer technology (SSL). Please be aware, however, that no data security measures can be guaranteed to be completely effective. Consequently, we cannot ensure or warrant the security of any information that you provide to us. You transmit information to us at your own risk.

If Meraki learns of a security systems breach, then we may attempt to notify you electronically so that you can take appropriate protective steps. Meraki may post a notice through the Services if a security breach occurs. Depending on where you live, you may have a legal right to receive notice of a security breach in writing. To receive a free written notice of a security breach, you should notify us at [privacy@meraki.com](mailto:privacy@meraki.com).





## Attachment 4

### **Meraki Return Policy**

#### **Warranty Returns**

If you are experiencing hardware issues, please contact Cisco Meraki support by signing in to dashboard (Help > File a Ticket) or by [calling us](#). If you require advance replacement, please call Cisco Meraki technical support. Advance replacement orders will ship within 1 business day. Cisco Meraki stands behind its products. Hardware products come with either a one year or lifetime warranty, as specified on the relevant Cisco Meraki data sheet.

To request a return materials authorization (RMA), please complete our RMA request form. If your RMA request is approved, Cisco Meraki will email you an RMA number and a return shipping label free of charge. We will ship replacement units within five business days of receiving your defective units. If no trouble is found, we will contact you before taking further action.

Additional information about Cisco Meraki's hardware warranty can be found in [Cisco Meraki's End Customer Agreement](#).

#### **Free Trial Returns**

If you would like to return units from a free trial, please go to your free trial webpage (using the link your rep provided you with) and go to the returns tab to fill out the RMA request form. If your free trial hardware was shipped to the US, Canada, or an EU member country you will also be able to print out a return shipping label and ship the product back to Cisco Meraki at no charge to you.

#### **Refund Requests**

If you are dissatisfied with your Cisco Meraki purchase for any reason, you may return your order for a full refund. All returns must meet the following criteria:

You purchased the product through an authorized Cisco Meraki reseller or direct from Cisco Meraki

You are the original purchaser of the product

You submit your refund request within 30 days of purchase

The product is in new condition, including all accessories in the original packaging

To request a refund, please complete our RMA request form.

If your refund request is approved, Cisco Meraki will email you an RMA number. In order for the refund to be accepted and processed, Meraki must receive the hardware you are returning no later than 30 days following the date the RMA number is issued. Once we have received and inspected the units, we will process your return. If you purchased through a Cisco Meraki reseller, your refund will be issued by that reseller. If you purchased directly from Cisco Meraki, we will issue a refund, typically within 15 days of receiving the return. (If you paid by credit card we will credit the original credit card. If you paid by any other method, we will send you a check.)

From time to time Cisco Meraki offers special refund terms. If your return is covered by special terms, please reference those terms on your RMA request.

Please contact Cisco Meraki directly for all returns, including product purchased through distributors or resellers.

#### **Shipment Preparation**

Please return units in their entirety. That is, include all power supplies, antennas, and other components along with the original product box.

Please use the original shipping carton and packaging material. If this is not possible, use another shipping carton with padding to protect the units from damage during shipping. DO NOT ship a product without a carton.

The customer will be charged for product that is damaged due to insufficient packaging.

Once you have received your RMA number from Cisco Meraki via email, write this RMA number in large letters on the exterior of the shipping carton. Shipments to Cisco Meraki without an RMA approval will not be processed.

If Cisco Meraki approves your RMA request, you will receive a confirmation email containing an RMA number within two business days. The address to which the product should be sent will also be included in that email.

Cisco Meraki will pay for warranty replacement return shipments and free trial return shipments from the US and Canada. For all other returns it is your responsibility to pay for return shipping back to Cisco Meraki using the carrier of your choice. Cisco Meraki recommends that the return package has a tracking number and is insured for the proper value of its contents. Cisco Meraki is not responsible for packages lost by carriers.

## Attachment 5

This document describes Cisco's Software Application

All capitalized terms in this description have the meaning ascribed to them in the Glossary of Terms. Direct Sale from Cisco. If you have purchased these Services directly from Cisco, this document is incorporated into your Master Services Agreement (MSA) with Cisco. In the event of a conflict between this Service Description and your MSA, this Service Description shall govern.

Sale via Cisco-Authorized Reseller. If you have purchased these Services through a Cisco-Authorized Reseller, this document is for description purposes only; is not a contract between you and Cisco. The contract, if any, governing the provision of this Service will be the one between you and your Cisco Authorized Reseller.

### SAS

Cisco Responsibilities:

Cisco Technical Assistance Center (TAC) access 24 hours per day, 7 days per week to assist by telephone, fax, electronic mail or the internet with Application Software use, configuration and troubleshooting issues. Cisco will respond within one Business Hours and for (1) hour for all calls received during Standard Severity 1 and 2 calls received outside Standard Business Hours. For Severity 3 and 4 calls received outside Standard Business Hours, Cisco will respond no later than the next Business Day.

Manage problems according to the [Cisco Severity and Escalation Guideline](#).

Access to Cisco.com. This system provides Customer with helpful technical and general information on Cisco Products as well as access to Cisco's on-line Software Center library. Please note that access restrictions identified by Cisco from time to time may apply.

Work-around solutions or patches to reported Application Software problems using reasonable commercial efforts. For an Application Software patch, a Maintenance Release for the Application Software experiencing the problem will be provided as follows: (a) download from Cisco.com (as available), or (b) shipment of Application Software on media such as CDROM using a nominated carrier. Requests for alternative carriers will be at Customer's expense.

Minor and Maintenance Releases. The Application Software releases and supporting Documentation are available on the Cisco.com Software Center ([www.cisco.com/software](http://www.cisco.com/software)) or on media such as CDROM, through the Cisco Product Upgrade Tool (PUT) ([www.cisco.com/upgrade](http://www.cisco.com/upgrade)). Applicable supporting Documentation, if available, is on Cisco.com and is limited to one copy per release. Additional copies may be purchased.

### SASU

Cisco Responsibilities:

Cisco-provided deliverables, as specified above in SAS.

Cisco-provided, on request, Major Application Software Releases. Such Updates are limited to Application Software releases that have been validly licensed and paid for and that are covered under a current SASU contract. The Application Software releases and supporting Documentation will be made available on the Cisco.com Software Center ([www.cisco.com/software](http://www.cisco.com/software)) or on media such as CDROM, through the Cisco PUT ([www.cisco.com/upgrade](http://www.cisco.com/upgrade)). Applicable supporting Documentation, if available, is available on Cisco.com and is limited to one copy per licensed Software. Additional copies may be purchased.

Customer Responsibilities:

The provision of the Service options assumes that Customer will:

Provide a severity level as described in the [Cisco Severity and Escalation Guideline](#) for all the calls Customer places.

Provide, at Customer's expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between Customer and the Cisco TAC engineer and systems passwords so that problems may be diagnosed and, where possible, corrected remotely.

Provide thirty (30) days Notice to Cisco of any requested addition(s) to your Equipment List.

Notify Cisco, using Cisco.com, of Product on the Equipment List which Customer has moved to a new location within thirty (30) days of such relocation. Please be aware that the Services will be provided to Customer beginning thirty (30) days after receipt of your notification. Cisco will also need Customer to notify Cisco of any modification to the Product and configuration including upgrades or changes to FRUs not in the original configuration within five (5) days of such modification.

Provide current shipment contact information as follows: contact name, title, address, telephone number, e-mail address, and fax number.

Provide valid and applicable serial numbers for all Product problems and issues reported to Cisco or where Customer is seeking information from Cisco in connection with Product use. Cisco may also require Customer to provide additional information in the form of location of the Product, city location details and zip code information.

When requested, provide Cisco with a list of all personnel that Customer has authorized to contact Cisco or access Cisco.com for Services and to download Software from Cisco.com or ordered via Cisco's PUT. Customer is responsible for reviewing the list on an annual basis and adding or removing personnel as necessary

Verify any in-transit damage of the media for the SAS or SASU Application Software Updates.  
Update to the latest Application Software release and latest third-party Software release, if required by Cisco to correct a reported Application Software problem.

Pay all engineering time, travel, and out-of-pocket expenses if Customer request performance of onsite Services or Services outside the scope of Service options described in this document.

Provide any Hardware required to perform fault isolation.

Receive Services on Cisco Application Software for which Customer has:

Purchased a valid and current license for the latest Major and Minor release or is renewing support for a valid supported license revision.

Make all reasonable efforts to isolate the Application Software problem prior to requesting support from Cisco.

Acquire, install configure and provide technical support for all:

Third-party Products, including upgrades required by Cisco or related Services; and  
Network infrastructure, including, but not limited to, local and wide-area data Networks and equipment required by Cisco for operation of Application Software.

Maintain Customer's entire Application Software implementation for configurable Application Software currently in use under the same Service option for Cisco to provide Services for any portion of Customer's Application Software implementation.

## Attachment 6

### Cisco Online Privacy Statement

Cisco Systems, Inc. and its subsidiaries (collectively "Cisco") are committed to protecting your privacy and ensuring you have a positive experience on our websites and in using our products and services ("Solution" or "Solutions"). This Privacy Statement applies to Cisco websites that link to this Statement but does not apply to those Cisco websites that have their own privacy statement. Our personal information handling practices are described below, in the supplements on the right, and in notices at the point of collection.

#### TRUSTe Certification

Cisco Systems, Inc. has been awarded TRUSTe's Privacy Seal signifying that this privacy policy and practices have been reviewed by TRUSTe for compliance with [TRUSTe's program requirements](#) including transparency, accountability and choice regarding the collection and use of your personal information. The TRUSTe program only covers information that is collected through the websites [www.cisco.com](http://www.cisco.com), [www.webex.com](http://www.webex.com), and [www.theflip.com](http://www.theflip.com), and does not cover information that may be collected through any software downloaded from these websites.

TRUSTe's mission, as an independent third party, is to accelerate online trust among consumers and organizations globally through its leading privacy trustmark and innovative trust solutions. If you have questions or complaints regarding our privacy policy or practices, please contact us at [privacy@cisco.com](mailto:privacy@cisco.com). If you are not satisfied with our response, you can contact TRUSTe [here](#).

Cisco complies with the U.S. – E.U. Safe Harbor framework and the U.S. - Swiss Safe Harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union member countries and Switzerland. Cisco has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. To learn more about the Safe Harbor program, and to view Cisco's certification, please visit <http://www.export.gov/safeharbor/>.

#### Collection of Your Personal Information

We will inform you of the purpose for collecting personal information when we collect it from you and keep it to fulfill the purposes for which it was collected, as required by applicable laws or for legitimate purposes. "Personal Information" is any information that can be used to identify an individual, and may include name, address, email address, phone number or payment card number. We collect Personal Information (and engage third parties to collect Personal Information to assist us) for a variety of reasons, such as processing your order, providing you with a newsletter subscription, enabling the use of certain features of our Solutions, personalizing your experience, managing a job application, or during the testing admissions process when a computer based certification test is administered to you (for more information about online testing, <http://pearsonvue.com/Cisco>). We and the third parties we engage may combine the information we collect from you over time and across our websites with information obtained from other sources to help us improve its overall accuracy and completeness, and to help us better tailor our interactions with you.

If you choose to provide third party Personal Information (such as name, email and phone number), we will assume that you have the third party's permission to provide us the information. Examples include forwarding reference material to a friend or job referrals. This information will not be used for any other purpose.

In some instances, Cisco may collect non-personal (aggregate or demographic) data through cookies, web logs, web beacons and other similar applications. This information is used to better understand and improve the usability, performance, and effectiveness of the website. Please read the "Cookies" section below for more information. In addition, by using some of our Solutions, anonymous network information may be transmitted to us such as the performance of the Solution and types of devices attached to the network. With this information we can determine how users are interacting with the Solution, to assist us with improving it, to manage your network, and to provide alerts via the Solution of available software updates/upgrades.

#### Uses of Your Personal Information

We will only use your Personal Information in the way we specified when it was collected. We will not subsequently change the way your Personal Information is used without first asking for your permission. Some of the ways we may use Personal Information include to deliver a Solution that you have requested, support our Solutions, contact you for customer satisfaction surveys, personalize websites and newsletters to your preferences, administer and process your certification exams, or communicate for marketing purposes. You can edit your preferences at any time (see [Your Choices and Selecting Your Communication Preferences](#) below).

#### Access to and Accuracy of Your Personal Information

We need your help in keeping your Personal Information accurate and up to date so please notify us of any changes to your Personal Information. To update your Personal Information and communication preferences, you can contact [privacy@cisco.com](mailto:privacy@cisco.com). In addition, you may have the ability to view or edit your personal information online, including:

**Cisco.com** – You can access and update your profile using the [Cisco Profile Management Tool](#). You may also make these updates or request deactivation of your website profile by sending an email to [web-help@cisco.com](mailto:web-help@cisco.com).

**Home.cisco.com (formerly Linksysbycisco.com)** – You can access and update your profile by signing into your Online Account at <http://home.cisco.com/>. You may also make these updates or request deactivation of your website profile by sending an email to [privacy@linksys.com](mailto:privacy@linksys.com).

**Webex.com** - You can access and update your profile by signing into your user online account at <http://try.webex.com/mk/get/profile>. You may also make these updates or request deactivation of your website profile by sending an email to [privacy@webex.com](mailto:privacy@webex.com).

**TheFlip.com** - You can access and update your profile by signing into your user online account at <http://puredigital2.custhelp.com/cgihttp://puredigital2.custhelp.com/cgi-bin/puredigital2.cfg/php/enduser/ask.phpbin/puredigital2.cfg/php/enduser/ask.php>. You may also make these updates or request deactivation of your website profile by sending an email to [remove@theflip.com](mailto:remove@theflip.com).

We make good faith efforts to honor your reasonable request to access and correct your data if it is inaccurate or delete the data if we are not required to retain it by law or for legitimate purposes. We will respond to your request to access within 30 days.

For a list of Cisco entities that may be considered data controllers from time to time and where you can exercise your rights of access and request corrections or deactivations under applicable data protection laws, [click here](#).

#### Your Choices and Selecting Your Communication Preferences

We give you the choice of receiving a variety of information that complements our Solutions. You can manage your communication preferences and unsubscribe using one of the following methods:

Each promotional email from us includes instructions on how you can unsubscribe from that particular mailing.

Sending a message via email at [privacy@cisco.com](mailto:privacy@cisco.com) or via mail to Cisco Systems, Inc., Legal Department, 170 West Tasman Dr., San Jose, CA 95134, USA. Please be sure to include your name, email address and specific relevant information about the material that you no longer wish to receive.

These choices do not apply to the receipt of mandatory service communications that are considered part of certain Solutions, which you may receive periodically unless you cancel the Solution in accordance with its terms and conditions.

#### **Sharing Your Personal Information**

We do not sell or share your Personal Information to third parties for marketing purposes unless you have granted us permission to do so. We will ask for your consent before we use or share your information for any purpose other than the reason you provided it or as otherwise provided by this Privacy Statement. We may share Personal Information in the following ways:

Within Cisco or with any of our worldwide subsidiaries for purposes of data processing or storage.

With business partners, service vendors, authorized third-party agents or contractors to provide a requested service or transaction, including processing orders and credit card transactions, hosting websites, hosting seminar registration and providing customer support. We only provide these third parties with the minimum amount of Personal Information necessary to complete/provide the requested service or transaction. We do not allow third parties to use your Personal Information for a different purpose.

To comply with the law or legal process (such as responding to subpoenas or court orders) and to exercise our legal rights or defend against legal claims.

To investigate, prevent, or take action regarding illegal activities, suspected or potential fraud, brand protection matters (such as gray market sales or use of Cisco's trademark without a license), situations involving potential threats to the physical safety of any person, violations of Cisco's terms of use, or as otherwise required by law.

#### **Security of Your Personal Information**

We are committed to protecting the Personal Information you share with us and utilize a combination of industry-standard security technologies, procedures, and organizational measures to help protect your Personal Information from unauthorized access, use or disclosure. We recommend you to take every precaution in protecting your Personal Information when you are on the Internet. For example, change your passwords often, use a combination of letters and numbers when creating passwords, and make sure you use a secure browser. When you enter sensitive information on our forms, we encrypt this data using SSL or other technologies. Please visit our Learning Center for more tips for using security features when connected to the Internet using a router.

#### **Retention of Personal Information**

We will only retain your Personal Information to fulfill the purposes for which it was collected or as required for legitimate purposes or permitted by law.

#### **Use of Cookies and other Web Technologies**

Like many websites, Cisco uses automatic data collection tools, such as cookies, embedded web links and web beacons. These tools collect certain standard information that your browser sends to our website such as your browser type and the address of the website from which you arrived at our website. They may also collect information about your Internet Protocol (IP) address (a number automatically assigned to your computer whenever you are surfing the Web, allowing Web servers to locate and identify your computer, which is a unique address assigned to your PC by your Internet Service Provider or Information Systems Department on a TCP/IP network) and clickstream behavior (for example, the pages you view and the links you click). These tools help make your visit to our website easier, more efficient and more valuable by providing you with a customized experience and recognizing you when you return. To learn more, read Cisco's [Use of Automatic Data Collection Tools](#).

Our website includes widgets, which are interactive mini-programs that run on our site to provide specific services from another company (e.g. displaying the news, opinions, music, etc). Personal information, such as your email address, may be collected through the widget. Cookies may also be set by the widget to enable it to function properly. Information collected by this widget is governed by the privacy policy of the company that created it. Our widget may have an import contacts feature to help you email your contacts. At your request, we will search your email address book to help you import your contacts to our website.

Some web browsers may let you enable a "do not track" feature that sends signals to the websites you visit, indicating that you do not want your online activities tracked. This is different than blocking or deleting cookies, as browsers with a "do not track" feature enabled may still accept cookies. There is currently no industry standard for how companies should respond to "do not track" signals, although one may develop in the future. We do not respond to "do not track" signals at this time. If we do so in the future, we will describe how in this Privacy Statement. More information about "do not track" is available at [www.allaboutdnt.org](http://www.allaboutdnt.org).

#### **Linked Websites**

We may provide links to other third-party websites and services which are outside our control and not covered by this Privacy Statement. We encourage you to review the privacy statements posted on those websites (and all websites) you visit.

#### **Forums/Chat Rooms**

If you participate in a discussion forum or chat room on a Cisco website, you should be aware that the information you provide there will be made broadly available to others, and can be read, collected or used by other users of these forums, potentially inside or outside Cisco, who have access to that discussion forum or chat room. This information could also be used to send you unsolicited messages. Also, please recognize that individual forums and chat rooms may have additional rules and conditions. Each participant's opinion on a forum or chat room is his or her own and should not be considered as reflecting the opinion of Cisco. We are not responsible for the Personal Information or any other information you choose to submit in these forums.

#### **Children's Privacy**

Cisco does not knowingly collect Personal Information from children under the age of 13. If we learn that we have collected Personal Information of a child under the age of 13, we will delete that data from our systems. Please note that the Personal Information collected by Cisco Networking Academy (NetAcad) is subject to the privacy statement posted on the NetAcad websites along with any applicable privacy supplement.

Cisco encourages parents and guardians to go online with their children. Here are a few tips to help make a child's online experience safer:

Teach children never to give Personal Information (such as name, address, phone number, school, etc.) unless supervised by a parent or responsible adult.

Know the sites your children are visiting and which sites are appropriate.

Look for website privacy policies and know how your child's information is treated.

For more tips on protecting children's privacy online, please see Cisco's Online Privacy Portal [here](#) or FTC's website [here](#).

#### **Consent to Transfer, Processing and Storage of Personal Information**

As Cisco is a global organization, we may transfer your Personal Information to Cisco in the United States of America, to any Cisco subsidiary worldwide, or to third parties acting on our behalf, for the purposes of processing or storage. By providing any Personal Information to us, you fully understand and unambiguously consent to the transfer, processing and storage of such information outside of your country of residence where data protection standards may be different. Our Privacy Statement and our practices are designed to provide a globally consistent level of

protection for Personal Information all over the world. This means that even in countries whose laws provide for less protection for your information, Cisco will still handle your information in the manner described here.

**Your California Privacy Rights**

Residents of the State of California, under California Civil Code § 1798.83, have the right to request from companies conducting business in California a list of all third parties to which the company has disclosed Personal Information during the preceding year for direct marketing purposes. Alternatively, the law provides that if the company has a privacy policy that gives either an Opt-out or Opt-in choice for use of your Personal Information by third parties (such as advertisers) for marketing purposes, the company may instead provide you with information on how to exercise your disclosure choice options.

Cisco qualifies for the alternative option. We have a comprehensive privacy statement, and provide you with details on how you may either Opt-out or Opt-in to the use of your Personal Information by third parties for direct marketing purposes. Therefore, we are not required to maintain or disclose a list of the third parties that received your Personal Information for marketing purposes during the preceding year.

If you are a California resident and request information about how to exercise your third party disclosure choices, please send a request to [privacy@cisco.com](mailto:privacy@cisco.com).

**How to Contact Us**

We value your opinions. Should you have any privacy-related questions or comments related to this Privacy Statement, please send an email to [privacy@cisco.com](mailto:privacy@cisco.com).

**Updates to this Cisco Privacy Statement**

We may update this Privacy Statement at any time, so please review it frequently. If we change our Privacy Statement, we will post the revised version here, with an updated revision date. If we make significant changes to our Privacy Statement, we may also notify you by other means prior to the changes taking effect, such as sending an email or posting a notice on our website.

REVISED AND POSTED AS OF: FEBRUARY 3, 2014. Please note this version does not substantively change the way we treat personal information compared to the previous version of the privacy statement available [here](#).



## Attachment 7

### Third Party Usage Guidelines for Oracle Trademarks

#### Oracle Trademarks

Oracle's trademarks and service marks ("Oracle trademarks") are valuable assets that Oracle needs to protect. We ask that you help us by properly using and crediting Oracle trademarks in accordance with these guidelines. For information about proper use of Oracle logos, logotypes, signatures, and design marks, please review the Third Party Usage Guidelines for Oracle Logos.

#### Permissible Use

You may generally use Oracle trademarks to refer to the associated Oracle products or services. For instance, an authorized reseller can note in its advertisements that it is selling the Oracle application server. Similarly, an Oracle customer may issue a press release stating that it has implemented Oracle software.

#### Relationship of Products or Services

You may indicate the relationship of your products or services to Oracle products or services by using accurate, descriptive tag lines such as "for Oracle database," "for use with Oracle E-Business Suite applications," and "works with Oracle software" in connection with your product or service name. Within text or body copy, such tag lines may appear in the same type as your product or service name. On product, packaging, advertising and other collateral where your product or service name is displayed apart from body copy, make sure that the tag line appears in significantly smaller type than your name. You should also distinguish the tag line from your mark by using a different font or color. However, Oracle or the tag line should never appear in the Oracle red color. This is important to avert any implication that your product or service is produced or endorsed by Oracle.

#### Titles

Oracle permits use of its marks in single volume book titles (not magazines or periodicals) where such use is descriptive or referential. To avoid misleading the public as to Oracle sponsorship, affiliation or endorsement, the Oracle mark must not appear more prominently than the rest of the title, and do not use Oracle logos on the cover. In addition, we request that you include a disclaimer of association with Oracle on the copyright page.

#### Open Source Software

Most open source licenses do not grant, and many exclude, a license of trademark rights. Do not assume you can use the name of a source code base in the name of your distribution developed from that code base. Without a license or permission, you may not incorporate Oracle trademarks in the name of your distribution or other products that incorporate open source elements. Truthful statements incorporating a trademark are generally allowed (for example, in the format "MyImplementation, derived from Trademarked ProductName"), but you should check the terms of the license for the original source code or any posted trademark guidelines for the project.

#### User Groups

Oracle generally permits use of its marks in groups name that include phrases such as "user group," "special interest group," "lobby," etc., that clarify the relationship between Oracle and the group and do not create confusion about the source of products. This applies only to user groups that are not formally doing business as commercial entities. If you are administering a user group that includes an Oracle trademark in its name, do not claim any trademark rights in the name or attempt to register the name or your logo with a trademark office, and do not register the name as a trade name or business name, or conduct any business under the name.

#### Prohibited Use

You may not use Oracle trademarks in a manner which could cause confusion as to Oracle sponsorship, affiliation or endorsement. Take particular care not to use Oracle marks as set out below.

#### Company, Product or Service Names

Do not use Oracle trademarks or potentially confusing variations as all or part of your company, product or service names. If you wish to note the relationship of your products or services to Oracle products or services, please use an appropriate tag line as detailed above. For example, "XYZ for Oracle database" not "OraXYZ or XYZ Oracle"

#### Logos

For more information regarding use of Oracle logos, please review the Third Party Usage Guidelines for Oracle Logos.

#### Trade Dress

You must not imitate Oracle trade dress, type style or logos. For instance, do not copy Oracle packaging for use with your product or display your product name in the distinctive logotype associated with the Oracle logo.

#### Domain Names

Do not use Oracle trademarks or potentially confusing variations in your Internet domain name. This helps prevent Internet users from being confused as to whether you or Oracle is the source of the Web site.

#### Correct Use

Proper use of Oracle trademarks reinforces their role as brands for our products and services, and helps prevent them from becoming generic names that can be used by anyone. Examples of former trademarks that became generic terms are "aspirin," "cellophane," and "escalator." By adhering to the following rules, you help protect Oracle's investment in its trademarks.

#### Use a Generic Term

Use a generic term in association with each Oracle trademark the first time the mark appears in text, and as often as possible after that. You need not include generic names in headlines, package titles and documentation titles. For example, "Oracle iLearning software", "Oracle On Demand services", and "Oracle database."

**Use as Adjectives**

Oracle trademarks are adjectives and should not be used as nouns, or in the possessive or plural form. For example, "Oracle database's benefits." not "Oracle's benefits..."

**Avoid Variations**

Do not vary Oracle trademarks by changing their spelling or abbreviating them. For example, "Oracle Collaboration Suite" not "CollabSuite."

**Trademark Symbols and Credit Lines**

Proper trademark attribution through trademark symbols and credit lines helps makes the public aware of our trademarks, and helps prevent them from becoming generic terms. Credit lines also help clarify that they belong to Oracle. Accordingly, Oracle would appreciate you attributing ownership of Oracle trademarks to Oracle Corporation by using trademark symbols (™ or SM or ®) and credit lines as detailed below.

**Trademark Symbols**

Use the ® symbol with the most prominent appearance of the "Oracle" mark on products, packaging, manuals, advertisements, promotional materials and Web pages (for example, in the headline of an advertisement), and the first use of the mark in text or body copy. This includes situations where "Oracle" is a part of a product or service name (for example, Oracle® Collaboration Suite, Oracle® PartnerNetwork). You do not need to use trademark symbols with other Oracle trademarks.

Example: XYZ Develops New Product for Oracle® Database XYZ Corporation, a member of the Oracle® PartnerNetwork program, has developed the ABC software cartridge for use with the industry leading Oracle database. The ABC software cartridge is one of numerous products XYZ has developed that complement leading Oracle offerings. "Oracle" receives a trademark symbol in the headline because this is the most prominent appearance, and when it appears as part of the "Oracle PartnerNetwork" name because this is the first appearance in text. While there is no trademark symbol after "Oracle" when it appears in front of the term "products" and "offerings" since we already used a symbol the first time that the term "Oracle" appeared in body copy. It is always acceptable to continue using the ® after "Oracle" throughout the document.

**Credit Line**

All products, packaging, manuals, advertisements, promotional materials and Web pages bearing Oracle trademarks should include the following trademark credit line. "Oracle and Java are registered trademarks of Oracle and/or its affiliates. Other names may be trademarks of their respective owners."

The credit line may appear anywhere on the collateral, but typically is displayed on a copyright page, the back of a package or at the end of a document or web page.

**"Oracle" As a Trade Name**

Trade names are the actual business names of companies. Trademarks and trade names are not the same, even though many companies use their trade names as trademarks. If you are using "Oracle" as a substitute for Oracle Corporation, you are using it as a trade name. Because they are nouns, trade names can be used in the possessive and do not require a generic term or a trademark symbol. Thus, you should not use a ® after "Oracle" when it appears as part of the full corporate name or as a trade name.

**Examples**

Corporate Name: This software was developed by Oracle Corporation.

Trade Name: This software was developed by Oracle.

Trade Name: Oracle's latest software developments are outstanding.

Trademark: The Oracle® database leads the industry.

## Attachment 8

### CISCO END USER LICENSE AGREEMENT (EULA)

#### Cisco EULA

September 24, 2013 as provided on Cisco.com: [http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN\\_.html](http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN_.html)

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**ATTACHMENT 9**

**Reserved**

**Attachment 10****VMware End User License Agreement**

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**DEFINITIONS.**

**"Affiliate"** means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of that entity.

**"Documentation"** means that documentation that is generally provided to You by VMware with the Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

**"Guest Operating Systems"** means instances of third-party operating systems licensed by You, installed in a Virtual Machine and run using the Software.

**"Intellectual Property Rights"** means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

**"License"** means a license granted under Section 2.1 (General License Grant).

**"License Key"** means a serial number that enables You to activate and use the Software.

**"License Term"** means the duration of a License as specified in the Order.

**"License Type"** means the type of License applicable to the Software, as more fully described in the Order.

**"Open Source Software" or "OSS"** means software components embedded in the Software and provided under separate license terms, which can be found either in the open\_source\_licenses.txt file (or similar file) provided within the Software or at [www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html).

**"Order"** means a purchase order, enterprise license agreement, or other ordering document issued by You to VMware or a VMware authorized reseller that references and incorporates this EULA and is accepted by VMware as set forth in Section 4 (Order).

**"Product Guide"** means the current version of the VMware Product Guide at the time of Your Order, copies of which are found at [www.vmware.com/download/eula](http://www.vmware.com/download/eula).

**"Support Services Terms"** means VMware's then-current support policies, copies of which are posted at [www.vmware.com/support/policies](http://www.vmware.com/support/policies).

**"Software"** means the VMware Tools and the VMware computer programs listed on VMware's commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.

**"Territory"** means the country or countries in which You have been invoiced; provided, however, that if You have been invoiced within any of the European Economic Area member states, You may deploy the corresponding Software throughout the European Economic Area.

**"Third Party Agent"** means a third party delivering information technology services to You pursuant to a written contract with You.

**"Virtual Machine"** means a software container that can run its own operating system and execute applications like a physical machine.

**"VMware"** means VMware, Inc., a Delaware corporation, if You are purchasing Licenses or services for use in the United States and VMware International Limited, a company organized and existing under the laws of Ireland, for all other purchases.

“VMware Tools” means the suite of utilities and drivers, Licensed by VMware under the “VMware Tools” name, that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine.

## LICENSE GRANT.

**General License Grant.** VMware grants to You a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment) license to use the Software and the Documentation during the period of the license and within the Territory, solely for Your internal business operations, and subject to the provisions of the Product Guide. Unless otherwise indicated in the Order, licenses granted to You will be perpetual, will be for use of object code only, and will commence on either delivery of the physical media or the date You are notified of availability for electronic download.

**Third Party Agents.** Under the License granted to You in Section 2.1 (General License Grant) above, You may permit Your Third Party Agents to access, use and/or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents' compliance with terms and conditions of this EULA and any breach of this EULA by a Third Party Agent shall be deemed to be a breach by You.

**Copying Permitted.** You may copy the Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only.

**Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or otherwise distribute the results of such studies to third parties as follows: (a) if with respect to VMware's Workstation or Fusion products, only if You provide a copy of Your study to [benchmark@vmware.com](mailto:benchmark@vmware.com) prior to distribution; (b) if with respect to any other Software, only if VMware has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact VMware at [benchmark@vmware.com](mailto:benchmark@vmware.com) to request such review and approval) prior to such publication and distribution.

**VMware Tools.** You may distribute the VMware Tools to third parties solely when installed in a Guest Operating System within a Virtual Machine. You are liable for compliance by those third parties with the terms and conditions of this EULA.

**Open Source Software.** Notwithstanding anything herein to the contrary, Open Source Software is licensed to You under such OSS's own applicable license terms, which can be found in the `open_source_licenses.txt` file, the Documentation or as applicable, the corresponding source files for the Software available at [www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html). These OSS license terms are consistent with the license granted in Section 2 (License Grant), and may contain additional rights benefiting You. The OSS license terms shall take precedence over this EULA to the extent that this EULA imposes greater restrictions on You than the applicable OSS license terms. To the extent the license for any Open Source Software requires VMware to make available to You the corresponding source code and/or modifications (the "Source Files"), You may obtain a copy of the applicable Source Files from VMware's website at [www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html) or by sending a written request, with Your name and address to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date You acquired this Software.

## RESTRICTIONS; OWNERSHIP.

**License Restrictions.** Without VMware's prior written consent, You must not, and must not allow any third party to: (a) use Software in an application services provider, service bureau, or similar capacity for third parties, except that You may use the Software to deliver hosted services to Your Affiliates; (b) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of VMware's Software done by or on behalf of You, except as specified in Section 2.4 (Benchmarking); (c) make available Software in any form to anyone other than Your employees or contractors reasonably acceptable to VMware and require access to use Software on behalf of You in a matter permitted by this EULA, except as specified in Section 2.2 (Third Party Agents); (d) transfer or sublicense Software or Documentation to an Affiliate or any third party, except as expressly permitted in Section 12.1 (Transfers; Assignment); (e) use Software in conflict with the terms and restrictions of the Software's licensing model and other requirements specified in Product Guide and/or VMware quote; (f) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except as specified in Section 3.2 (Decompilation); (g) remove any copyright or other proprietary notices on or in any copies of Software; or (h) violate or circumvent any technological restrictions within the Software or specified in this EULA, such as via software or services.

**Decompilation.** Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of the Territory give You the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, You must first request such information from VMware, provide all reasonably requested information to allow VMware to assess Your claim, and VMware may, in its discretion, either provide such interoperability information to You, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that VMware's proprietary rights in the Software are protected and to reduce any adverse impact on VMware's proprietary rights.

**Ownership.** The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of VMware and its licensors. Your rights to use the Software and Documentation shall be limited to those expressly granted in this EULA and any applicable Order. No other rights with respect to the Software or any related Intellectual Property Rights are implied. You are not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this EULA or the applicable Order. VMware reserves all rights not expressly granted to You. VMware does not transfer any ownership rights in any Software.

**Guest Operating Systems.** Certain Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that You are responsible for obtaining and complying with any licenses necessary to operate any such third-party software.

**ORDER.** Your Order is subject to this EULA. No Orders are binding on VMware until accepted by VMware. Orders for Software are deemed to be accepted upon VMware's delivery of the Software included in such Order. Orders issued to VMware do not have to be signed to be valid and enforceable.

**RECORDS AND AUDIT.** During the License Term for Software and for two (2) years after its expiration or termination, You will maintain accurate records of Your use of the Software sufficient to show compliance with the terms of this EULA. During this period, VMware will have the right to audit Your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable notice by VMware and will not unreasonably interfere with Your business activities. VMware may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. You will reasonably cooperate with VMware and any third party auditor and will, without prejudice to other rights of VMware, address any non-compliance identified by the audit by promptly paying additional fees. You will promptly reimburse VMware for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by You for the period audited, or that You have materially failed to maintain accurate records of Software use.

**SUPPORT AND SUBSCRIPTION SERVICES.** Except as expressly specified in the Product Guide, VMware does not provide any support or subscription services for the Software under this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software developed by VMware unless you separately purchase VMware support or subscription services. These support or subscription services are subject to the Support Services Terms.

## WARRANTIES.

**Software Warranty, Duration and Remedy.** VMware warrants to You that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery ("Warranty Period"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than VMware or its authorized representative. VMware will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to VMware by You in writing during the Warranty Period. If VMware determines that it is unable to correct the error or replace the Software, VMware will refund to you the amount paid by You for that Software, in which case the License for that Software will terminate.

**7.2 Software Disclaimer of Warranty.** OTHER THAN THE WARRANTY ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS EULA, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. VMWARE AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET YOUR REQUIREMENTS.

## INTELLECTUAL PROPERTY INDEMNIFICATION.

**Defense and Indemnification.** Subject to the remainder of this Section 8 (Intellectual Property Indemnification), VMware shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China, to the extent that such countries are part of the Territory for the License ("Infringement Claim") and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if You: (i) promptly notify VMware in writing of the Infringement Claim; (ii) allow VMware sole control over the defense for the claim and any settlement negotiations; and (iii) reasonably cooperate in response to VMware requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of VMware.

**Remedies.** If the alleged infringing Software become, or in VMware's opinion be likely to become, the subject of an Infringement Claim, VMware will, at VMware's option and expense, do one of the following: (a) procure the rights necessary for You to make continued use of the affected Software; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund: (i) the fees paid by You for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 (Remedies) shall limit VMware's obligation under Section

**8.1 (Defense and Indemnification)** to defend and indemnify You, provided that You replace the allegedly infringing Software upon VMware's making alternate Software available to You and/or You discontinue using the allegedly infringing Software upon receiving VMware's notice terminating the affected License.

**Exclusions.** Notwithstanding the foregoing, VMware will have no obligation under this Section 8 (Intellectual Property Indemnification) or otherwise with respect to any claim based on: (a) a combination of Software with non-VMware products (other than non-VMware products that are listed on the Order and used in an unmodified form); (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer VMware version would have avoided the infringement; (d) any modification to the Software made without VMware's express written approval; (e) any claim that relates to open source software or freeware technology or any derivatives or other adaptations thereof that is not embedded by VMware into Software listed on VMware's commercial price list; or (f) any Software provided on a no charge, beta or evaluation basis. THIS SECTION 8 (INTELLECTUAL PROPERTY INDEMNIFICATION) STATES YOUR SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

## LIMITATION OF LIABILITY.

**Limitation of Liability.** TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. VMWARE'S AND IT'S LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR \$5000. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**9.2 Further Limitations.** VMware's licensors shall have no liability of any kind under this EULA and VMware's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1 (Limitation of Liability). You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

## TERMINATION.

**EULA Term.** The term of this EULA begins on the notice of availability for electronic download or delivery of the Software and continues until this EULA is terminated in accordance with this Section 10.

**Termination for Breach.** VMware may terminate this EULA effective immediately upon written notice to You if: (a) You fail to pay any portion of the fees under an applicable Order within ten (10) days after receiving written notice from VMware that payment is past due; or (b) You breach any other provision of this EULA and fail to cure within thirty (30) days after receipt of VMware's written notice thereof.

**Termination for Insolvency.** VMware may terminate this EULA effective immediately upon written notice to You if You: (a) terminate or suspend your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

**Effect of Termination.** Upon VMware's termination of this EULA: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease; and (b) You must cease all use of all Software, and return or certify destruction of all Software and License Keys (including copies) to VMware, and return, or if requested by VMware, destroy, any related VMware Confidential Information in Your possession or control and certify in writing to VMware that You have fully complied with these requirements. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5 (Records and Audit), 7.2 (Software Disclaimer of Warranty), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General).

## CONFIDENTIAL INFORMATION.

**Definition. "Confidential Information"** means information or materials provided by one party ("**Discloser**") to the other party ("**Recipient**") which are in tangible form and labelled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding VMware's pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

**Protection.** Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

**Exceptions.** Recipient's obligations under Section 11.2 (Protection) with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

**Data Privacy.** You agree that VMware may process technical and related information about Your use of the Software which may include internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services and may transfer such information to other companies in the VMware worldwide group of companies from time to time. To the extent that this information constitutes personal data,

VMware shall be the controller of such personal data. To the extent that it acts as a controller, each party shall comply at all times with its obligations under applicable data protection legislation.

## GENERAL.

**Transfers; Assignment.** Except to the extent transfer may not legally be restricted or as permitted by VMware's transfer and assignment policies, in all cases following the process set forth at [www.vmware.com/support/policies/licensingpolicies.html](http://www.vmware.com/support/policies/licensingpolicies.html), You will not assign this EULA, any Order, or any right or obligation herein or delegate any performance without VMware's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by you will be void. VMware may use its Affiliates or other sufficiently qualified subcontractors to provide services to you, provided that VMware remains responsible to You for the performance of the services.

**Notices.** Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.

**Waiver.** Failure to enforce a provision of this EULA will not constitute a waiver.

**Severability.** If any part of this EULA is held unenforceable, the validity of all remaining parts will not be affected.

**Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this EULA.

**Construction.** The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word "including" means "including but not limited to".

**Governing Law.** This EULA is governed by the laws of the State of California, United States of America (excluding its conflict of law rules), and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in Santa Clara County, California will be the exclusive jurisdiction for disputes arising out of or in connection with this EULA. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

**Third Party Rights.** Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

**Order of Precedence.** In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You.

**Entire Agreement.** This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

**Contact Information.** Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department. - See more at: [http://www.vmware.com/download/eula/esxi50\\_eula.html#sthash.PWrl1eoX.dpuf](http://www.vmware.com/download/eula/esxi50_eula.html#sthash.PWrl1eoX.dpuf)



CITRIX SYSTEMS, INC.  
831 WEST CYPRESS CREEK ROAD  
FT. LAUDERDALE, FL 33309

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Citrix Systems, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**CITRIX SYSTEMS, INC.**

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**CITRIX SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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**GRANT OF LICENSE.** This PRODUCT contains software that provides services on a computer called a server ("Server Software") and contains software that allows a computer to access or utilize the services provided by the Server Software ("Client Software"). This PRODUCT is licensed under a concurrent user, user, or device model. For purposes of this license, i) "Concurrent User" is single client device connected to the Server Software; ii) "User" is an individual authorized by Ordering Activity to use any device(s) to access instances of the Server Software through Ordering Activity's assignment of a single user ID, regardless of whether or not the individual is using the PRODUCT at any given time; and iii) a "Device" is a device authorized by Ordering Activity to be used by any individual(s) to access instances of the Server Software (locally or over a network) through Ordering Activity's assignment of the device identity to a Device log, regardless of whether or not the device is being used at any given time. Server Software is activated by licenses that allow use of the Server Software in increments defined by the license model ("Licenses"). Under the User or Device model, Ordering Activity may deploy network architectures that use hardware or software to reduce the number of Users or Devices that directly access the Server Software. This is referred to as *multiplexing or pooling*. This does not reduce the number of Licenses required to access or use the Server Software. A License is required for each User or Device that is connected to the multiplexing or pooling software or hardware front end. Ordering Activity must acquire and assign a License to each User or Device that accesses Ordering Activity's instances of the Server Software directly or indirectly, frequently or infrequently. Client Software is not activated by Licenses but will not operate in conjunction with the Server Software without the Server Software being activated. Licenses for other CITRIX PRODUCTS or other editions of the same PRODUCT may not be used to increase the allowable use for the PRODUCT. Licenses are version specific for the PRODUCT. They must be the same version or later than the Server Software being accessed. CONTRACTOR grants to Ordering Activity the following worldwide, non-exclusive rights to the Server Software and Client Software and accompanying documentation (collectively called the "SOFTWARE"):

Server Software. Ordering Activity may install and use the Server Software on one or more computers ("Server(s)"). Each License may be installed and used on a single license server within Ordering Activity's production environment and a single license server within Ordering Activity's disaster recovery environment. The Server Software may be used only to support up to the allowable number of Concurrent Users, Users or Devices based on Ordering Activity's total purchases of Licenses. Ordering Activity may use the Server Software to provide application services to third parties ("Hosting"). Each License that is installed in both a production and disaster recovery environment may be used only in one of the environments at any one time, except for duplicate use during routine testing of the disaster recovery environment. If Ordering Activity purchased the Enterprise or Platinum editions of this PRODUCT, each License may be used only to support use of any one or more of the edition features for the same Concurrent User, User or Device. Ordering Activity's use of Application Streaming to included with XenApp is limited to support of Concurrent Users, Users or Devices using XenApp hosted applications, and not other users. Ordering Activity's use of EasyCall voice services included with XenApp is limited to support of Concurrent Users, Users or Devices using XenApp hosted applications, and not other users. Ordering Activity's use of Profile management included with XenApp Enterprise or Platinum Edition is limited to support of Concurrent Users, Users or Devices using XenApp Enterprise and Platinum hosted applications, and not other users. Ordering Activity's use of Provisioning services included with the XenApp Platinum Edition is limited to provisioning only the XenApp Platinum Edition workload. Ordering Activity's use of Single Sign-On included with XenApp Platinum Edition is limited to support of Concurrent Users, Users or Devices using XenApp Platinum hosted applications, and not other users. If multiple Licenses are delivered for the various features of the edition, they should be treated as a single License. If Ordering Activity received this PRODUCT as a component of XenDesktop Enterprise or Platinum Edition, the Server Software may be used either to provide presentation services to physical or virtual machines running in the XenDesktop environment or directly to client devices.

Client Software. Under the Concurrent User or User model, the Client Software may be installed and used on an unlimited number of client devices. Under the Device Model, the Client Software may be installed and used only on Devices. Ordering Activity may use Client Software only to allow Concurrent Users, Users and Devices to access instances of the Server Software.

Perpetual License. If the SOFTWARE is "Perpetual License SOFTWARE," the SOFTWARE is licensed on a perpetual basis and includes the right to receive Subscription Advantage (as defined in Section 2 below).

Annual License. If the SOFTWARE is "Annual License SOFTWARE," Ordering Activity's license is for one (1) year and includes the right to receive Updates for that period (but not under Subscription Advantage as defined in Section 2 below). For the purposes of this ATTACHMENT A, an Update shall mean a generally available release of the same SOFTWARE. To extend an Annual License, Ordering Activity must purchase and install an additional Annual License prior to the expiration of the current Annual License. Note that if a new Annual License is not purchased and installed, Annual SOFTWARE disables itself upon the expiration of the then-current Annual License period.

Archive Copy. Ordering Activity may make one (1) copy of the SOFTWARE in machine-readable form solely for backup purposes, provided that Ordering Activity reproduce all proprietary notices on the copy.

SUBSCRIPTION RIGHTS. Ordering Activity's subscription for the SOFTWARE ("Subscription") shall begin on the date the Licenses are delivered to Ordering Activity by email. Should Licenses be delivered to Ordering Activity on a tangible license card, Subscription shall instead begin on the date Ordering Activity request that the Licenses be allocated to Ordering Activity through mycitrix.com. Subscription shall continue for a one (1) year term subject to Ordering Activity's purchase of annual renewals (the "Subscription Term"). During the initial or a renewal Subscription Term, CONTRACTOR may, from time to time, generally make Updates available for licensing to the public. Upon general availability of Updates during the Subscription Term, CONTRACTOR shall provide Ordering Activity with Updates for covered Licenses. Any such Updates so delivered to Ordering Activity shall be considered SOFTWARE under the terms of this ATTACHMENT A, except they are not covered by the Limited Warranty applicable to SOFTWARE, to the extent permitted by applicable law. Subscription Advantage may be purchased for the SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT Support Lifecycle Policy posted at [www.citrix.com](http://www.citrix.com). This website reference is for informational purposes only.

Ordering Activity acknowledge that CONTRACTOR may develop and market new or different computer programs or editions of the SOFTWARE that use portions of the SOFTWARE and that perform all or part of the functions performed by the SOFTWARE. Nothing contained in this

ATTACHMENT A shall give Ordering Activity any rights with respect to such new or different computer programs or editions. Ordering Activity also acknowledge that CONTRACTOR is not obligated under this ATTACHMENT A to make any Updates available to the public. Any deliveries of Updates shall be Ex Works CITRIX (Incoterms 2000).

SUPPORT. Ordering Activity may buy SUPPORT for the SOFTWARE. SUPPORT shall begin on the date of SUPPORT activation by CONTRACTOR THROUGH CITRIX and shall run for a one (1) year term subject to Ordering Activity's purchase of annual renewals. SUPPORT is sold including various combinations of Incidents, technical contacts, coverage hours, geographic coverage areas, technical relationship management coverage, and infrastructure assessment options. An "Incident" is defined as a single SUPPORT issue and reasonable effort(s) needed to resolve it. An Incident may require multiple telephone calls and offline research to achieve final resolution. The Incident severity will determine the response levels for the SOFTWARE. Unused Incidents and other entitlements expire at the end of each annual term. SUPPORT may be purchased for the SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT Support Lifecycle Policy posted at [www.citrix.com](http://www.citrix.com). This website reference is for informational purposes only. SUPPORT will be provided remotely from CONTRACTOR THROUGH CITRIX to your locations. Where on-site visits are mutually agreed, Ordering Activity will be billed for reasonable travel and living expenses in accordance with Ordering Activity's travel policy. CONTRACTOR THROUGH CITRIX' performance is predicated upon the following responsibilities being fulfilled by Ordering Activity: (i) Ordering Activity will designate a Customer Support Manager ("CSM") who will be the primary administrative contact; (ii) Ordering Activity will designate Named Contacts (including a CSM), preferably each CITRIX certified, and each Named Contact (excluding CSM) will be supplied with an individual service ID number for contacting SUPPORT; (iii) Ordering Activity agree to perform reasonable problem determination activities and to perform reasonable problem resolution activities as suggested by CONTRACTOR THROUGH CITRIX. Ordering Activity agrees to cooperate with such requests; (iv) Ordering Activity is responsible for implementing procedures necessary to safeguard the integrity and security of SOFTWARE and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures; (v) Ordering Activity is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at Ordering Activity's site and providing CONTRACTOR THROUGH CITRIX with access to Ordering Activity's facilities as required to operate the SOFTWARE and permitting CONTRACTOR THROUGH CITRIX to perform the service called for by this ATTACHMENT A; and (vi) Ordering Activity is required to implement all currently available and applicable hotfixes, hotfix rollup packs, and service packs or their equivalent to the SOFTWARE in a timely manner. CONTRACTOR THROUGH CITRIX is not required to provide any SUPPORT relating to problems arising out of: (i) Ordering Activity's customization to the operating system or environment that adversely affects the SOFTWARE; (ii) any alterations of or additions to the SOFTWARE performed by parties other than CONTRACTOR THROUGH CITRIX; (iii) use of the SOFTWARE on a processor and peripherals other than the processor and peripherals for which such SOFTWARE was designed and licensed for use on; or (iv) SOFTWARE that has reached End-of-Life. In situations where CONTRACTOR THROUGH CITRIX cannot provide a satisfactory resolution to Ordering Activity's critical problem through normal SUPPORT methods, CONTRACTOR THROUGH CITRIX may engage its product development team to create a private fix. Private fixes are designed to address Ordering Activity's specific situation and may not be distributed by Ordering Activity outside Ordering Activity's organization without written consent from CONTRACTOR. CONTRACTOR retains all right, title, and interest in and to all private fixes. Any hotfixes or private fixes are not SOFTWARE under the terms of this ATTACHMENT A and they are not covered by the Limited Warranty applicable to SOFTWARE, to the extent permitted by applicable law. With respect to infrastructure assessments or other consulting services, all intellectual property rights in all reports, preexisting works and derivative works of such preexisting works, as well as installation scripts and other deliverables and developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the assessment are and shall remain the property of CONTRACTOR, subject to a worldwide, nonexclusive License to Ordering Activity for internal use.

DESCRIPTION OF OTHER RIGHTS, LIMITATIONS, AND OBLIGATIONS. Unless expressly permitted by applicable law, Ordering Activity may not transfer, rent, timeshare, or lease the SOFTWARE. Under the User or Device model, Ordering Activity may permanently reassign a License from one User to another or from one Device to another, and Ordering Activity may temporarily assign a License to a temporary worker while the User is absent or a License to a loaner device while the Device is out of service. If Ordering Activity purchased Licenses for the SOFTWARE to replace other CITRIX Licenses for other CITRIX SOFTWARE and such replacement is a condition of the transaction, Ordering Activity agrees to destroy those other CITRIX Licenses and retain no copies after installation of the new Licenses and SOFTWARE. Ordering Activity shall provide the serial numbers of such replaced Licenses and corresponding replacement Licenses to the reseller, and upon request, directly to CONTRACTOR for license tracking purposes. Except as specifically licensed herein, Ordering Activity may not modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, or copy (except for backup as permitted above) the SOFTWARE, except to the extent such foregoing restriction is expressly prohibited by applicable law. Ordering Activity may not remove any proprietary notices, labels, or marks on any SOFTWARE. Notwithstanding the foregoing, this ATTACHMENT A shall not prevent or restrict Ordering Activity from exercising additional or different rights to any free, open source code, documentation and materials contained in or provided with the SOFTWARE in accordance with the applicable free, open source license for such code, documentation, and materials.

ORDERING ACTIVITY MAY NOT USE, COPY, MODIFY, OR TRANSFER THE SOFTWARE OR ANY COPY IN WHOLE OR IN PART, OR GRANT ANY RIGHTS IN THE SOFTWARE OR ACCOMPANYING DOCUMENTATION, EXCEPT AS EXPRESSLY PROVIDED IN THIS ATTACHMENT A. ALL RIGHTS NOT EXPRESSLY GRANTED ARE RESERVED BY CONTRACTOR OR ITS SUPPLIERS.

LIMITED WARRANTY AND DISCLAIMER. CONTRACTOR warrants that for a period of ninety (90) days from the date of delivery of the SOFTWARE to Ordering Activity, the SOFTWARE will perform substantially in accordance with the CITRIX PRODUCT documentation published by CITRIX and included with the PRODUCT. CONTRACTOR and its suppliers' liability and Ordering Activity's remedy under this warranty (which is subject to Ordering Activity returning the SOFTWARE to CONTRACTOR or an authorized reseller) will be, at the option of CONTRACTOR and subject to applicable law, to replace the media and/or SOFTWARE or to refund the purchase price and terminate this ATTACHMENT A. CONTRACTOR will provide the SUPPORT requested by Ordering Activity in a professional and workmanlike manner, but CONTRACTOR cannot guarantee that every question or problem raised by Ordering Activity will be resolved or resolved in a certain amount of time. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTY FOR SOFTWARE, CONTRACTOR AND ITS SUPPLIERS MAKE AND ORDERING ACTIVITY RECEIVE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE; AND CONTRACTOR AND ITS SUPPLIERS SPECIFICALLY DISCLAIM WITH RESPECT TO SOFTWARE, UPDATES, SUBSCRIPTION ADVANTAGE, AND SUPPORT ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE,



QUIET ENJOYMENT, QUIET POSSESSION, MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR DISTRIBUTION WITH ANY EQUIPMENT THE FAILURE OF WHICH COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. ORDERING ACTIVITY ASSUMES THE RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE AND HARDWARE TO ACHIEVE ORDERING ACTIVITY'S INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE AND HARDWARE.

PROPRIETARY RIGHTS. No title to or ownership of the SOFTWARE is transferred to Ordering Activity. CONTRACTOR and/or its licensors own and retain all title and ownership of all intellectual property rights in and to the SOFTWARE, including any\ adaptations or copies. Ordering Activity acquires only a limited License to use the SOFTWARE.

U.S. GOVERNMENT END-USERS. If Ordering Activity is a U.S. Government agency, in accordance with Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)), Ordering Activity hereby acknowledge that the SOFTWARE constitutes "Commercial Computer Software" and that the use, duplication, and disclosure of the SOFTWARE by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this ATTACHMENT A. In the event that, for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, Ordering Activity hereby acknowledge that the Government's right to use, duplicate, or disclose the SOFTWARE are "Restricted Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable. Manufacturer is Citrix Systems, Inc., 851 West Cypress Creek Road, Fort Lauderdale, Florida, 33309.

### **EXHIBIT A – ORDERING ACTIVITY RETURN POLICY**

Limited Warranty. Contractor warrants to Ordering Activity for each Product that the Hardware delivered as part of an Appliance shall be free from defects in material and workmanship in normal use for a period of one (1) year from the date of purchase. Ordering Activity's remedy and the liability of Contractor, its licensors, and suppliers under this warranty. This warranty extends only to the original Ordering Activity and may not be assigned. Ordering Activity's remedy and the liability of Contractor, its licensors and suppliers under this limited warranty (which is subject to Ordering Activity returning the Hardware to Contractor or an authorized reseller) will be, at the discretion of Contractor, to replace the Hardware or refund the purchase price. This warranty does not cover any loss or damage which occurs in shipment or which is due to any of the following: (1) improper installation, maintenance, adjustment, repair or modification by Ordering Activity or a third party; (2) misuse, neglect, or any other cause other than ordinary use, including without limitation, accidents or acts of God; (3) improper environment, excessive or inadequate heating or air conditioning, electrical power failures, surges, or other irregularities; or (4) third party software or software drivers. Ordering Activity's maintenance agreement as detailed in Exhibit B hereunder with Contractor will supersede this Ordering Activity Return Policy.

Warranty Returns. Ordering Activity may return to Contractor through Citrix any defective Product subject to the limited warranty above. Prior to such return, Ordering Activity shall verify that the Product is defective and shall obtain from Citrix a Return Material Authorization ("RMA") number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix's RMA procedures including providing the part number, serial number and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall use commercially reasonable efforts to send to Ordering Activity an RMA form and RMA number within five (5) business days of Ordering Activity's request. Within five (5) business days after receiving an RMA number for the Product, Ordering Activity shall package the Product in its original packing material or equivalent, write the RMA number on the outside of the package and return the Product, at Contractor's cost, shipped properly insured, freight prepaid, DDP (Incoterms 2000) Citrix's designated facility. Ordering Activity shall enclose with the returned Product the applicable RMA form, and any other documentation or information requested by Citrix. Ordering Activity shall assume any and all risk of loss of or damage to the Product during shipping. Citrix shall elect to repair or replace the Product using new or reconditioned parts (of better or equivalent quality) at Citrix's discretion, and shall pay the shipping costs to return the Product to the location from which it was returned by Ordering Activity. Any Product that has been returned, but that Citrix determines not to be defective, or that is not otherwise covered under the limited warranty above, shall be returned to Ordering Activity at Ordering Activity's expense and risk. Title to any Product returned under warranty shall at all times remain with Ordering Activity unless and until Citrix either replaces the Product or pays Ordering Activity the Price of the Product in lieu of repair or replacement, at which time title shall pass to Citrix. The warranty period of any repaired or replaced Product shall be the longer of (a) ninety (90) calendar days from Citrix's return shipment of the Product or (b) the original warranty period for the Product. Citrix shall not be responsible for any software, firmware, information, memory, data or the like of Ordering Activity or other's contained in, stored on or integrated with any Product returned to Citrix for repair, whether or not under warranty.

### **EXHIBIT B – CITRIX APPLIANCE MAINTENANCE & TECHNICAL SUPPORT**

#### **SERVICES PROVIDED BY CITRIX.**

Contractor through Citrix offers a range of maintenance programs for its Products (including standard Products and optional Products) as described below and as summarized in the below Citrix Appliance Maintenance Program Overview (the "Program Overview"). Ordering Activity shall be entitled to receive the following services to the extent Ordering Activity has ordered and paid in full the Annual GSA Fee for the applicable service. Ordering Activity must purchase maintenance services for its optional Products where Ordering Activity has maintenance services in place for the corresponding standard Product. Ordering Activity may purchase maintenance services for its optional Products only where it has maintenance services in place for the corresponding standard Product. Ordering Activity may also purchase optional installation and/or consulting services as offered by Contractor through Citrix.

#### **Extended hardware Warranty ~~D~~ includes the following:**

Except as otherwise provided in this Attachment A, Contractor warrants to Ordering Activity that the Hardware (as defined below) shall be free from material defects in materials and workmanship during the term of this Attachment A. Contractor's liability and Ordering Activity's remedy under this warranty shall be limited to repair or replacement of, or refund of the price paid for, the non-conforming Product at Contractor's option.

For purposes of this Attachment A, "Hardware" shall mean that portion of the Product that is not the Software. For purposes of this Attachment A, "Software" shall mean the Product software, in machine-readable form, and accompanying user documentation licensed to Ordering Activity by Contractor pursuant to an applicable purchase order between Ordering Activity and Contractor for such license.

**Software Subscription Service D includes the following:**

**Software Updates.**

Ordering Activity's subscription for Software ("Subscription Advantage") shall be effective during the term of this Attachment A, subject to Ordering Activity's purchase of annual renewals (the "Subscription Term"). During the Subscription Term, Contractor may, from time to time, generally make Updates available for licensing to the public. For the purposes of this Attachment A, an Update shall mean a generally available release of the same Software. Upon general availability of Updates during the Subscription Term, Ordering Activity may obtain Updates by downloading the Update from Contractor through Citrix's server via the Internet. Any such Updates so delivered to Ordering Activity shall be considered Software under the terms of this Attachment A, except they are not covered by the Limited Warranty applicable to Software, to the extent permitted by applicable law. Subscription Advantage may be purchased for the Software until it is no longer offered in accordance with the Citrix Product Support Lifecycle Policy posted at [www.citrix.com](http://www.citrix.com). This website reference is for informational purposes only.

Ordering Activity acknowledges that Contractor through Citrix may develop and market new or different computer programs or editions of the Software that use portions of the Software and that perform all or part of the functions performed by the Software. Nothing contained in this Attachment A shall give Ordering Activity any rights with respect to such new or different computer programs or editions. Ordering Activity also acknowledge that Contractor is not obligated under this Attachment A to make any Updates available to the public. Any deliveries of Updates shall be Ex Works Citrix (Incoterms 2000).

**Bronze/Silver/Gold Maintenance**

**Bronze Maintenance** includes all of the services set forth above under Extended Warranty Program and Software Subscription Service, plus each of the following:

*Telephone Support.* During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line during designated business hours. Citrix Appliance Support Coverage hours are indicated in the Program Overview. Citrix support technicians shall only be obligated to respond to Ordering Activity's designated contacts.

*Support Service Level.* Contractor through Citrix shall respond within twenty four (24) hours of receiving an inquiry from Ordering Activity if received during a business day (or if received on a day other than a business day, within twenty four (24) hours of the opening of business on the succeeding business day) regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

*Returns.* During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above. Prior to such return, Ordering Activity shall verify that said Product is defective and shall obtain from Citrix a Return Material Authorization ("RMA ") number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix's RMA procedures including providing the part number, serial number, quantity and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than ten (10) business days after Citrix's issuance of an RMA number (or longer in countries where regulation requires export approval documentation in advance of RMA shipment). The replacement Product may be a new or reconditioned Product (of better or equivalent quality) at Citrix's discretion. Citrix shall pay the shipping costs to ship the replacement Product to Ordering Activity. Within five (5) business days after Citrix issues an RMA number for the defective Product, Ordering Activity shall package said Product in its original packing material or equivalent, write the RMA number on the outside of the package and return said Product, at Ordering Activity's cost, shipped properly insured, freight prepaid, DDP (Incoterms 2000) Citrix's designated facility. Ordering Activity shall enclose with the returned Product the applicable RMA form, and any other documentation or information requested by Citrix. Ordering Activity shall assume any and all risk of loss of or damage to such Product during shipping. Title to the defective Product shall pass to Citrix upon Citrix's receipt thereof. When a replacement Product is provided and Ordering Activity fails to return the defective Product to Citrix within ten (10) business days after Citrix issues an RMA number for the defective Product, Contractor may charge Ordering Activity, and Ordering Activity shall pay for the replacement Product at the then current GSA price. The warranty period of any replacement Product shall be the longer of (a) ninety (90) calendar days from Citrix's shipment of said Product or (b) the remainder of the applicable warranty period for said Product pursuant to the Extended Warranty Program.

**Silver Maintenance** includes all of the services set forth above under Extended Warranty Program and Software Subscription Service plus each of the following:

*Telephone Support.* During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line during designated business hours. Citrix Appliance Support Coverage hours are indicated in the Program Overview. Citrix support technicians shall only be obligated to respond to Ordering Activity's designated contacts.

*Support Service Level.* Contractor through Citrix shall respond within twelve (12) hours of receiving an inquiry from Ordering Activity if received during a business day (or if received on a day other than a business day, within twelve (12) hours of the opening of business on the succeeding business day) regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

*Returns.* During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above pursuant to the Advance Return provisions set forth below.

**Gold Maintenance** includes all of services set forth above under Extended Warranty Program and Software Subscription Service plus each of the following:



**Telephone Support.** During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line twenty-four (24) hours per day, three hundred sixty-five (365) days per year. Citrix's support technician shall only be obligated to respond to Ordering Activity's designated contacts.

**Support Service Level.** Contractor through Citrix shall respond within two (2) hours of receiving an inquiry from Ordering Activity regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

**Returns.** During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above pursuant to the Advance Return provisions set forth below.

**Advance Return**

Prior to any return as to which Advance Return applies, Ordering Activity shall first verify that said Product is defective and shall obtain from Contractor through Citrix a Return Material Authorization ("RMA") number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix's RMA procedures including providing the part number, serial number, quantity and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than one (1) business day after Citrix's issuance of an RMA number, except in countries where regulation requires export approval documentation in advance of RMA shipment (current list shown in the table below). The replacement Product may be a new or reconditioned Product (of better or equivalent quality) at Citrix's discretion. Citrix shall pay the shipping costs to ship the replacement Product to Ordering Activity. Within five (5) business days after Citrix issues an RMA number for the defective Product, Ordering Activity shall package said Product in its original packing material or equivalent, write the RMA number on the outside of the package and return said Product, at Citrix's shipping expense to Citrix's designated facility. Title to the defective Product shall pass to Citrix upon Citrix's receipt thereof. When a replacement Product is provided and Ordering Activity fails to return the defective Product to Citrix within ten (10) business days after Citrix issues an RMA number for the defective Product, Contractor may charge Ordering Activity. The warranty period of any replacement Product shall be the longer of (a) ninety (90) calendar days from Citrix's shipment of said Product or (b) the remainder of the applicable warranty period for said Product pursuant to the Extended Warranty Program.

\*Current list of countries requiring export approval documentation before shipment of replacement Product:

Country	RMA Documents	Time Estimate
Egypt	CVO/EX A/Embassy	10 business days
Jordan	CVO/EX A/Embassy/Min. foreign	10 business days
Kuwait	EX A/Embassy/CVO	10 business days
Qatar	EX A/Embassy/CVO/Min. foreign	10 business days
Norway	EU A	1 business day
Switzerland	EU A	1 business day
Dubai/United Arab Emirates	CVO/EX A	2 business days
Israel	CVA/EX A	2 business days
Russian Federation	EX A	2 business days
Saudi Arabia	EX A/CVO	2 business days
South Africa	EX A	2 business days
Turkey	EX A/ATR	2 business days

**4-hour Advance Return**

Where available, and upon payment of the applicable GSA fees, Ordering Activities receiving Gold Maintenance may select an optional expedited Advance Return service. The features of the 4-hour Advance Return are the same as the standard Advance Return above, except that Contractor through Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than four (4) hours after Citrix's issuance of an RMA number.

**Onsite Support**

This Attachment A does not include onsite support. In critical situations, Ordering Activity may request onsite support as a separate and distinct billable service, subject to a separate purchase order between Contractor and Ordering Activity. Onsite support is subject to Contractor through Citrix resource availability, and the tasks performed will vary based on the situation, environment, and business impact of the problem.

**Product Development Support**

In situations where Contractor through Citrix cannot provide a satisfactory resolution to Ordering Activity's critical problem through normal support methods, Citrix may engage its product development team to create a Ordering Activity-specific solution (a "Private Fix") to the Products. Privates Fixes are designed to address a specific Ordering Activity situation and may not be distributed by Ordering Activity outside the Ordering Activity organization without written consent from Citrix. Private Fixes and hotfixes are provided 'as-is', without warranty of any kind applicable to Software pursuant to this Attachment A to the extent permitted by applicable law. Citrix retains all right, title and interest in and to all Private Fixes.

**Technical Relations Management**

Ordering Activity may select an optional Technical Relations Manager (TRM) to enhance the technical support relationship between Ordering Activity and Contractor through Citrix. The TRM provides high-level technical expertise and proactive services, and also serves as the point of information delivery and feedback to Citrix product groups, research and development teams, and other Citrix groups. These services include:

**Orientation Session.** At the start of this service, an initial orientation session will be scheduled for the TRM to introduce the Ordering Activity to Citrix Technical Support contact information and processes.

**Escalation Management.** In cases where issues need engineering assistance, the TRM will act as the Ordering Activity's advocate and function as point-of-contact to assist in rapid resolution of the incident.

**Implementation and Informational Reviews.** The TRM will be a resource for the Ordering Activity to assist with product information and recommendations for integration of Citrix products in the Ordering Activity environments.

**Incident Tracking and Status Reporting Sessions.** TRM will provide the Ordering Activity on a regular basis, reports summarizing Ordering Activity account information such as incidents opened and status updates.

TRM services can only be used in a single geographical region. Ordering Activities wishing to use TRM services in more than one region must purchase 200 hour blocks in each region. All TRM purchased hours are valid for 12 months from date of purchase; unused TRM hours do not roll over into a subsequent purchase order term. Citrix regions are as follows: (a) Americas – North America, Latin America, and the Caribbean; (b) EMEA – Europe, Middle East and Africa; (c) Asia Pac –Asia, New Zealand and Australia and (d) Japan. Ordering Activities should contact Contractor through Citrix Technical Support to determine TRM service availability in their region.

**ORDERING ACTIVITY RESPONSIBILITIES.**

**Ordering Activity Assistance.** Contractor through Citrix's performance is predicated upon the following responsibilities being fulfilled by Ordering Activity: (i) Ordering Activity agrees to provide Citrix reasonable access to all necessary personnel to answer questions or resolve problems reported by Ordering Activity regarding the Products; (ii) Ordering Activity agrees to perform reasonable problem determination activities and to perform reasonable problem resolution activities as suggested by Citrix. Ordering Activity agrees to cooperate with such requests; (iii) Ordering Activity is responsible for implementing procedures necessary to safeguard the integrity and security of Software and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures; (iv) Ordering Activity is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at Ordering Activity's site; (v) Ordering Activity is required to implement all currently available and applicable Updates and error corrections provided by Citrix under this Attachment A in a timely manner, including hotfixes, hotfix rollup packs, and service packs or their equivalent; and (vi) Ordering Activity shall allow Citrix access as needed to the Products via the Internet for the purpose of providing support services and shall permit Citrix to perform the support services called for by this Attachment A. Ordering Activity shall maintain Citrix supported versions of required third party software, if any.

**Named Contacts.** Ordering Activity shall appoint at least two (2) named contacts within Ordering Activity's organization to serve as contacts between Ordering Activity and Contractor through Citrix and to receive support through Citrix's telephone support center. Ordering Activity's contacts shall have been adequately trained on the Software and shall have sufficient technical expertise, training and experience.

**EXCLUSIONS.**

Notwithstanding anything in this Attachment A to the contrary, Contractor through Citrix shall have no obligation or responsibility to provide any support services relating to problems arising out of or related to (i) Ordering Activity's failure to implement all updates to the Software which are made available to Ordering Activity under this Attachment A; (ii) the failure to provide a suitable installation environment; (iii) Ordering Activity's customization to the operating system or environment that adversely affects the Software; (iv) any alteration, modification, enhancement or addition to the Products performed by parties other than Citrix; (v) use of the Products in a manner, or for a purpose, for which it was not designed; (vi) accident, abuse, neglect, unauthorized repair, inadequate maintenance or misuse of the Products; (vii) operation of the Products outside of environmental specifications; (viii) interconnection of the Software with other software products not supplied by Citrix; (ix) use of the Software on any systems other than the specified hardware platform for such Software; or (x) introduction of data into any database used by the Software by any means other than the use of the Software. Notwithstanding anything else contained in this Attachment A to the contrary, Citrix shall only be obligated to provide support for eligible Products as indicated in the Citrix Appliance End of Life Policy available [www.citrix.com](http://www.citrix.com). This website reference is for informational purposes only.

**OWNERSHIP AND USE; WARRANTY DISCLAIMER.**

**Ownership and Use.** All Updates and other changes, improvements, bug fixes or other modifications to the Software provided under this Attachment A shall be deemed to be included within the Software and shall be subject to the terms and conditions of this Attachment A except that they are not covered by the warranty. With respect to installation and consulting services relating to the Product purchased from Contractor, all intellectual property rights in all reports, preexisting works and derivative works of such preexisting works, as well as installation scripts and all other deliverables and developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the consulting services are and shall remain the property of Contractor, subject to a worldwide, nonexclusive license to Contractor for internal use.

**Warranty and Warranty Disclaimer.** Contractor shall use all reasonable commercial efforts to provide the support, installation and consulting services requested by Ordering Activity under this Attachment A in a professional and workmanlike manner, but Contractor cannot guarantee that every question or problem raised by Ordering Activity shall be resolved. OTHER THAN THE EXPRESS LIMITED WARRANTIES MADE BY CONTRACTOR, CONTRACTOR MAKES, AND ORDERING ACTIVITY RECEIVES, NO WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS ATTACHMENT A OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND CONTRACTOR HEREBY SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED, STATUTORY AND OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS INCLUDING WITHOUT LIMITATION THOSE ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE

AND THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND SATISFACTORY QUALITY.

### **HOW TO CONTACT CITRIX TECHNICAL SUPPORT**

If Ordering Activity purchased maintenance for Citrix products, Ordering Activity can contact Citrix Technical Support either by phone or via the Internet. In order to contact Citrix Technical Support each individual named contact must have a valid support agreement number in place. If Ordering Activity purchased maintenance and Ordering Activity have been designated a named contact, Ordering Activity should have received Ordering Activity's individual agreement number via email. However, if Ordering Activity has not received Ordering Activity's agreement number, please send an email to Contractor through Citrix (addresses provided below) with your name, company name, phone number and serial number of the unit.

#### **Phone**

From North America, Latin America, and the Caribbean, please dial: 1-800-424-8749 or (954) 267-2599

From EMEA (Europe, Middle East, Africa), please dial: 00353-1-805-5000

From APAC (Australia, New Zealand and Asia), please dial: +61-2 8870 0899

From Japan, please contact your distributor directly.

Ordering Activity may also find Ordering Activity's country specific toll free phone number by going to the following website address:  
[www.citrix.com/English/ss/supportContacts.asp](http://www.citrix.com/English/ss/supportContacts.asp)

#### **Internet**

Log on to [www.mycitrix.com](http://www.mycitrix.com)

Navigate to the Toolbox and select "My Support". This will direct Ordering Activity to the eService Self Service Homepage. This view provides links with associated descriptions in a user friendly web-based format. These links will include Service Requests, Agreements and Returns / Exchange Orders. Ordering Activity can find more details as you navigate through each link.

#### **Email**

From North America, Latin America and the Caribbean, please use [techsupport\\_na@citrix.com](mailto:techsupport_na@citrix.com)

From EMEA (Europe, Middle East, & Africa), please use [techsupport\\_emea@citrix.com](mailto:techsupport_emea@citrix.com)

From APAC (Australia, New Zealand and Asia), please use [techsupport\\_apac@citrix.com](mailto:techsupport_apac@citrix.com)

From Japan, please contact your distributor directly.

### **CITRIX APPLIANCE MAINTENANCE PROGRAM OVERVIEW**

As an Ordering Activity, Ordering Activity is entitled the following services as described in this document to the extent Ordering Activity has ordered and paid in full the Annual Fee for the applicable service.

Ordering Activity puts confidence in Contractor through Citrix when Ordering Activity installed products in Ordering Activity's network infrastructure. Citrix wants that confidence to last, and is committed to making sure Ordering Activity's Citrix Appliance is successfully implemented and continues to work to provide a robust solution for Ordering Activity's applications. The Citrix Appliance Maintenance Program has been designed to help sustain, grow and enhance our products within Ordering Activity's infrastructure, so Ordering Activity can be assured of their performance every step of the way.

The levels of maintenance that are available for the Citrix products are:

#### **Bronze (not currently available for Citrix Access Gateway)**

Unlimited incidents during each one-year term

Standard business hours (see technical support coverage hours below)

One year of software updates and bug fixes

2 named contacts

Standard replacement for materials (ships within 10 business days after issuing the RMA number\*)

#### **Silver**

Unlimited incidents during each one-year term

Standard business hours (see technical support coverage hours below)

One year of software updates and bug fixes

Assigned Support Account Manager for non-technical Relations Management Services

4 named contacts

Advanced replacement for materials (ships within 1 business day after issuing the RMA number\*)

#### **Gold**

Unlimited incidents during each one-year term

24 x 7 coverage hours

One year of software updates and bug fixes

Assigned Support Account Manager for non-technical Relations Management Services

6 named contacts

Advanced replacement for materials (ships within 1 business day after issuing the RMA number\*)

\* Please note that in countries where regulation requires export approval documentation in advance of RMA shipment, the time for shipment may be longer.

**Citrix Appliance Technical Support Coverage Hours**

	<b>Bronze</b>	<b>Silver</b>	<b>Gold</b>
North America, Latin America, and the Caribbean	8 a.m. to 9 p.m. U.S. Eastern time, Monday -Friday	8 a.m. to 9 p.m. U.S. Eastern time, Monday -Friday	24 x 7
Asia (excluding Japan*)	8 a.m. to 6 p.m. Hong Kong time, Monday - Friday	8 a.m. to 6 p.m. Hong Kong time, Monday - Friday	24 x 7
Australia & New Zealand	8 a.m. to 6 p.m. AEST, Monday - Friday	8 a.m. to 6 p.m. AEST, Monday -Friday	24 x 7
Europe, Middle East, & Africa	8 a.m. to 6 p.m. GMT, Monday - Friday	8 a.m. to 6 p.m. GMT, Monday - Friday	24 x 7

\*Ordering Activities in Japan should contact their local distributor for technical support coverage.

Contractor through Citrix's tiered Citrix Appliance Maintenance Program allows Ordering Activity to select the level of service that is best for Ordering Activity. Citrix's goal is to continue to earn Ordering Activity's confidence and to exceed Ordering Activity's expectations. If Ordering Activity has not already chosen a Citrix Appliance Maintenance Program, please review the levels above.

**CODE42 SOFTWARE, INC.**  
**100 WASHINGTON AVENUE SOUTH**  
**SUITE 2000**  
**MINNEAPOLIS, MN 55401**

**ATTACHMENT A**  
**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**CODE42 SOFTWARE, INC.**  
**CODE42 SOFTWARE, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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By both parties executing this agreement in writing you agree to this Master Services Agreement (“**Agreement**”). If you do not agree to this Agreement, you must not use any of the Offerings. “**You**” or “**Ordering Activity**” means the undersigned Ordering Activity under GSA Schedule contracts. “**Code42**” means Code42 Software, Inc. This Agreement governs your use of all of the Offerings in your Order and is effective as of the date you first use any of the Offerings. This Agreement expires at the end of the last Subscription Term for the Order under which you accepted this Agreement.

## 1. DEFINITIONS

- 1.1 “**Affiliate**” means, for a party at a given time, an entity that is directly controlled by, under common control with, or controls that party, where “control” means an ownership, voting or similar interest representing more than 50% of the total interests then outstanding of that entity.
- 1.2 “**Authorized Users**” means (A) you, (B) your Affiliates, and (C) your and your Affiliate’s employees, contractors and service providers.
- 1.3 “**Cloud Services**” means the cloud-based service offerings that Code42 provides to you.
- 1.4 “**Customer Data**” means any data that you provide to Code42 through the Software or Cloud Services.
- 1.5 “**Documentation**” means the information about using the Software or Cloud Services that Code42 makes available at <https://support.code42.com/Administrator> and <https://support.code42.com/CrashPlan>.
- 1.6 “**Intellectual Property Rights**” means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications and moral rights, whether registered or unregistered.
- 1.7 “**Offerings**” means all products and services that Code42 provides to you under this Agreement.
- 1.8 “**Offering Description**” means the terms applicable to an Offering available at [https://support.code42.com/Terms\\_and\\_conditions/Code42\\_customer\\_support\\_resources/Code42\\_enterprise\\_support\\_policy](https://support.code42.com/Terms_and_conditions/Code42_customer_support_resources/Code42_enterprise_support_policy), [https://support.code42.com/Terms\\_and\\_conditions/Code42\\_customer\\_support\\_resources/Code42\\_University\\_policies\\_or](https://support.code42.com/Terms_and_conditions/Code42_customer_support_resources/Code42_University_policies_or) <https://www.code42.com/professional-services/>.
- 1.9 “**Order**” means an ordering document, signed Quote or online submission that you issue to Code42, or a Code42 authorized reseller, in response to a Quote.
- 1.10 “**Service Level Agreement**” means the service level agreement available at [https://support.code42.com/Terms\\_and\\_conditions/Legal\\_terms\\_and\\_conditions/Cloud\\_storage\\_service\\_level\\_agreement](https://support.code42.com/Terms_and_conditions/Legal_terms_and_conditions/Cloud_storage_service_level_agreement).
- 1.11 “**Software**” means the commercial software (including updates and upgrades provided through support) in object code format that Code42 provides to you.
- 1.12 “**Subscription Term**” means the term during which you may use the Offerings.
- 1.13 “**Technical Services**” means the standard service offerings described at <https://www.code42.com/professional-services/>.
- 1.14 “**Quote**” means Code42’s written or website description of the Offerings and applicable terms.

## 2. CUSTOMER USE OF THE OFFERINGS.

**2.1 Authorized Users.** You may allow your Authorized Users to use the Cloud Services and Software as “you” under this Agreement. You are responsible for your Authorized Users’ compliance with this Agreement.

**2.2 Software and Cloud Services.** Code42 grants you a nonexclusive, non-sublicensable, non-transferable (except as set forth in section 12.1 (General: Assignment)), worldwide license to use the Software, Cloud Services and Documentation during the Subscription Term solely for your internal business purposes. You must only use the Software and Cloud Services for up to the number of users or devices listed on your Quote and in accordance with the Documentation. You may copy the Software and Documentation as necessary to install and run the Software, and for backup and archiving. Code42 will provide the Cloud Services in accordance with the applicable Documentation and Service Level Agreement. You will reasonably cooperate with Code42 to resolve any issues relating to your use of the Software and Cloud Services. To use the Cloud Services, you must create login credentials (e.g. a username and password). You are responsible for all activity occurring under your login credentials and will notify Code42 as soon as possible if you believe there has been any unauthorized use of your login credentials.

**2.3 Other Offerings.** If you purchase other Offerings, including support, appliance maintenance, hardware and education services, Code42 will provide those Offerings in accordance with the Offering Description.

**2.4 Restrictions.** You will not (A) permit anyone other than your Authorized Users to use the Offerings; (B) use the Offerings for the benefit of any third party other than your Authorized Users; (C) use the Offerings except as permitted under this Agreement; (D) decompile, reverse engineer, modify or create a derivative work of the Offerings (to the extent this restriction is not prohibited by law); (E) attempt to test the vulnerability of, gain unauthorized access to, or circumvent limitations on the use of, the Offerings or their related systems or networks; (F) interfere with the performance of the Offerings; or (G) remove any copyright or other proprietary notices in the Offerings.

**2.5 Evaluation Use.** Code42 may make an Offering or a new feature or functionality available to you on an evaluation or beta basis (“**Evaluation Offering**”). Each Evaluation Offering is provided “AS IS” without indemnification, Service Level Agreement, support or warranty of any kind. You must only use an Evaluation Offering in a non-production environment for evaluation purposes during the evaluation period set by Code42.

## 3. INTELLECTUAL PROPERTY



**3.1 Customer Ownership.** As between you and Code42, you retain all right, title and interest in and to the Customer Data and all related Intellectual Property Rights. You grant Code42 a royalty-free, non-exclusive, non-transferable (except as set forth in section 12.1 (General: Assignment)), sub-licensable, worldwide right to use Customer Data solely to provide the Offerings to you under this Agreement. Code42's rights to use the Customer Data are only those expressly granted in this Agreement.

**3.2 Code42 Ownership.** As between you and Code42, Code42 retains all right, title and interest in and to the Offerings and all related Intellectual Property Rights. Your rights to use the Offerings are only those expressly granted in this Agreement. All Software is licensed and not sold, even if Code42 uses words like "sale" or "purchase" in sales materials.

**3.3 Feedback.** If you provide any suggestions to Code42 regarding the Offerings, you grant Code42 a royalty-free, non-exclusive, transferable, sub-licensable, worldwide, perpetual, irrevocable license to use the suggestions and incorporate them into the Offerings. Code42 acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

**3.4 Open Source Software.** "Open Source Software" means the software components that Code42 provides in the Software under separate license terms that are found either in the open\_source\_licenses.txt file (or similar file) provided within the Software or at [http://support.code42.com/Terms\\_And\\_Conditions/Open\\_Source\\_Licenses](http://support.code42.com/Terms_And_Conditions/Open_Source_Licenses). Open Source Software is licensed to you under its own applicable license terms. These license terms are consistent with the license granted in section 2.2 (Customer Use of the Offerings: Software and Cloud Services) and take precedence over this Agreement to the extent that this Agreement imposes greater restrictions on you. If required, Code42 makes the Open Source Software source code and modifications (the "Source Files") available to you on the Code42 website or on written request. You will send requests with your name and address to Code42 at the address in section 12.6 (General: Notice) specifying: Attention: General Counsel - Open Source Files Request. This offer to obtain a copy of the Source Files is valid for three years from the date you acquired the Software containing the Open Source Software.

#### 4. SECURITY AND DATA PROCESSING

**4.1 Code42 Obligations.** Code42 will provide the Software and Cloud Services in accordance with the Information Security Addendum at [https://support.code42.com/Terms\\_and\\_conditions/Legal\\_terms\\_and\\_conditions/Information\\_security\\_addendum](https://support.code42.com/Terms_and_conditions/Legal_terms_and_conditions/Information_security_addendum). Code42 will process your Customer Data in accordance with the Data Processing Addendum at

[https://support.code42.com/Terms\\_and\\_conditions/Legal\\_terms\\_and\\_conditions/Data\\_processing\\_addendum](https://support.code42.com/Terms_and_conditions/Legal_terms_and_conditions/Data_processing_addendum). Following the expiration of your Subscription Term, Code42 will delete any Customer Data in accordance with the applicable Documentation. If you request, Code42 will provide written certification that Code42 deleted your Customer Data.

**4.2 Customer Obligations.** You are responsible for providing notices, obtaining consents, and satisfying any other requirements for Code42 to use the Customer Data to perform its obligations under this Agreement. You will not provide Code42 with any data that is regulated by the United States Health Insurance Portability and Accountability Act unless you have entered into a business associate agreement with Code42.

#### 4.3 Code42 Data.

**(A)** Code42 collects de-identified information and aggregated information about the use and performance of the Software and Cloud Services ("Service Data"). Service Data may include information about the frequency of feature usage, technical performance metrics, product configuration, and file usage patterns. Service Data never includes Customer Data. Code42 owns the Service Data and uses it to improve the Offerings and create new products.

**(B)** Code42 also collects account-related data during your purchase and use of the offerings ("Administrative Data"). Administrative Data never includes Customer Data. Code42 owns the Administrative Data and uses it to provide the Offerings, bill you for the Offerings, advise you of new Code42 products and service, and comply with Code42's contractual obligations and applicable law. Code42 is an independent controller of the Administrative Data and will process the Administrative Data under the Code42 privacy policy available at: <https://www.code42.com/privacy-policy>.

#### 5. ORDERING AND PAYMENT

**5.1 Orders.** You may purchase Offerings directly from Code42 or through a Code42 authorized reseller. If you purchase through a Code42 authorized reseller, sections 5.2 (Ordering and Payment: Affiliate Orders), 5.3 (Ordering and Payment: Payment), 5.5 (Ordering and Payment: Disputed Payments), 5.6 (Ordering and Payment: Taxes) and 5.7 (Ordering and Payment: Delivery) will not apply to that purchase. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement. The Subscription Term is a continuous and non-divisible commitment for the full duration of the Subscription Term. Except as required by applicable law and regulations, all Orders are non-refundable and non-cancelable except as expressly provided in this Agreement.

**5.2 Affiliate Orders.** Your Affiliates whom you identify in an email sent to Code42 at PO@code42.com may submit Orders as "you" to Code42 under this Agreement. You will place Orders with Code42 or its Affiliate as indicated on the Quote. If you place an Order with a Code42 Affiliate, then that Affiliate will act as "Code42" for sections 5.3 (Ordering and Payment: Payment), 5.5 (Ordering and Payment: Disputed Payments), 5.6 (Ordering and Payment: Taxes) and 5.7 (Ordering and Payment: Delivery). Each party is responsible for its Affiliate's compliance with this Agreement.

**5.3 Payment.** Code42 will invoice you for the fees stated on your Quote in accordance with the GSA Schedule Pricelist after accepting your Order. You will pay all applicable and valid fees in the amount and currency specified on your invoice within 30 days of the invoice receipt date. You will pay any delinquent amounts within 30 days of Code42's written notice identifying a delinquency.

**5.4 Money Back Guarantee.** This section does not apply to any CrashPlan for Small Business offering. If you are not completely satisfied with your initial purchase of any Software or Cloud Service offering, you may terminate that subscription for convenience by providing written notice to Code42 during the first 60 days of the Subscription Term. Code42 will promptly refund you the amount that Code42 received for the unused portion of the Subscription Term for the terminated Software or Cloud Services offering. This termination right only applies to your initial purchase of a specific Software or Cloud Service offering (and not to any renewal, staggered deployment or expansion order) and only if you purchased Code42's deployment services available for the offering.

#### 5.5 Reserved.

**5.6 Taxes.** Code42 shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the Offerings) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**5.7 Delivery.** When Code42 accepts your Order, Code42 will make cloud services available to you and deliver license keys to you by email to the address associated with your account. Code42 will provide any physical goods to the carrier listed on the Quote for shipment to you. Shipping and delivery terms for physical goods are Ex Works Code42's regional fulfillment facility (INCOTERMS 2010). You are the importer of record if Code42 ships physical goods to you in a country in which Code42 does not have a physical presence.



**6. MODIFICATIONS.** This Agreement incorporates by reference all of the documents that this Agreement identifies as applicable to your ordered Offerings ("**Ancillary Documents**"). Ancillary Documents may include the Documentation, Service Level Agreement, Information Security Addendum, Data Processing Addendum and Offering Descriptions. Because the Offerings are continually evolving, Code42 may update any of the Ancillary Documents from time to time so long as the update is not material (as defined in 48 CFR § 552.212-4(w)(1)(vi)), and the Ancillary Document applicable at any time is the then-current version. Code42 will notify you in writing if any update to an Ancillary Document is material, and in that case you and Code42 may amend the Agreement to incorporate the change or you may elect in writing to terminate the affected Offering. If you terminate the Offering, Code42 will refund the portion of the fees applicable to the unused portion of the Subscription Term for the terminated Offering.

## **7. WARRANTIES**

**7.1 Software and Cloud Services Warranty.** Code42 warrants that the Software and Cloud Services will substantially conform to the applicable Documentation for a period of 120 days following notice of availability for electronic download or access ("**Warranty Period**"). This warranty only applies if the Software and Cloud Services were properly installed and used in unmodified form in accordance with the Documentation. For any reproducible error identified in writing during the Warranty Period, Code42 will either replace that Software or Cloud Service or correct the error. If Code42 determines that it cannot correct the error or replace the Software or Cloud Service, Code42 will refund to you the amount that Code42 received for the unused portion of the Subscription Term after the date you notified Code42 of the breach for that Software or Cloud Services offering, in which case your rights to use that Software or Cloud Service will terminate. Code42 will do this at its own expense and as its sole obligation and your sole remedy for breach of this Software and Cloud Services warranty.

**7.2 Technical Services Warranty.** Code42 warrants that it will perform Technical Services in a workmanlike manner in accordance with the standards of the industry. If you provide written notice to Code42 within 10 business days after any alleged breach of this warranty, Code42 will correct that breach or terminate that Technical Service and refund to you the amount that Code42 received for that Technical Service. Code42 will do this at its own expense and as its sole obligation and your sole remedy for breach of this Technical Services warranty.

**7.3 Disclaimer.** The express warranties set forth in section 7 (Warranties) are in lieu of all other warranties. To the extent permitted by law, Code42 disclaims all other warranties, whether express, implied or statutory (including any implied warranties of merchantability, fitness for a particular purpose, title or noninfringement), and any warranties arising from usage of trade, course of dealing or course of performance. Code42 does not warrant that the Offerings will meet your requirements or that they will be accurate or operate without interruption or error.

## **8. INDEMNIFICATION**

### **8.1 Code42 Indemnification.**

**(A)** Subject to the remainder of section 8.1 (Indemnification: Code42 Indemnification), Code42 will defend you against any unaffiliated third party claim that the Software or Cloud Services infringe any patent, trademark or copyright, or misappropriate a trade secret, of that third party under the laws of (1) the United States, (2) Canada, (3) the United Kingdom, (4) Australia, and (5) any European Economic Area member state ("**Infringement Claim**"). Code42 will indemnify you from the resulting costs and damages finally awarded against you to that third party by a court of competent jurisdiction or agreed to in settlement. Code42's obligations only apply if you: (a) promptly notify Code42 of the Infringement Claim in writing, (b) allow Code42 sole control over the defense for the claim and any settlement negotiations, and (c) reasonably cooperate in response to Code42's requests for assistance. You may not settle or compromise any Infringement Claim without Code42's prior written consent. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

**(B)** If Software or Cloud Service become, or in Code42's opinion is likely to become, the subject of an Infringement Claim, Code42 will at its option and expense do one of the following: (1) procure the rights necessary for you to make continued use of the affected Software or Cloud Service; (2) replace or modify the affected Software or Cloud Service to make it non-infringing; or (3) terminate your right to use the affected Software or Cloud Service, and upon your certified deletion of any affected Software, refund you the portion of the fees applicable to the unused portion of the Subscription Term for the terminated Software and Cloud Services offering. Nothing in this section 8.1(B) (Mutual Indemnification: Code42 Indemnification) will limit Code42's obligation under section 8.1(A) (Indemnification: Code42 Indemnification) to defend and indemnify you, provided that you replace any allegedly infringing Software upon Code42's making alternate Software available to you and you discontinue using any allegedly infringing Software upon receiving Code42's notice terminating your license to use the Software.

**(C)** Code42 will not have any obligation under section 8.1(A) (Indemnification: Code42 Indemnification) with respect to any claim based on (1) a combination of Software or Cloud Services with non-Code42 products or Customer Data; (2) continued use of an infringing version of the Software after Code42 has provided you a noninfringing version under section 8.1(B) (Mutual Indemnification: Code42 Indemnification); (3) any modification to the Software by anyone other than Code42; or (4) any Software or Cloud Services provided on a no charge, beta or evaluation basis.

**(D)** This section 8.1 (Indemnification: Code42 Indemnification) is your sole exclusive remedy and Code42's entire liability for any infringement claims or actions.

### **8.2 Reserved.**

## **9. LIMITATIONS OF LIABILITY**

**9.1 Exclusion of Damages.** Neither Code42 nor you are liable for any lost profits or business opportunities, loss of use, business interruption, or any indirect, special, incidental or consequential damages under any theory of liability. This exclusion applies regardless of whether Code42 or you have been advised of the possibility of those damages and regardless of whether any remedy fails of its essential purpose.

**9.2 Cap on Monetary Liability.** The maximum aggregate liability for Code42 or you for claims under this Agreement will not exceed an amount equal to the contract price, including total fees paid or payable to Code42 for your use of the Offerings.

### **9.3 Reserved.**

**9.4 Exclusions.** The exclusions and limitations in section 9 (Limitations of Liability) will not apply to: (A) either party's violation of the other party's or its licensor's Intellectual Property Rights; (B) either party's obligations in section 8 (Mutual Indemnification); (C) your payment obligations under section 5 (Orders and Payment); (D) either party's liability for death or personal injury caused by its negligence; (E) Fraud; or (F) any liability that cannot be excluded under applicable law.

## **10. CONFIDENTIAL INFORMATION**

**10.1 Obligations.** "**Confidential Information**" means non-public information provided in connection with this Agreement that is labeled "confidential" or the like, or is provided under circumstances reasonably indicating its confidentiality. Code42's Confidential Information includes product roadmaps. Your Confidential Information includes your Customer Data. A party ("**recipient**") may use Confidential Information of the other party ("**discloser**") solely to exercise its rights and perform its obligations under this Agreement. Code 42 and you will each protect the

other party's Confidential Information in the same manner as it protects its own Confidential Information of a similar nature, but in any event with not less than reasonable care.

**10.2 Exclusions.** The recipient's obligations under section 10.1 (Confidential Information: Obligations) will terminate with respect to any Confidential Information that the recipient can show: (A) was already rightfully known to the recipient without any obligation of confidentiality at the time of disclosure; (B) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (C) was at the time of disclosure, or through no fault of the recipient has become, generally available to the public; or (D) was independently developed by the recipient without access to or use of the discloser's Confidential Information. Code42 recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by Code42.

**10.3 Permitted Disclosures.** The recipient may disclose Confidential Information only to its employees, professional advisors, service providers or contractors who have a need to know the Confidential Information and who are under a similar duty of confidentiality. The recipient may also disclose Confidential Information to the extent required by law or regulation, in which case the recipient will notify the discloser as soon as practicable and if permitted by law or regulation. At the discloser's request and expense, the recipient will take reasonable steps to contest and to limit the scope of any required disclosure.

**10.4 Reserved.**

## 11. TERM AND TERMINATION

**11.1 Term.** This Agreement will remain in effect until the later of (A) the end of the period identified in the preamble or (B) the termination or expiration of all Orders accepted under this Agreement. Either party may terminate this Agreement before the end of the term in accordance with the Contract Disputes Act and Federal Acquisition Regulation if expressly permitted by this Agreement. The Subscription Term and any renewal is described in the applicable Quote. If you place an Order after the start date stated on your Quote, Code42 may adjust your start date as described in the Quote, in which case your Subscription Term will be described on your invoice.

**11.2 Termination.** When you are an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Code42 shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

**11.3 Effect of Expiration or Termination.** Upon termination or expiration of an Order, you will stop using and Code42 will stop providing the applicable Software or Cloud Services. Upon termination or expiration of this Agreement, Code42 and you will each delete any Confidential Information of the other party.

**11.4 Survival.** The following sections will survive termination or expiration of this Agreement: 3 (Intellectual Property); 4 (Security and Data Processing); 5.3 (Ordering and Payment: Payment); 7.3 (Warranties: Disclaimer); 8 (Mutual Indemnification); 9 (Limitations of Liability); 10 (Confidentiality); 11 (Term and Termination); and 12 (General).

## 12. GENERAL

**12.1 Assignment.** Neither party may assign its rights or obligations under this Agreement or any Order, by operation of law or otherwise, without the prior written consent of the other party. But either party may assign this Agreement without consent to its Affiliates or to any successor or assign that has acquired substantially all of its business relating to this Agreement. This Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any purported assignment in violation of this section is void.

**12.2 Governing Law and Venue.** This Agreement is governed by the Federal laws of the United States. The 1980 U.N. Convention on Contracts for the International Sale of Goods will not apply.

**12.3 Compliance with Laws.** Each party will comply with any statutes and regulations that apply to it in its performance under this Agreement.

**12.4 Export Compliance.** The Offerings are of United States origin, are provided subject to the U.S. Export Administration Regulations, and may be subject to export control laws. You are not, and are not acting on behalf of: (A) any person who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; or (B) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List. You are not subject, either directly or indirectly, to any order issued by any agency of the United States government revoking or denying, in whole or in part, your United States export privileges.

**12.5 U.S. Government Rights.** Code42 provides the Offerings, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Offerings include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software). If a government agency has a need for rights not granted under these terms, it must negotiate with Code42 to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

**12.6 Notice.** All notices will be in writing and deemed given the second business day after mailing if sent by a recognized overnight courier (receipt requested). Code42 will send notices to you at the address in your Quote. You will send notices to Code42 at: Code42 Software, Inc., 100 Washington Ave., 20th Floor, Minneapolis, MN 55401, United States of America, Attention: General Counsel. Except for notices of termination or indemnification, notices may also be delivered by email and are effective the business day after sending. Code42 will email billing-related notices to the billing contact that you designate. Code42 will email Offering-related notices to the system administrator that you designate. You will email all notices to Code42 at [legal@code42.com](mailto:legal@code42.com).

**12.7 Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**12.8 Entire Agreement.** The Agreement as it may be modified from time to time by both parties in writing, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), is the entire agreement of the parties regarding its subject matter. The Agreement supersedes all prior or contemporaneous communications, understandings and agreements, whether written or oral, between the parties regarding its subject matter. In the event of a conflict, the descending order of precedence is: (A) the Quote, (B) the Agreement, and (C) the applicable Ancillary Document. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

**12.9 Counterparts.** Each party may sign this agreement using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.

**12.10 Waiver and Amendment.** The waiver of a breach of any provision of the Agreement will not constitute a waiver of any other provision or any later breach. Any modification of this Agreement must be in writing and signed by the party against whom the modification will be enforced.

**12.11 Relationship of the Parties.** The parties are independent contractors. Nothing in this Agreement creates a partnership, joint venture or agency relationship. Neither party has any authority to assume or create any obligation of any kind in the name of or on behalf of the other party.

**12.12 Third Party Rights.** Other than as expressly provided in the Agreement, the Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to the Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

**12.13 Severability.** If any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in force to the maximum extent feasible or permitted by law.

**12.14 Construction.** The Offerings will be provided in the English language. The word "including" means "including but not limited to." Section headings are for convenience only and are not to be used in interpreting this Agreement.

*End of Agreement*

CommVault Systems, Inc.  
1 CommVault Way  
Tinton Falls, NJ 07724

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached CommVault Systems, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific Terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works of Licensor's existing software or enhancements to the Licensor's software shall remain with Commvault, however of any ownership in GSA Customer preexisting material shall remain independently with the GSA Customer. The parties agree that such ownership rights are in agreement with the those set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost for its own internal business.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**COMMVAULT SYSTEMS, INC.**

**COMMVAULT SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

***End User License and Limited Warranty Agreement***

(including Microsoft SQL Server 2008 Enterprise Edition, Microsoft SQL Server 2008 R2 Enterprise Edition, Microsoft SQL Server 2012 Enterprise Edition, SQL Server™ 2008 Express Edition, SQL Server™ 2008 R2 Express Edition, SQL Server™ 2012 Express Edition, SQLServer™ 2014 Standard Edition and Windows Pre-Installation Environment)

**End User License Agreement**

**THIS END USER LICENSE AGREEMENT (“EULA”) IS A LEGAL AGREEMENT BETWEEN the Ordering Activity under GSA Schedule contracts (“YOU” or “Ordering Activity”) AND COMMVAULT SYSTEMS, INC. (“COMMVAULT”) FOR SERVICES PROVIDED BY COMMVAULT, AS WELL AS THE ABOVE-REFERENCED SOFTWARE PRODUCT(S), WHICH INCLUDES COMPUTER SOFTWARE AND MAY INCLUDE ASSOCIATED HARDWARE, MEDIA, AND “ONLINE” OR ELECTRONIC DOCUMENTATION (“SOFTWARE”). BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA.**

This EULA grants You, the user, a non-exclusive license to use the Software (and including any hardware appliance, if applicable) under the terms and conditions stated herein. You agree that all updates, enhancements, maintenance releases, patches, bug-fixes or other modifications to the Software provided to You, on a when and if available basis, shall be governed by the terms and conditions, including the limited warranty, exclusive remedies and limitations of liability provisions, contained in this EULA. Except as otherwise provided herein, the license granted herein shall be perpetual provided You comply with the terms hereof. This EULA shall be in effect until terminated pursuant to the Contract Disputes Act except as expressly otherwise provided herein. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Commvault shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination, You must destroy all copies of Software in Your possession or control.

In the event You license the Software on a temporary, term or subscription basis (the “license period”), Your license to use the Software shall not be perpetual, notwithstanding any conflicting language contained in this EULA. In the event of any such license, Your license shall expire at the end of the license period which shall be as set forth on the applicable ordering document. If no license period is stated, then Your license shall continue on a month to month basis, unless terminated by either You or Commvault pursuant to the Contract Disputes Act. You may be required to periodically re-apply license keys during such license period, which shall be provided by Commvault. Following the license period, You may use a limited recovery version of the Software solely for recovering data stored using the Software during the license period. Maintenance and support services shall only be provided during the license period.

You may: (i) use the Software, with the same or lower version number identified herein, in numbers equal to the number of licenses purchased for all items, or in the event You are licensing the Software on a capacity basis, up to the maximum capacity purchased; (ii) make copies of the Software, documentation or other user information accompanying the Software solely for back-up purposes, provided such back-up copies are only utilized as a replacement for the original copy on the same computer that the Software was previously installed; and, (iii) make a copy of or print documentation provided in electronic form for Your internal use only, and You may use Commvault trademarks solely for these purposes, but You must incorporate all patent, copyright, trademark and other notices included on the materials on any copies or partial copies that You make.

You may not: (i) make a copy of any of the Software for any purpose not explicitly permitted herein; (ii) provide commercial hosting services, sell, sublicense, rent, loan or lease the Software to another party, without the prior written consent of Commvault; (iii) except to the extent that such a prohibition is expressly prohibited by law, decompile, disassemble, reverse engineer or modify, in any manner, any of the Software; (iv) transfer or assign Your rights to use the Software without the prior written consent of Commvault; (v) use the Software in violation of applicable local, federal or other laws or regulations; (vi) use the Software for any purpose other than as permitted in this EULA; or, (vii) remove, destroy, erase, alter or otherwise modify Commvault’s trademarks.

Unless this software is provided to You for beta, demonstration, test, or evaluation purposes or is labeled “Not for Resale” as further described herein, You agree to use the Software solely for Your internal data center operations and to restrict any access to the Software, documentation, or other user information accompanying the Software only to those of your employees having a demonstrable need to have such access for your internal data processing operations. You agree that you shall not permit any access to the Software, documentation, or other user information accompanying the Software to any person engaged in product research, development, support, sales, marketing, or other functions not directly related to your internal data processing operations. You also agree not to use the Software, documentation, or user information accompanying the Software to assist, directly or indirectly, in the development or design of any computer hardware or software program including, but not limited to, a program that provides or is intended to provide or include a similar feature or functionality as the Software, or any conversion utility or aid relating to the Software intended to enable or facilitate a user’s conversion from the use of the Software to an alternative program. Any software Commvault and/or its licensors may provide You as part of maintenance and support services are governed by this EULA, unless separate terms are provided. This EULA does not obligate Commvault and/or its licensors to provide any maintenance and support services or to support any Software provided as part of those services. If support services are provided, they shall be provided subject to the terms of this EULA and in accordance with Commvault’s attached Global Customer Support Services Guide. In the event You elect to purchase maintenance and support services, You must purchase such maintenance and support services for all of the licensed Software in Your entire environment. Such maintenance and support services shall begin on the date Software is shipped to You. Personal health information, personal financial information, or any other personally identifiable information is not necessary for Commvault’s provision of services. You agree that You will not provide any such information to Commvault.

You agree that Commvault and/or its licensors may, for business purposes, collect, process, and use technical information gathered as part of any product maintenance and support services provided to You related to the Software and any other technical information You provide to Commvault provided that such information does not personally identify You. By providing data or information to Commvault, including personal



data or information, You hereby consent to Commvault's use, storage or processing of such data or information in the United States (or in any other country in which we operate) for purposes of providing products and/or services to You.

All title and intellectual property rights in and to the Software, and any copies You are permitted to make herein, are owned by Commvault and/or its licensors and is protected by United States and other country patent, copyright, trade secret, and other laws and by international treaty provisions. **This Software is licensed, not sold.** The purchase of a license to the Software is final and non-refundable except as expressly provided for herein under a warranty or through an indemnification. Acceptance of the Software occurs upon shipment by Commvault or its licensors. No rights are granted to You other than a license to use the Software upon the terms expressly set forth in this EULA. The structure, sequence, organization and source code of the Software are valuable trade secrets of Commvault and/or its licensors. The export of the Software may be restricted by the export control laws of the United States of America and other countries. You agree to comply strictly with all such regulations and acknowledge that You have the responsibility to obtain licenses to export, re-export, or import Software. This EULA shall be governed by the Federal laws of United States. Commvault is not subject to any terms in any purchase order or other document unless Commvault executes a written agreement to such terms. No advertisements, catalogues or other publications or statements, whether written or oral, regarding the performance of the Software licensed under this EULA shall form part of this EULA. If any provision of this EULA is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this EULA shall remain in full force and effect.

In the event You license the Software on a capacity basis, if you exceed the maximum capacity purchased, the Software may cease to operate normally and/or performance may be impaired; provided however that reducing Your usage to the purchased capacity level or purchasing additional capacity will return the Software to its normal operation. Any excess capacity usage above the purchased maximum shall entitle Commvault to invoice You for licensed capacity and maintenance and support amounts owed and customer will pay within thirty (30) days of receipt of invoice. You shall provide Commvault with any usage reports upon request within a reasonable period of time (and You shall not interfere with any automated reporting features) in order to enable Commvault to verify Your capacity usage.

In the event that You license the Software by virtue of Your purchase or use of a hardware appliance, this license is limited to the hardware appliance on which the Software was originally shipped, and the Software may not be used on or transferred to any other hardware or appliance. If you have purchased the Commvault hardware appliance, by agreeing to this EULA, you are also acknowledging that you have received, read and agree to accept the attached hardware warranty terms.

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Global Customer Support Services Guide

January 2018

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## Overview

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Welcome to Commvault Customer Support Services!

**NOTE:** Not all services are available for all products or customers. Customers with OEM-based or CASP level support may have different features offered through their primary Support contact.

Commvault's Customer Support Services options help you make the most of your investment in the Commvault software suite. We want you to get the most from your products throughout their life. Commvault offers different Support options based on your business requirements in order to enhance the value of your support investment and meet the needs of your business. You also receive access to a variety of other services that are valuable throughout the life of your products:

### Product Updates

Service Pack and Hot Fix availability  
New update notifications through the Support Notification Service<sup>1</sup>

### Online Services

Access to the Commvault eSupport Portal ('Maintenance Advantage') with features specially-designed for our Support customers  
Access to Mobile Advantage App for iOS and Android with the ability to control your Support experience  
Online Knowledge Base  
Online Forum for real time discussion with Commvault experts and Commvault end-users  
Online documentation and FAQs for each product  
Notification of changes in open support service requests  
Support that is available 24/7<sup>2</sup>, whenever a problem may occur  
Unlimited number of calls to Commvault Customer Support  
Regular updates on the status of open incidents  
Support engineers who are certified with high-skill security qualifications  
Remote debugging and re-configuration tools for rapid fault resolution  
Proactive site monitoring through the Commvault Metrics service

### Other Features

Telephone access to skilled engineers  
Product Upgrade Validation Automation Tools  
Commvault Support Log Upload Management  
Product Compatibility and Interoperability Matrices  
Cloud Metrics Reporting

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<sup>1</sup> New release version upgrades may be made available by Commvault

<sup>2</sup> For customers with Premium-based Maintenance Contracts

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## Support Offerings

### Commvault Customer Support Programs

Commvault provides multiple support options for our customers; each is designed to meet the needs and requirements of a wide range of customers. These plans maximize your productivity, letting you focus on your core business.

### Support Programs

As a Commvault customer, you rely on us to deliver the best software and support so that you can manage your data with the utmost results. To that end, we listen to your needs and anticipate your future requirements. We take this knowledge and design the best support programs to meet your needs at any level, to maximize your productivity and lower your costs.



### **Standard Support**

The Standard Support offering provides broad business hours coverage with direct access to the Commvault Technical Assistance Center and is designed to support the majority of customer's needs. This package includes:

Access to the Commvault Technical Assistance Center on business days (Monday - Friday), excluding statutory holidays, between the hours of 7 AM to 7 PM (local time<sup>3</sup>) for the location where the software is installed  
24x7 access to the Maintenance Advantage self-help website  
Notification of critical software update fixes  
Web E-Support such as Incident Management, Knowledge Database, Commvault Books Online and the Commvault Forums  
Support Account History Reports provided upon request

### **Premium Support**

The Premium Support offering provides live access customer support over a comprehensive 24x7 coverage period. Premium Support includes:  
Around-the-clock access to the Commvault Technical Assistance Center (including holidays)  
24x7 access to the Maintenance Advantage self-help website  
Notification of critical software updates product enhancements and new releases (when available)<sup>4</sup>  
Web E-Support such as Incident Management, Knowledge Database, Commvault Books Online and the Commvault Forums  
Support Account History Reports provided upon request

### **Proactive Support**

Proactive Support is an enhanced Commvault support offering that includes all of the benefits of Premium Support and additional value added services associated with mission critical data management operations. These services include:  
15 minute Service Level Response Target for Severity 0 incidents  
Inclusive Premium Operations Management Reporting for all internet-connected CommServes  
Support Account Management Service. This service team:  
Monitors open issues to ensure there is continued activity towards prompt resolution  
Communicates directly with customer management to update and prioritize on high severity issues  
Directs issue escalation to ensure continued ownership  
Monthly Technical Reviews with Support Account Management

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<sup>3</sup> **Standard Coverage Support** for Commvault's Japanese Customers is 7am to 6pm in the time zone in which the CommServe resides.

<sup>4</sup> New release version upgrades may be made available by Commvault



**Technical Account Manager**

The Technical Account Manager (TAM) is an enhanced support offering that allows the customer to have a localized resource (onsite and remote) who aligns a strategic business plan with a customer's business objectives and the technology to accomplish those objectives.

These Services include (but are not limited to):

Fulfill the role of "voice of the customer" in Commvault meetings, and the technical "voice of Commvault" in customer meetings (ongoing)  
Communicate proactive monitoring metrics to customer, including if thresholds met or exceeded and the potential impact on the business (Quarterly)

Identify risks in the environment as it relates to data management operations

Help executing the technical business plan in accordance with customer policies and procedures

Fractional TAM Options (20% or 50%): Onsite/Remote presence with the customer (to be scheduled with the TAM, max number of days as per fraction purchased, dependent on agreed requirements)

Dedicated TAM Option: Full time technical consultant to ensure the operational stability and value realization of your Commvault environment

Escalated Critical Ticket Management – work with development directly on critical issues which are affecting business operations

Work in tandem with the SAM on any support needs

Note: The TAM (TAM-20) is typically assigned five customers and can dedicate up to 20% of service time (throughout the service contract) to each customer. This service time is reviewed with assigned customers on a regular basis in order to determine the frequency and type of coverage (onsite or remote) needed to ensure the customer receives the maximum value out of the TAM Program. Please note that the 20% service time is a guideline and doesn't imply that the customer is guaranteed 20% time nor can customers accumulate service time from month to month. If the customer desires guaranteed focus for a specified time from a TAM, beyond what is included with the base offering, they can purchase options for a fully or partially dedicated (i.e. 100% or 50%) TAM.

**Enterprise Support Program (ESP)**

**Commvault's Enterprise Support Program** is Commvault's most comprehensive support offering and is designed to provide strategic World Class Technical Management for all aspects of our customers' Enterprise Data Management Solution. We partner fully with our customers to enable success, and to provide business stakeholders with the highest level of customer satisfaction, all while safeguarding technology investments and intellectual property.

**Severity Level Agreement Targets**

Resources work towards the achievement of SLAs as per the targets outlined below in section 2.2.6

Severity 0 (Zero) designed to support Enterprise Data Centers

**Customer Support Engineer (CE)**

The CE works to provide answers, solutions or a work-around for Enterprise Support Program customer Commvault issues.

The CE:

Takes responsibility to accept, analyze, resolve or escalate new issues

Manages issues using Enterprise Support Program Service Level Agreements

Prioritizes all ESP issues before all non-ESP clients

Keeps a current issue status and advises client and SAM of regular updates to the status

**Support Account / Technical Account Manager (SAM /TAM)**

The Enterprise Support Program is a joint collaboration with the Support Account Manager (SAM) and Technical Account Manager (TAM). The following are the roles and responsibilities for each under the ESP to ensure continued success:

**Support Account Manager (SAM)**

The SAM works to ensure SLA success, provide reporting, and manage escalation and critical care instances.

Single point of contact owning the overall support experience

Overall management of support status – includes all tickets and metrics associated with ticket history

Hosts Weekly Support Calls and provides status updates

Deliver Quarterly Business Reviews – metrics/business reviews

Working with the customer to understand the business requirements and stated Service Level Agreements (SLAs) (Reviewed for both Commvault and customer's internal SLA's to ensure they are achievable metrics for success)

Generation and Review of support ticket history and analysis during the Quarterly Business Reviews

Yearly Briefings – Executive and/or Technical. Work with TAM on strategic agenda

Work closely with the TAM for any onsite technical requirements/assistance

Work closely with the TAM to identify training opportunities for customer personnel

**Technical Account Manager (TAM)**

The ESP includes assignment of a TAM (20% percent coverage) to partner with our customers to understand the customer's business objectives.

The TAM provides proactive and reactive guidance to mitigate risk and reduce time to resolution by aligning key technologies and resources to those objectives.

The ESP TAM is a TAM-20, typically assigned five customers and may dedicate up to 20% of service time (throughout the service contract) to each customer. This service time is reviewed with assigned customers on a regular basis in order to determine the frequency and type of coverage (onsite or remote) needed to ensure the customer receives the maximum value out of the Enterprise Support Program. Please note that the 20% service time is a guideline and doesn't imply that the customer is guaranteed 20% time nor can customers accumulate service time from month to month. If the customer desires guaranteed focus for a specified time from a TAM, beyond what is included with Enterprise Support, they can purchase options for a fully or partially dedicated (100% or 50%) TAM as described in the TAM Offering.

Fulfill the role of "voice of the customer" in Commvault meetings, and the technical "voice of Commvault" in customer meetings (ongoing)

Communicate proactive monitoring metrics to customer, including if thresholds are met or exceeded and the potential impact on the business (Quarterly)

Identify risks in the environment as it relates to data management operations

Help executing the technical business plan in accordance with customer policies and procedures

Fractional TAM Options (20% or 50%): Onsite/Remote presence with the customer (to be scheduled with the TAM, max number of days as per fraction purchased, dependent on agreed requirements)

Dedicated TAM Option: Full time technical consultant to ensure the operational stability and value realization of your Commvault environment

Escalated Critical Ticket Management – work with development directly on critical issues which are affecting business operations

Work in tandem with the SAM on any support needs

**Enterprise Service Credits**

Service credit for Commvault Services E.g. Professional Services, RSE, Training, Personalization, etc.

Credits can be used by customer or SAM (with customer agreement) during the period of the Enterprise contract. ESP Credits must be used in the same country as the location of the designated, main (named) location / home region.

Availability of credits allows for prompt co-ordination to meet additional customer requirements, reducing procurement overhead at a time when speed may be critical

Service credits are reset upon renewal, expire in 12 months from the date of purchase and not transferable between contract periods

**Reporting**

Working with the Enterprise Support Program's Customer's fiscal or operation calendar, the SAM will present data on quarterly activity:

Commvault Cloud Metrics Reporting configured to provide customer with an overview of the CommCells(s) within your environment

Weekly conference call with customer principals to discuss issue status and path to resolution

Compiles and reports to customer management with the Monthly Executive Summary

Demonstrates SLA response and resolution success

Provides data trending

Job counts\*

CommCell Health\*

License Usage and Forecasting\*

Reports on quarterly success for SLA response and resolution, and overall CommCell® trends\*

Provides a Quarterly Executive Summary (summary can be conducted onsite or remote, to meet the needs of the customers distributed global teams)

\*Ability to enable 'CommCell Diagnostics and Usage' on your CommServe(s) required / Requires CommServe connectivity to port 443 for access and connectivity to the cloud.commvault.com hosted infrastructure.

**Enterprise Metrics Reporting**

Enterprise Metrics Reporting allows you to monitor the performance of all CommCell computers, gauge the storage capacity for backups, and predict the cost of data protection in your organization. Available reports include the Activity Report, Monthly Chargeback Report, CommCell Growth Report, and the Health Report.

Enterprise Support Customers receive access to Premium Metric Reports with no requirement to purchase additional Metrics licensing to access these reports. These reports are available for download from Commvault Cloud site. For more information, please contact your assigned Support Account Manager.

**Service Levels Response and Resolution Target Matrix**

**Service Levels Response and Resolution Target Matrix**



PRIORITY TIERS	STANDARD SUPPORT	PREMIUM SUPPORT	PROACTIVE SUPPORT	ENTERPRISE SUPPORT
<b>SEV0 (Catastrophic)</b>				
Response	N/A	N/A	15 Minutes	15 Minutes
Resolution/Workaround	N/A	N/A	12 Hours	12 Hours
<b>SEV1 (Critical)</b>				
Response	1 Hour	1 Hour	30 Minutes	30 Minutes
Resolution/Workaround	24 Hours	24 Hours	24 Hours	24 Hours
<b>SEV2 (High)</b>				
Response	2 Hours	2 Hours	1 Hour	1 Hour
Resolution/Workaround	72 Hours	72 Hours	72 Hours	72 Hours
<b>SEV3 (Medium)</b>				
Response	3 Hours	3 Hours	3 Hours	3 Hours
Resolution/Workaround	20 Days	20 Days	10 Days	10 Days
<b>SEV4 (Low)</b>				
Response	4 Hours	4 Hours	4 Hours	4 Hours
Resolution/Workaround	N/A	N/A	N/A	N/A

**Customer Support Quality Assurance**

Commvault is committed to providing best in class technical support, and we drive our customer satisfaction through a variety of metrics to guide us to achieve that goal. Industry standard measurements of time to respond, first contact resolution and time to solve are cornerstones of our support model.

Outside of internal objectives we proactively solicit feedback from our user base for each incident logged with Commvault support in the form of a survey. This survey includes a brief questionnaire along with a comments section to add remarks about our service quality. Each survey response is reviewed by support management and, in the event of an unsatisfactory survey response, we initiate an investigation into the source of customer’s dissatisfaction with the support experience. Support management will initiate a call with the customer to cover satisfaction issues that were brought to light in the survey. The outcome of that conversation is reviewed against existing support processes and adjustments are made, as needed.

Commvault is committed to improving our products, and we are always open to customer suggestions and requests of ways we can best accomplish this. By providing reports regarding customer’s use of the software, including results, comments or suggestions to Commvault (collectively, the “Feedback”), customer agrees that Commvault may use and disclose the Feedback in any manner Commvault chooses, provided that Commvault ensures the confidentiality of customer’s identity at all times. Commvault acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71. Commvault shall own all intellectual property rights related to the Feedback and its use. For those customers that request to opt out of this product improvement process, Commvault notes this in each such customer’s Support Account.

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### **Contacting Customer Support**

Prior to contacting support, it is highly recommended that customers search for possible solutions via the Web on our Support Portal, "Maintenance Advantage" and/or load the latest service pack and updates. If the problem persists, collecting log files, along with having the latest Service Pack and updates installed, will help expedite the resolution of your issue. If these steps are not taken by you, this can cause longer resolution times. Please be aware that Commvault Technical Support Management reserves the right to close a service call if repeated attempts to contact the end user over the course of three (3) business days have failed to yield a response without reason. If necessary, these Support Incidents can be referenced if a new call for the original incident is required.

Commvault offers three different methods of support:

Web Support – Self Service (Forum, Knowledge Base, Chat, Solution Engine, and more)

Web Support Submission

Telephone Support

### **Web Support – Self Service**

Commvault's Web Support is provided via our Support Portal called Maintenance Advantage ([ma.commvault.com](http://ma.commvault.com)). Maintenance Advantage is provided to customers who have a current and active maintenance contract. If you meet this requirement and you do not have a Maintenance Advantage login and password please send an email to [support@commvault.com](mailto:support@commvault.com) and provide your CommCell-ID along with your contact information and you will be notified via email of your login and password within 24 - 48 hours.

Maintenance Advantage contains a set of powerful tools to enable Commvault software customers to optimize and maintain their deployments. The section includes:

Knowledge Base

Solution Engine

Commvault's Customer Forum

Service Packs and Hotfix Update Downloads, when and if available

Technical FAQs

Tips and Techniques to achieve better performance

Configuration and deployment guidelines

Supported hardware and software compatibility matrixes

Troubleshooting Guides, and other valuable resources

Enterprise Support Dashboard

Commvault Support Chat

### **Web Support Submission**

Customers can submit an incident via the internet by logging into Maintenance Advantage and clicking on the Incident Management link. From this location customers can view, update, and close incidents.

Web-Submitted incidents are responded to using the following guidelines:

**Severity 0 (CATASTROPHIC)\* and Severity 1 - (CRITICAL)** incidents cannot be opened via the Maintenance Advantage website

**Severity 2 (SEV2)** – 2 Hour Response

**Severity 3 (SEV3)** – 3 Hour Response

**Severity 4 (SEV4)** – Next Business Day

\*Only available to Proactive or Enterprise Support customers

Once the online form is submitted, a ticket will automatically be generated as well as email notification that will include the Ticket number and a link to upload logs via the HTTP Log up-loader. In the majority of the support cases, logs will be required in order to troubleshoot and analyze the problem reported. Uploading logs in a timely manner will help expedite the troubleshooting process.

### **Commvault Chat**

Customers may leverage Chat and access quick information about their support accounts, an incident, and more. Chat is found on the Common Portal of Maintenance Advantage. Chat is utilized for the following:

- Documentation or Product Supportability questions
- Hardware Compatibility questions
- Questions on Reporting
- Questions regarding Commvault licensing
- Problems with Maintenance Advantage Sub Account Creation
- Contact information for your Commvault Sales Representative
- Incident Escalation
- Incident Follow up
- Incident Re-Assignment
- Questions about Log and Database uploads

If your subject is of a break fix or technical nature please [create an incident](#) or, for Critical Incidents, please contact Customer Support using your local Technical Support [hotline number](#).

**Telephone Support**

Commvault has four Main Global Customer Support locations; Tinton Falls, New Jersey; Reading, UK; Sydney, Australia; and Beijing, China. The Commvault Technical Assistance Centers are staffed by highly skilled professionals who are available 24 hours a day / 7 days a week (based on your warranty and contract support hours).

**NORTH AMERICA**

Toll Free #

**(877) 780-3077**

Direct Toll #

**(732) 571-2160****LATIN AMERICA**

Brazil

**0-800-892-2288**

Colombia

**01800-710-2063**

Mexico

**01-800-681-1581****EUROPE, MIDDLE EAST & AFRICA (EMEA)**

Belgium

**0800-79392**

Denmark

**8088-9260**

France

**0800-918893**

Germany

**0800-1012330**

Ireland

**1-800-608178**

Israel

**1-809-494177**

Italy

**0800-782147**

Netherlands

**0800-0227402**

Norway

**800-11-985**

Portugal

**800-8-14516**

Russia

**8-800-100-9423**

Saudi Arabia

**800-8-110540**

South Africa

**080-09-81256**

Spain

**0900-991600**

Sweden

**0200-896316**

Switzerland

**0800-836023**

United Arab Emirates

**8000-35770005**

United Kingdom

**0800-9171424**

Other EMEA Countries

**+441189522030****ASIA-PACIFIC & JAPAN (APJ)**

Australia

**1300 368 528**

India

**1800-419-2951**

Indonesia

**040-6654-0300**

Japan

**001-803-015-205-0066**

Korea

**0120-938-003**

Malaysia

**00-308-13-1763**

New Zealand

**1-800-813-686**

Singapore

**0800 002 032****800-101-2206**

Thailand

**001-800-13-204-2904****CHINA**

China

**400-818-5908**

Hong Kong

**800-906-128**

Taiwan

**00801-14-7127****Submitting an Incident**

When contacting support, customers should be prepared to provide the following information. Failure to provide this information can result in delays in the processing of your incident.

User name and Contact Information

CommCell ID

Company Name

Description of the problem

Agent type, Version and Update Level

Any other pertinent information such as failure reason and time of failure



Severity levels are mutually agreed upon between customer and support representative. (See: Severity Level Definitions in section 3.7). For Severity 1-Critical issues, customer must provide valid business case reason for a Severity 1-Critical call classification.

**Language Support**

Commvault provides its primary support activities in English with support assistance available for both localized support within our Support Centers and translation support for phone and remote support activities. Elements of Commvault’s Web Support infrastructure include localized language views for non-English speaking customers. Customers should designate their preferred language on their Maintenance Advantage profile. Chinese speaking customers are serviced locally by our Beijing Support Center in native language.

**Solution Engine**

All incidents submitted to Commvault Support are ingested into our solution engine which will return results based on classification and text content. Our solution engine seeks to return results that have a 90% or greater chance of solving your problem. The results will come in several forms such as recommended hotfix, knowledge base article, documentation etc.

Results for the Solution Engine are returned in two different methods depending on how the incident is logged with support.

**Web-submitted:** Solution Engine results are presented after the incident details have been filled out and submitted via our online incident form. Each result will include “Did this solve your issue? **Yes** or **No**” response links which can be clicked there or upon returning to the open incidents page.

**Hotline/Phone submission:** Solution Engine results are sent via email after the incident details have been collected by our Frontline Engineer with a subject of “Possible Solution detected for incident”. At the conclusion of creating your incident our Frontline Engineer will inform you that a possible solution(s) has been detected and to please follow the steps provided within our email. Included in that message is solution content and “Did this solve your issue? **Yes** or **No**” response links which can be clicked there or upon returning to your open incidents page.

**Note:** If a solution is detected that incident will be placed into a status of “Waiting for result feedback” for a period of 24 hours or until a Yes/No response has been submitted. If at any point within that time the No option is selected, that incident will be immediately routed to an engineer for service under the SLA guidelines determined by severity. If Yes has been selected, that incident will be closed and the corresponding solution noted as its resolution.

**Service Packs and Hotfix Updates**

Customers can download Service packs and hot fixes via Maintenance Advantage. Our Service Packs are a roll up of all released updates up to the release date of the most current Service Pack. Hotfixes are fully certified updates that are not part of the last Service Pack. Commvault notes that these updates are offered on a “if-and-when available” basis only and do not follow any specific release schedule.

**Alerts and Notifications**

In order for customers to receive alerts they must edit their Maintenance Advantage user profile. There are two methods to receive alerts, one manual via ad hoc alerts sent by Technical Support or automated alerts via setting in your user profile.

**Manual Alert Notifications:** You can subscribe yourself to these alerts by selecting **Yes** on the Receive Update Alert Messages portion of the profile. Once you choose to receive alerts please make sure the Alert Distribution email field contains the email to which you wish to send these reports. We recommend creating an alias distribution address so that more than one person can be notified such as a primary and a backup.

**Automated Alert Notifications:** The automated alert notification feature will automatically send notifications on what you selected. You can select to receive Critical Alerts, Service Pack Alerts and/or Critical Updates only. You will then need to select the frequency either weekly or monthly and the day of the week you wish to receive those alerts. These alerts will send notification on updates posted since the last notification.

**Severity Level Definitions**

**Severity Level Definitions and Examples:**

<b>0-Catastrophic  Proactive &amp; Enterprise Only</b>	This severity level is reserved solely for Commvault Enterprise Support or Proactive Support Customers. This severity is used to indicate that all Commvault components are inoperable and no data movement operations are possible. Examples of SEV0-Catastrophic incidents are: Complete outage to CommServe. Multiple Server outages/rebuilds issues. Disaster Recovery Event (not a DR Test)
<b>1-Critical</b>	This severity should be used to indicate that a major component is down or having a serious problem that it is impacting business. Examples of SEV1-Critical incidents are: CommServe® is not functioning, and server backups or restores are not possible Mission Critical Database Restores (Exchange, SQL, Oracle, Informix etc.) impacting customers’ business Mission Critical Server Restore/Rebuild impacting customers business
<b>2-High</b>	This severity should be used to indicate that a major component has problems that degrade the ability to meet the needs of the business. Examples of SEV2-High incidents are: Critical Server Backup failures Directory/Folder and File level Restore failures.
<b>3-Medium</b>	This severity should be used to indicate intermittent problems that do not impact the immediate production needs of the business. Examples of SEV3-Medium incidents are: Client installation issues Media Management issues Operational problems.

**4-Low**

This severity is used to report a defect or inconsistency in the product or request an enhancement to the product.

**Problem Escalation:**

This section describes the actions that will be taken towards a resolution of Severity 1-Critical issues that are not resolved, and/or where no progress is being made nor a workaround provided within the response target goal time:

A Tier 2 Engineer will be assigned to manage and coordinate efforts to work towards a resolution. Managers from the following departments will be notified: Technical Support, Engineering, Sales and Regional Technical Services.

The Tier 2 Engineer will coordinate a conference call with the user and all necessary personnel from Support and Engineering departments to discuss the viability of providing a workaround until a permanent solution can be achieved. Regular updates on the progress of the issue will be provided to the user. All reasonable efforts to resolve the issue remotely will be taken, such as remote access to the problem site, replication of the problem in a support lab, or utilization of information gathered through the installation of diagnostic updates. The majority of problems are resolved remotely using phone support along with remote access tools.

If all remote troubleshooting attempts are deemed unsuccessful, then an on-site engineer can be provided until the problem is resolved. The on-site engineer fees would comprise of the current daily billable rates in accordance with the GSA Pricelist. Ordering Activity Licensee agrees to pay any travel expenses for the on-Site engineer in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document.

**Incident Escalation:**

While Commvault support makes every effort to meet our customer's expectations, occasionally a situation may arise where an incident may need to be expedited, or criticality may have changed. In cases where you feel additional attention or further escalation is required, any of the following processes may be followed:

Escalate Online: From our [Maintenance Advantage](#) Support Portal's Active Incidents list, open the incident and select the Update Activity with 'Yes, please ask management to review my incident'.

Escalate via Email Link: Click on the Support Management Escalation link in your incident's email footer.

Escalate via Mobile Advantage App: From the Open Incidents view, select the incident and click Mgmt. Review.

Escalate via Phone: Contact the Customer Support Hotline providing your incident-id number and ask to have the incident escalated. Please provide the reason for escalation so that the incident can be handled accordingly by our engineers.

You may also request to speak with a Supervisor or Manager. In most cases a Supervisor or Manager will return your call within one hour. You will have the opportunity to explain the situation currently being faced and we will assist in getting the situation rectified.

Please refer to section 3.4 Telephone Support or online, for a list of Toll Free numbers to contact your local Support Center.

<https://ma.commvault.com/Support/TelephoneSupport>

## Product Updates

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### Keeping Your Products Current

A current Commvault Maintenance Agreement entitles you to the latest versions<sup>5</sup> of your licensed Commvault products, Service Packs, Maintenance Packs, hotfixes, and more.

### Download Software Packages

Commvault makes all of its software packages available online. To access Commvault's Software Suite, log into the Maintenance Advantage website and click **Electronic Software Distribution, Service Pack** or **Additional Platform Support Packages** under the **Downloads and Packages** tab. Different release versions are accessed by selecting the appropriate Software Version.

### Download Software Updates

Commvault constantly enhances its products for resiliency and performance. Regular updates to your deployed Commvault environment ensures optimized operating efficiency for your CommCell(s) and minimizes the possibility of encountering an issue that has already been addressed in the Service or Maintenance Pack.

To check for available software updates (loose updates, Service Pack), log into the Maintenance Advantage website and click **Software Updates** under the **Product Support** tab. You can sort the list of Updates by Major Release and Product family.

### Weekly Update Alert Notice

The Weekly Update Alert Notice delivers to you via email product information, update and upgrade notifications, as well as critical alerts that may require immediate attention. This information helps you get the most out of your Commvault investment by keeping you up to date. For more information, visit the URL noted below and update your User Profile for alerting:

<https://ma.commvault.com/Profile/Editor>

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<sup>5</sup> Release version upgrades are available per the terms of your active Maintenance Agreement

## **Support Entitlement and Maintenance Renewals**

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### **Support Entitlement**

In order to receive maintenance and support services, including updates and upgrades, Customers must maintain the same level of active maintenance and support on all software licenses within their software configuration. Customers who do not have a maintenance agreement with Commvault will have limited access to technical resources. Commvault will respond on a Time & Material basis with “commercially reasonable effort”, only upon receipt of email acceptance of payment by (Credit Card or Purchase Order) based off of the current billable rates on the GSA Pricelist.

### **Maintenance Renewals**

Maintenance Agreements are renewed on an annual basis. Any changes to a Maintenance agreement must be made in writing. Contract change requests can be submitted via e-mail for the following locations:

US: [servicecontracts@Commvault.com](mailto:servicecontracts@Commvault.com)  
Canada: [servicecontractscan@Commvault.com](mailto:servicecontractscan@Commvault.com)  
EMEA: [servicecontractsemea@Commvault.com](mailto:servicecontractsemea@Commvault.com)  
APJ: [apjservicecontracts@Commvault.com](mailto:apjservicecontracts@Commvault.com)

### **Product Obsolescence**

Commvault is committed to providing all customers with one (1) year advanced notification of the obsolescence date of any Commvault product. At the time a product is declared obsolete, Commvault will also notify all customers of any specific maintenance arrangements associated with any products that have been declared obsolete. Customers can view the list of obsolete products on the Web at <https://ma.commvault.com/Support/ProductSupport>

## **Product License Registration**

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### **Product Registration**

After a successful installation of Commvault software, the Customer has thirty (30) days to notify Commvault and request a permanent License Key. If the Permanent License Key is not ordered within the 30 day period following installation, the Commvault software will cease to function. This occurs because the License Key used during the new Commvault Pilot deployment was temporary. The following outlines the processes required to request a Permanent License Key:

E-mail [prodreg@Commvault.com](mailto:prodreg@Commvault.com) for US and APAC-based Customers, [prodreg-canada@Commvault.com](mailto:prodreg-canada@Commvault.com), or [Licensekey@Commvault.com](mailto:Licensekey@Commvault.com) for EMEA and India-based customers and provide the following:

Company Name

Contact Name with email and phone number

CommCell-ID – This information can be obtained from the License Administration Window

License Summary Report

WINNTHOSTID –8 character Hexadecimal version of the CommServe® IP address. (This information is necessary to ensure the correct IP address is obtained especially if multiple NIC cards are installed in the server)

Alternately, the license activation process may be completed online at the following URL:

<https://ma.commvault.com/Support/ProductRegistration>

If for any reason the received Permanent License Key fails to apply, please check the following:

If the number of licenses in the license key corresponds to the installed items in the license summary report

If the WINNTHOSTID output corresponds with the CommServe ID of the license key.

If the above checks do not resolve the issue, please contact via email the appropriate license alias listed above with the following information:

Company Name, Contact Name and Contact info

CommCell-ID

License summary report of the licenses used

Was a pilot key used for installing the software (Y/N)

Screenshot of the failure message at the moment the Permanent License Key is applied

**Global Support and Services Resource Allocation**

**Worldwide Regional Locations**

<b>Commvault Location</b>	<b>North America</b>	<b>Latin America</b>	<b>APJ</b>	<b>EMEA</b>	<b>China</b>	<b>India</b>
<b>Services</b>	X	X	X	X	X	X
<b>Support Center</b>	X		X	X	X	
<b>Engineering</b>	X					X
<b>Management</b>	X	X	X	X	X	X

Commvault's World Wide Headquarters is located in Tinton Falls, New Jersey, United States

**Regional Technical Service Professionals and Resource Locations**

<b>United States</b>
Western Region (AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY, Mexico)
Central Region (AR, IA, IL, IN, KS, LA, MI, MN, MO, ND, NE, OK, SD, TX, WI)
Eastern Region (AL, CT, DE, FL, GA, KY, MA, MD, ME, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WV)
<b>Canada</b>
National Capital Region (Ottawa/Hull, Federal Government)
Western Region (British Colombia, Alberta)
Central Region (Ontario, Manitoba, Saskatchewan)
Eastern Region (Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland)
<b>APAC</b>
(Bangladesh, Bhutan, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Mongolia, Myanmar, South Korea, Vietnam, Philippines, Republic of Korea, Taiwan, Singapore, Thailand, Australia, New Zealand, Papua New Guinea)
<b>EMEA</b>
FRANCE, SPAIN, ITALY, & PORTUGAL
SOUTHERN EUROPE, MIDDLE EAST, & AFRICA
UNITED KINGDOM & IRELAND
GERMANY, SWITZERLAND & AUSTRIA
BELGIUM, NETHERLANDS, LUXEMBOURG (BENELUX)
SWEDEN, NORWAY, DENMARK & FINLAND
SOUTH AFRICA
MIDDLE EAST



**Resource Directory**

**Department and Contact Information**

<b>Commvault Corporate Office</b>	Tinton Falls, New Jersey 1-732-870-4000
<b>Commvault Technical Support</b>	North America Toll-Free # (877) 780-3077 North America Direct Toll# (732) 571-2160 Brazil 0-800-892-2288 Columbia 01800-719-2063 Mexico 01-800-681-1581 <b>EMEA:</b> Belgium 0800-79392 Denmark 8088-9260 France 0800-918893 Germany 0800-1012330 Ireland 1-800-608178 Israel 1-80-9494177 Italy 0800-782147 Netherlands 0800-0227402 Norway 800-11-985 Portugal 800-8-14516 Russia 8-800-100-9423 Saudi Arabia 8000-35770005 South Africa 080-09-81256 Spain 0900-991600 Sweden 0200-896316 Switzerland 0800-836023 United Arab Emirates 8000-35770005 United Kingdom 0800-9171424 Other EMEA Countries +44-1189522030 <b>APAC:</b> Australia 1300 368 528 China 400-818-5908 India 1800-425-2951 Japan 0120-938-003 Korea 00-308-13-1763 Malaysia 1-800-813-686 New Zealand 0800 002 032 Singapore 800-101-2206 Thailand 001-800-13-204-2904
<b>Product License Registration</b>	North America/APAC: <a href="mailto:ProdReg@Commvault.com">ProdReg@Commvault.com</a> EMEA: <a href="mailto:Licensekey@Commvault.com">Licensekey@Commvault.com</a>
<b>Maintenance Advantage</b>	<a href="https://ma.commvault.com/">https://ma.commvault.com/</a>
<b>Service Contracts</b>	US: <a href="mailto:servicecontracts@Commvault.com">servicecontracts@Commvault.com</a> Canada: <a href="mailto:servicecontractscan@Commvault.com">servicecontractscan@Commvault.com</a> EMEA: <a href="mailto:servicecontractsemea@Commvault.com">servicecontractsemea@Commvault.com</a> APJ: <a href="mailto:apj-servicecontracts@Commvault.com">apj-servicecontracts@Commvault.com</a>
<b>Training</b>	North America: <a href="mailto:training@Commvault.com">training@Commvault.com</a> EMEA: <a href="mailto:trainingEMEA@CommvaultEMEA.com">trainingEMEA@CommvaultEMEA.com</a> APJ: <a href="mailto:RegistrarANZ@Commvault.com">RegistrarANZ@Commvault.com</a>
<b>Professional Services</b>	US: <a href="mailto:PSUSA@Commvault.com">PSUSA@Commvault.com</a> Canada: <a href="mailto:PSCanada@Commvault.com">PSCanada@Commvault.com</a> EMEA: <a href="mailto:PSEMEA@Commvault.com">PSEMEA@Commvault.com</a> APJ: <a href="mailto:PSAustralia@Commvault.com">PSAustralia@Commvault.com</a>
<b>Account Management Information</b>	Contact Sales Representative
<b>Invoice and Product Questions</b>	Contact Sales Representative

Coupa Software, Inc.  
1855 South Grant Street  
San Mateo, California 94402

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

**Scope.** This Rider and the attached Coupa Software, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates antideficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the AntiDeficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

## COUPA SOFTWARE

## COUPA SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

## MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (“**Agreement**”) is between Coupa Software Inc. (“**Coupa**”) and the Ordering Activity (“**Customer**”). This Agreement incorporates the **Subscription Schedule**, attached as **Exhibit A**, which describes the following operational matters of the Hosted Applications (as defined below): (1) technical support & update process; (2) service level agreement; and (3) data security measures.

## 1. DEFINITIONS

- 1.1. “**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity; and “**control**” for the purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interest of the subject entity, provided that any such Affiliate shall be deemed an Affiliate only for so long as such control lasts.
- 1.2. “**Confidential Information**” means all confidential and proprietary information of a disclosing party or any of its Affiliates disclosed by or on behalf of such party to the receiving party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including Customer Data, business and marketing plans, technology and technical information, product designs, and business processes. Notwithstanding anything to the contrary, the Hosted Applications and Coupa Platform are deemed to be Confidential Information of Coupa. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (ii) was known to the receiving party without restriction prior to its disclosure by the disclosing party and without breach of any obligation owed to the disclosing party; (iii) was independently developed by the receiving party without either use of or reference to any Confidential Information or breach of any obligation owed to the disclosing party; or (iv) is received from a third party without restriction and without breach of any obligation owed to the disclosing party.
- 1.3. “**Coupa Platform**” means any software and hardware that enables Coupa to provide Customer with access to and use of the Hosted Applications as contemplated by this Agreement.
- 1.4. “**Customer Data**” means any data, information or material provided or submitted by Customer or on behalf of Customer to the Coupa Platform in the course of using the Hosted Applications.
- 1.5. “**Documentation**” means the Coupa product documentation relating to the operation and use of the Hosted Applications, including technical program or interface documentation, operating instructions, update notes, and support knowledge base, as made available and updated from time to time by Coupa.
- 1.6. “**Hosted Application(s)**” means applications and associated content (as identified on an Order Form) to be provided by Coupa to Customer as a subscription service and made accessible on a website designated by Coupa.
- 1.7. “**Order Form**” means a purchase order mutually executed by the parties evidencing the purchase of subscriptions to the Hosted Applications specifying, among other things, the Subscription Term, the number of Users, the applicable fees, and the billing period as agreed to between the parties. Each Order Form, once mutually executed, shall be governed by and become part of this Agreement, and is hereby incorporated by this reference.
- 1.8. “**Protected Health Information**” has the meaning given to it in the Health Insurance Portability and Accountability Act (“**HIPAA**”).
- 1.9. “**Protected Information**” means Protected Health Information and Regulated Information.
- 1.10. “**Regulated Information**” means, where applicable, (a) from the perspective of EU law: special categories of data as defined in Article 8 of EU Directive 95/46/EC or Article 9 of the GDPR; and/or (b) from the perspective of US law: an individual’s first name and last name (or first initial and last name) in combination with any one or more of the following data elements that relate to such individual: (i) Social Security number; (ii) driver’s license number or state issued identification card number; or (iii) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual’s financial account.
- 1.11. “**Subscription Term**” means the period(s) during which Customer is authorized to use the Hosted Applications pursuant to an Order Form.
- 1.12. “**Support**” means the Coupa technical support as specified on the Order Form in accordance with the terms in **Exhibit A-1**.
- 1.13. “**Updates**” means Coupa’s updates of the Hosted Applications for repairs, enhancements or new features applied by Coupa to Customer’s instances, including updates to the Documentation as a result of such updates, at no additional fee during the Subscription Term. Updates shall not include additional functionality or upgrades to the Hosted Applications that Coupa requires a separate charge from its other customers generally.
- 1.14. “**Users**” means employees of Customer and its Affiliates and their representatives, consultants, contractors, subcontractors, or agents who are authorized to use the Hosted Applications and have been supplied unique user identifications and passwords by Customer.

## 2. COUPA’S OBLIGATIONS

- 2.1. **Provision of the Hosted Applications.** Coupa will make available to Customer, and Customer is authorized to use, the Hosted Applications during the Subscription Term as set forth in an applicable Order Form for its and its Affiliates’ internal business purposes in accordance with the Documentation.
- 2.2. **Support, Uptime & Updates.** Coupa shall: (i) provide the level of support specified in the Order Form in accordance with **Exhibit A-1**; (ii) provide Updates at no additional charge as part of Customer’s subscription during the Subscription Term in accordance with **Exhibit A-1** and (iii) make the Hosted Applications available in accordance with **Exhibit A-2**.
- 2.3. **Security.** Coupa shall maintain a written information security program of policies, procedures and controls (“**Security Program**”) governing the processing, storage, transmission and security of Customer Data. The Security Program as of the Effective Date is set forth in **Exhibit A-3**. The Security Program shall include industry standard practices designed to protect Customer Data from unauthorized access, acquisition, use, disclosure, or destruction. Coupa may periodically review and update the Security Program to address new and evolving security technologies, changes to industry standard practices, and changing security threats, provided that any such update does not materially reduce the overall level of security provided to Customer as described herein.
- 2.4. **Breach Notification.** Unless notification is restricted by law, Coupa shall report to Customer’s support contacts designated in Coupa’s customer support portal (“**Support Portal**”) any unauthorized acquisition, access, use, disclosure or destruction of Customer Data (“**Breach**”) promptly without undue delay after Coupa determines that a Breach has occurred. Unless prohibited by law, Coupa shall share information

about the nature of the Breach that is reasonably requested by Customer to enable Customer to notify affected individuals, government agencies and/or credit bureaus. Customer has sole control over the content of Customer Data that it enters into the Coupa Platform and is responsible for determining whether to notify impacted individuals and the applicable regulatory bodies or enforcement commissions and for providing such notice.

**2.5. Audit Report.** During the Subscription Term, except as stated otherwise on the Order Form, Coupa shall engage at its expense, an independent accounting firm to conduct an audit of Coupa's operations with respect to the Hosted Applications in accordance with the Statement on Standards for Attestation Engagements No. 18 (the "SSAE 18"), and have such accounting firm issue SSAE 18, SOC 1 Type 2 and SOC 2 Type 2 reports (or substantially similar report of a successor auditing standard in the event the SSAE 18 auditing standard is no longer an industry standard) (the "Auditor's Report"), which shall cover Coupa's security policies, procedures, and controls. Upon Customer's request,

Coupa shall provide Customer and its external auditors with a current copy of such Auditor's Report, provided that such report shall be deemed Confidential Information of Coupa.

**2.6. Insurance.** Coupa shall maintain during the term of this Agreement: (a) Commercial General Liability Insurance with minimum limits of US\$1,000,000 combined single limit and combined bodily injury and property damage per occurrence and US\$3,000,000 dollars in the aggregate; (b) Commercial Automobile Liability Insurance providing coverage for owned, hired, and non-owned motor vehicles used in connection with this Agreement in an amount of not less than US\$1,000,000 per accident combined single limit for bodily injury and property damage; (c) Umbrella Liability providing excess liability coverage in the minimum amount of US\$5,000,000.00 per occurrence, to supplement the primary coverage provided in the policies listed above; (d) Professional Liability Insurance (Errors and Omissions Insurance) with minimum limits of US\$5,000,000.00; (e) Workers Compensation Insurance covering Coupa employees pursuant to applicable state laws, and at the maximum limits statutorily required for each such state; and (f) Commercial Crime Insurance including coverage for loss or damage resulting from theft committed by the Coupa's employees, acting alone or in collusion with others, and coverage for computer crime, with a minimum per event and annual aggregate limit of US\$2,000,000. Upon request, Coupa shall promptly furnish Customer with a certificate evidencing the coverages set forth above.

### 3. CUSTOMER'S USE OF THE HOSTED APPLICATIONS

**3.1. User Accounts.** Customer is responsible for activity occurring under its User accounts and shall ensure that it and its Users abide by all local, state, national and foreign laws, treaties and regulations applicable to Customer's use of the Hosted Applications. Customer shall: (i) notify Coupa promptly of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) notify Coupa promptly and use reasonable efforts to promptly stop any unauthorized use, copying, or distribution of the Hosted Applications that is known or suspected by Customer or its Users; (iii) not impersonate another Coupa user or provide false identity information to gain access to or use the Hosted Applications or Coupa Platform; and (iv) restrict each User account to only one authorized User at a time.

**3.2. Restrictions.** Customer shall not (i) license, sublicense, sell, resell, transfer, rent, lease, assign (except as provided in Section 11.3 (Assignment)), distribute, disclose, or otherwise commercially exploit or make available to any third party the Hosted Applications; (ii) copy, modify or make derivative works based upon the Hosted Applications; (iii) "frame" or "mirror" the Hosted Applications on any other server or device; (iv) access the Hosted Applications for any benchmarking or competitive purposes or use the Hosted Applications for application service provider, timesharing or service bureau purposes, or any purpose other than its own internal use, (v) decompile, disassemble, reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the Hosted Applications (except to the extent reverse engineering restrictions are prohibited by applicable law), (vi) remove, obscure or modify a copyright or other proprietary rights notice in the Hosted Applications; (vii) use the Hosted Applications to send or store infringing, obscene, threatening, libelous, or otherwise unlawful material, including material that violates third party privacy rights; (viii) use the Hosted Applications to create, use, send, store, or run material containing software viruses, worms, Trojan horses or otherwise engage in any malicious act or disrupt the security, integrity or operation of the Hosted Applications or the Coupa Platform; (ix) attempt to gain or permit unauthorized access to the Hosted Applications or its related systems or networks; (x) use the Hosted Applications other than in compliance with all applicable laws and regulations or (xi) permit or assist any other party (including any User) to do any of the foregoing.

**3.3. User Reassignment.** User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require use of the Hosted Applications. Unless otherwise specified in the relevant Order Form, the replacement User shall be under the same Subscription Term of the original User.

**3.4. Additional Users.** Additional Users may be purchased pursuant to the parties signing an Order Form and unless otherwise specified in the relevant Order Form, the Subscription Term of additional Users shall be coterminous with the Subscription Term in effect at the time the additional Users are added.

**3.5. Protected Information.** The intended purpose of the Hosted Applications is to optimize Customer's corporate spend management processes and Customer acknowledges and agrees that use of the Hosted Applications does not require Customer to provide any Protected Information to or through the Hosted Applications or Coupa Platform. Protected Information should not be stored by any Hosted Applications or Coupa Platform, and Coupa shall have no liability to Customer or its suppliers, Users or any other party related to any Protected Information. Customer shall not (and shall ensure that its suppliers and Users do not) upload, provide or submit any Protected Information to the Hosted Applications or Coupa Platform.

#### 3.6. Third Party Interactions.

**No Supplier Fees.** Each party agrees that it shall not charge Customer's suppliers for the right to interact with Customer through the Coupa Platform.

**Supplier Interactions.** During the Subscription Term, Customer may enter into correspondence with and purchase goods and/or services from suppliers on or through the Hosted Applications. Any such activities and associated terms are solely between Customer and the applicable third party supplier. Customer agrees that Coupa shall have no liability, obligation or responsibility for any such correspondence or purchase between Customer and any such third party supplier.

### 4. RESERVED

### 5. PROPRIETARY RIGHTS

**5.1. Coupa's Intellectual Property Rights.** As between Coupa and Customer, all rights, title, and interest in and to all intellectual property rights in the Hosted Applications and Coupa Platform (including all modifications and enhancements thereof) are and shall be owned exclusively by Coupa notwithstanding any other provision in this Agreement or Order Form. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Hosted Applications or Coupa Platform. The Coupa name, logo and product names associated with the Hosted Applications or Coupa Platform are trademarks of Coupa, and no right or license is granted to use them. All rights



not expressly granted to Customer are reserved by Coupa. Coupa alone shall own all rights, title and interest in and to any suggestions, enhancement requests, feedback, or recommendations provided by Customer or any third party relating thereto.

**5.2. Customer Data.** As between Customer and Coupa, Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of and right to use all Customer Data, and hereby warrants that that it has and will have all rights and consents necessary to allow Coupa to use all such data as contemplated by this Agreement. Customer hereby grants to Coupa a royalty-free, fully-paid, non-exclusive, non-transferable (except as set forth in Section 11.3 (Assignment)), sub-licensable, worldwide right to use and process Customer Data solely for the purpose of providing to Customer the Hosted Applications and any other activities expressly agreed to by Customer in a written document signed by both parties.

## **6. CONFIDENTIAL INFORMATION**

**6.1. Obligations.** The receiving party shall not disclose or use any Confidential Information of the disclosing party for any purpose outside the scope of this Agreement, except with the disclosing party's prior written permission. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care). If the receiving party is compelled by law to disclose Confidential Information of the disclosing party, it shall provide the disclosing party with prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at disclosing party's cost, if the disclosing party wishes to contest the disclosure, and any information so disclosed shall continue to be treated as Confidential Information for all other purposes.

### **6.2. Reserved.**

**6.3. Use of Aggregate Data.** Customer agrees that Coupa may collect, use and disclose quantitative data derived from the use of the Hosted Applications for industry analysis, benchmarking, analytics, marketing, and other business purposes. All data collected, used, and disclosed will be in aggregate form only and will not identify Customer or its Users.

## **7. WARRANTIES**

**7.1. Coupa's Obligations.** Coupa warrants that during the Subscription Term (i) Customer's production instances of the Hosted Applications shall materially conform to the Documentation and (ii) that the functionality of the Hosted Applications at the time of the Order Form shall not materially decrease during the Subscription Term.

**7.2. Procedure.** To submit a warranty claim under this Section, Customer shall (1) reference this Section; and (2) submit a support request to resolve the non-conformity as provided in the Subscription Schedule. If the non-conformity persists without relief more than thirty (30) days after written notice of a warranty claim provided to Coupa under this Section, then Customer may terminate the affected Hosted Applications and Coupa, as its sole liability in connection with a breach of this warranty, shall refund to Customer any prepaid subscription fees covering the remainder of the Subscription Term of the affected subscription after the effective date of termination. Notwithstanding the foregoing, this warranty shall not apply to any non-conformity due to any modification of or defect in the Hosted Applications that is made or caused by someone other than Coupa (or someone acting at Coupa's direction).

## **8. INDEMNIFICATION**

**8.1. Coupa's Obligations.** Subject to this Agreement, Coupa shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, or demand (each a "Claim") that alleges the Hosted Applications used in accordance with this Agreement and the applicable Order Form infringe any issued patent, copyright, trademark or misappropriation of any trade secret of, such third party; and (ii) pay any court-ordered award of damages or settlement amount which may include any expense, liability, loss, damage, costs or reasonable attorneys' fees, each to the extent payable to a third party, to the extent arising from such Claims. Notwithstanding the foregoing, if Coupa reasonably believes that Customer's use of any portion of the Hosted Applications is likely to be enjoined by reason of any Claims then Coupa may, at its expense and in its sole discretion: (i) procure for Customer the right to continue using the Hosted Applications; (ii) replace the same with other products of substantially equivalent functions and efficiency that are not subject to any Claims of infringement; or (iii) modify the applicable Hosted Applications so that there is no longer any infringement, provided that such modification does not materially and adversely affect the functional capabilities of the Hosted Applications as set out herein or in the applicable Order Form. If (i), (ii), and (iii) above are not available on commercially reasonable terms in Coupa's judgment, Coupa may terminate the affected Hosted Applications and refund to Customer the fees paid by Customer covering the remaining portion of the applicable Subscription Term for the affected Hosted Applications after the date of termination. The foregoing indemnification obligation of Coupa shall not apply: (1) if the Hosted Application is modified by any party other than Coupa (or someone acting at Coupa's direction), but solely to the extent the alleged infringement is related to such modification; (2) the Hosted Application is combined with other non-Coupa products, applications, or processes not authorized by Coupa, but solely to the extent the alleged infringement is related to such combination; (3) to the extent the Claim arises in connection with any unauthorized use of the Hosted Application, or use that is not in compliance with all applicable laws and related Documentation; (4) to any third party products, processes or materials that are not provided by Coupa; or (5) to any Claims arising as a result of the content of the Customer Data. THIS SECTION SETS FORTH COUPA'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT. Nothing contained in this Agreement shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

### **8.2. Reserved.**

**8.3. Process.** Coupa's indemnity obligations are subject to the following: (i) Customer shall promptly notify Coupa in writing of any Claims; and (ii) Customer shall cooperate fully to the extent necessary at Coupa's cost in such defense and settlement.

## **9. DISCLAIMER**

**9.1. DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COUPA DOES NOT MAKE ANY OTHER REPRESENTATION, WARRANTY, OR GUARANTY, AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES PROVIDED OR OFFERED HEREUNDER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES PROVIDED TO CUSTOMER HEREUNDER ARE PROVIDED STRICTLY ON AN "AS IS" BASIS AND ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.



**10. TERM; TERMINATION**

10.1. **Term.** The Agreement commences on the Effective Date and continues until all Order Forms subject to this Agreement have expired or terminated, unless this Agreement is earlier terminated in accordance with this Section 10. User subscriptions commence on the subscription start date specified in the relevant Order Form and continue for the Subscription Term specified therein.

10.2. **Reserved.**

10.3. **Transition Services.** Upon termination of the Agreement, at Customer’s election, Coupa shall provide transition services to facilitate the orderly and complete transfer of the Customer Data to Customer or to any replacement provider designated by Customer (“**Transition Services**”), provided that the scope and fees of the Transition Services shall be mutually agreed to by the parties in an Order Form prior to commencing Transition Services. Notwithstanding the provisions of this subsection, in no event shall Coupa be required to disclose any of its Confidential Information or provide a license under any of its intellectual property to Customer or any third party as part of the Transition Services. For the avoidance of doubt, Customer shall continue to pay the subscription fees for the use of the Hosted Applications during the transition period set forth in an applicable Order Form.

10.4. **Survival.** Upon expiration or termination of the Agreement, Sections 1 (Definitions), 3.2 (Restrictions), 5 (Proprietary Rights), 6 (Confidential Information), 8 (Indemnification), 9 (Disclaimer), 10 (Term; Termination), and 11 (General Provisions) of this Agreement shall survive.

**11. GENERAL PROVISIONS**

11.1. **Compliance with Laws and Export Control.** Each party shall comply with all applicable laws and government regulations, including the export laws and regulations of the United States and other applicable jurisdictions, in connection with providing and using the Hosted Applications and/or Coupa Platform. Without limiting the foregoing, (i) each party represents that it is not named on any government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not, and shall ensure that Users do not violate any export embargo, prohibition, restriction or other similar law in connection with this Agreement.

11.2. **Reserved.**

11.3. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.4. **Reserved.**

11.5. **Entirety.** The Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist and applicable Order Forms, comprises the entire agreement between Customer and Coupa and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. In the event of any conflict between this Agreement and the Order Form, the Order Form shall govern. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. Customer agrees that Customer’s purchase of any subscription is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Coupa with respect to future functionality or features. No joint venture, partnership, employment, or agency relationship exists between Customer and Coupa as a result of the Agreement or use of the Hosted Applications or Coupa Platform. The failure of a party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision.

11.6. **Force Majeure.** This Agreement is subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010).

**EXHIBIT A - SUBSCRIPTION SCHEDULE**

**EXHIBIT A-1: TECHNICAL SUPPORT**

The following describes the technical support services (“**Technical Support**”) Coupa shall provide for the support level purchased by Customer (“**Support Level**”) as stated on the Order Form. The following terms may be updated from time to time, however, for each Order Form, the terms effective as of the execution of the Order Form shall apply for the duration of the applicable Subscription Term.

**Scope.** The purpose of Technical Support is to address defects in the Hosted Applications that prevent them from performing in substantial conformance with the applicable Documentation. A resolution to such a defect may consist of a fix, workaround or other relief reasonably determined by Coupa’s Technical Support staff.

**Online Support Portal.** The Support Portal includes an online knowledge base, best practices for use of the Hosted Applications, and a portal for the Designated Support Contacts (as defined below) to submit support tickets.

**Live Phone Support.** Coupa personnel is available to provide Technical Support to Customer, depending on the Support Level (as defined below) purchased by Customer.

**Severity Levels.** Each support ticket shall be categorized by Customer into one of the following severity levels.

Severity	Definition
Level 1	Severe error that results in the Hosted Applications experiencing complete unavailability and halting transactions with no workaround.
Level 2	Serious error that results in a major function of the Hosted Applications suffering a reproducible problem causing either major inconvenience to Users or consistent failure in a common functionality.
Level 3	Error that results in a common functionality experiencing an intermittent problem or a consistent failure in a less common functionality.
Level 4	Service requests such as sandbox refreshes, SSO setups, and other how-to type of questions.

5. **Support Levels**

Support Level	Silver	Gold	Platinum
Online Ticket Submission	Yes	Yes	Yes
Phone Support	Weekdays (8 am to 6 pm at Customer's headquarters)	24x7 for Severity 1 cases	24x7 for Severity 1 cases
Designated	Maximum of 3	Maximum of 5	Maximum of 7
Support Contacts			
Response Times			
Severity 1	1 Business Day	4 Hours	2 Hours
Severity 2	2 Business Days	1 Business Day	4 Hours
Severity 3	4 Business Days	3 Business Days	3 Business Days
Severity 4	7 Business Days	7 Business Days	7 Business Days

6. **Customer Responsibilities**

Customer shall designate no more than the number of Coupa Platform administrators ("**Designated Support Contacts**") set forth above who may contact and interact with Coupa in connection with Technical Support requests. Customer's Designated Support Contacts shall answer questions and resolve issues as needed when they arise from other Users of the Hosted Applications. Customer's Designated Support Contacts enter support request tickets, work through Technical Support issues with Coupa, and take action as needed to implement the resolution to the issue. Customer agrees that Coupa may communicate, and follow instructions to make changes to Customer Data and/or Customer's instances, with its Designated Support Contacts via email, phone or through the Support Portal.

Customer shall ensure that Customer's Designated Support Contacts are trained on the use and administration of the Hosted Applications. Customer shall ensure that the name, contact and other information for these Designated Support Contacts are current in the Support Portal. Customer may replace Designated Support Contacts by updating the applicable information in the Support Portal, provided that at no time may Customer have more than the number of Designated Support Contacts permitted based on its Support Level.

7. **Support Exclusions**

Coupa is not required to provide resolutions for immaterial defects or defects due to modifications of the Hosted Applications made by anyone other than Coupa (or anyone acting at Coupa's direction). Technical Support does not include professional services for implementation, configuration, integration or customization of a Hosted Application or custom software development, training or assistance with administrative functions.

8. **Update Process**

Coupa shall use commercially reasonable efforts to (1) monitor the Hosted Applications and related infrastructure for opportunities to address performance, availability and security issues; and (2) at Coupa's discretion, deliver functionality enhancements to address customer and market requirements to improve such Hosted Applications based on Coupa innovation.

Coupa's update and release process, as updated from time to time, is described at [https://success.coupa.com/Success/Release Management/01 Release Types](https://success.coupa.com/Success/Release_Management/01_Release_Types) ("**Update Process**"). Customer shall upon notice comply with the Update Process and understands that not all Technical Support may be available if Customer does not comply with the Update Process and only the latest release of the Coupa Platform and Hosted Applications contains the most current features, availability, performance and security, including software fixes. Coupa is not responsible for product defects or security issues affecting the Hosted Applications or failure to meet the Uptime SLA (defined in [Exhibit A-2](#)) for Hosted Applications when Customer is not in compliance with the Update Process.

**EXHIBIT A-2: SERVICE LEVEL AGREEMENT (SLA)**

If service outages result in a failure of any production instance of a Hosted Application to meet an uptime availability requirement of 99.8% over a calendar month ("**Uptime SLA**"), Customer's sole and exclusive remedy shall be a service credit equal to the greater of:

Ten percent (10%) of the subscription fees set forth in the applicable Order Form for the applicable Hosted Application for that calendar month; or

The actual unavailability rate for that calendar month (as an example, if the Hosted Application has an uptime availability of 85% during a calendar month, then the service credit shall be fifteen percent (15%) of the applicable subscription fees for that calendar month).

The following events shall be excluded in calculating Uptime SLA:

Planned maintenance windows, which are described at [https://success.coupa.com/Success/Release Management/03 Maintenance Windows](https://success.coupa.com/Success/Release_Management/03_Maintenance_Windows); and

Emergency maintenance required to address an exigent situation with the Hosted Application or Coupa Platform that if not addressed on an emergency basis could result in material harm to the Hosted Application or Coupa Platform. Coupa shall provide advance notice of emergency maintenance via the Support Portal to the extent practicable.

Any unavailability caused by circumstances beyond Coupa's reasonable control, including without limitation, unavailability due to Customer or its Users' acts or omissions, a Force Majeure Event, Internet service provider failures or delays, failure or malfunction of equipment or systems not belonging to or controlled by Coupa,

Items (a) – (c) collectively, "**Excused Downtime**".

Coupa reserves the right to perform planned maintenance outside the target periods above if circumstances require, and Coupa shall provide prior notice to Customer via the Support Portal before doing so.

Uptime SLA is calculated as follows:

$\frac{(x - y - z)}{(x - z)} \times 100$	<p><math>x</math> = total number of minutes in a calendar month  <math>y</math> = downtime that is not excluded  <math>z</math> = Excused Downtime (as defined above)</p>
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Customer must request all service credits in writing to Coupa within thirty (30) days of the end of the month in which the Uptime SLA was not met, including identifying the period Customer's production instance of the Hosted Applications was not available. Coupa shall apply the service credit during Customer's next billing cycle unless the service credit is reasonably disputed by Coupa, in which case Customer and Coupa shall work together in good faith to resolve such dispute in a timely manner. The total amount of service credits for any month may not exceed the applicable monthly subscription fee for the affected Hosted Applications, and has no cash value (unless a service credit is owed at the termination or expiration of this Agreement without a renewal order, in which case, such service credit shall be paid to Customer within ninety (90) days of the end of the Subscription Term). Uptime and other system performance metrics can be found on [trust.coupa.com](http://trust.coupa.com).

**EXHIBIT A-3: DATA SECURITY MEASURES**

The following terms may be updated from time to time, however, for each Order Form, terms effective as of execution of the Order Form shall apply for the duration of the applicable Subscription Term.

(A) **ORGANIZATIONAL ACCESS CONTROL**

**Control Environment.** Coupa employees are required to sign a written acknowledgement form documenting their receipt and understanding of the employee handbook and their responsibility for adhering to the policies and procedures therein. Employees are also required to sign a confidentiality agreement agreeing not to disclose proprietary or confidential information, including client information, to unauthorized parties.

**Access Administration.** Coupa employees do not have direct access to Customer Data, except where necessary for Technical Support, system management, maintenance, backups and other purposes separately authorized by Customer in writing. Access to Customer Data is further restricted to technical and customer support staff on a need-to-know basis. When an employee or contractor no longer has a business need for these privileges, his or her access is revoked in a timely manner, even if he or she continues to be an employee or contractor of Coupa. Coupa's policies require Coupa personnel to report any known security incidents to Coupa management, including the Coupa Security Officer, for investigation and action.

**Personnel Screening.** Criminal background checks are performed for employees with access to Customer Data as a component of the hiring process.

**Security Awareness and Training.** Coupa maintains a security awareness program that includes appropriate training of Coupa personnel on Coupa's security program. Training is conducted at the time of hire and periodically in accordance with the Coupa Information Security Policy.

**Subprocessors and Data Transfer.** Coupa may engage Subprocessors and other Third-Party Suppliers (each as defined below) to perform some of its obligations under the Agreement. Coupa shall ensure that Subprocessors only access and use Customer Data in accordance with the terms of the Agreement and that they are bound by written obligations to protect Customer Data. At the written request of Customer, Coupa shall provide additional information regarding Third Party Suppliers and their locations. Customer may send such requests to Data Privacy Officer at [legalnotices@coupa.com](mailto:legalnotices@coupa.com). "**Third-Party Suppliers**" means third-party contractors and suppliers engaged by Coupa in the context of the provision of the Hosted Applications or Coupa Platform. "**Subprocessors**" means those Coupa Affiliates and Third-Party Suppliers that have access to, and process, Customer Data. As part of providing the Hosted Applications or Coupa Platform, Coupa may transfer, store and process Customer Data in the Europe Economic Area, United States of America, and India or any other country in which Coupa and its Subprocessors maintain facilities.

**Business Continuity Management Process.** Coupa shall maintain a business continuity plan (BCP) that defines the processes and procedures for the company to follow in the event of a disaster and shall review and shall regularly test Coupa's disaster recovery plan to ensure that it is capable of recovering Coupa assets and continuing key Coupa business processes in a timely manner.

(B) **PHYSICAL ACCESS CONTROL**

**Physical Protection of the Data Centers.** Physical access to data centers is strictly controlled by the cloud infrastructure provider ("IaaS Provider") both at the perimeter and at building ingress points by security staff. Authorized staff must pass a two-factor authentication to access data center floors which are monitored by cameras. All visitors and contractors are required to present identification and are signed in and continually escorted by authorized staff. The IaaS Provider only provides data center access and information to employees and contractors who have a legitimate business need for such privileges. When an employee or contractor no longer has a business need for these privileges, his or her access is immediately revoked, even if he or she continues to be an employee or contractor of the IaaS Provider. All physical access to data centers is logged and audited routinely.

**Availability.** Data centers are built in various global regions. All data centers are online and serving customers; no data center is "cold." In case of failure, automated processes move Customer Data traffic away from the affected area.

The datacenters have backup power and environmental protection systems, which are regularly maintained and tested.

**Disaster Recovery.** Coupa shall create a disaster recovery plan designed to provide appropriate technical and operational controls to deliver a recovery time objective (RTO) of no more than 1 hour and a recovery point objective (RPO) of availability with data loss of no more than 1 hour for the Hosted Applications.

**Fire Detection and Suppression.** Automatic fire detection and suppression equipment has been installed to reduce risk and damage to data center environments.

**Power.** The data center electrical power systems are designed to be fully redundant and maintainable without impact to operations, 24 hours a day, and seven days a week. Data center facilities have power backup and environmental protection systems in the event of an electrical failure for critical and essential loads in the facility.

**Climate and Temperature.** Data centers are conditioned to maintain atmospheric conditions at optimal levels. Personnel and systems monitor and control temperature and humidity at appropriate levels.

**Monitoring.** The IaaS Provider monitors electrical, mechanical, and life support systems and equipment so that any issues are immediately identified. Preventative maintenance is performed to maintain the continued operability of equipment.

(C) **TECHNICAL SECURITY MEASURES**

**Database Protection.** Database infrastructure is completely segregated from the application servers and the Internet via firewalls.

**Encryption.** All communications are encrypted between the data exporter and the data centers using high-grade encryption (AES-256). Access to Coupa's on-demand applications and services is only available through secure sessions (https) and only available with an authenticated login and password. Passwords are never transmitted or stored in their original form.

**Intrusion Protection.** The application infrastructure is protected against intrusion by industry standard firewalls at the network, host, and application levels, and intrusion detection systems across all servers. Customer is prohibited from performing its own penetration on any system of Coupa or its supplier.

**Instance Isolation.** Different IaaS instances are hosted on the same physical machine and are isolated from each other through the hypervisor layer. All packets pass through this layer, so that another instance has no more access to Customer's instance than any other host on the Internet – the instances look like they are on separate physical hosts. Customer instances in the IaaS infrastructure have no access to raw disk devices, but instead are presented with virtualized disks.

**Malicious Software Protection.** Coupa and the IaaS Provider shall ensure that the Hosted Applications and the Coupa Platform include reasonably up-to-date versions of system security agent software which shall include reasonably current and tested malware protection, patches and anti-virus protection.

(D) **RETURN OF CUSTOMER DATA**

Customer will have a period of 30 days after the effective date of termination of the Agreement ("**Transition Period**") to download any available data produced by the Hosted Applications ("**Transactional Data**") based on Customer Data. Customer may seek assistance from Coupa during the Transition Period to download large files of the Transactional Data. Upon such request, Coupa will promptly make available for download Transactional Data in comma separated value (.csv) format along with attachments in their native format. For clarity, such Transactional Data will not include system generated log files or Coupa specific configuration data. After such Transition Period, Coupa shall have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

(E) **EXCLUSIONS**

If Customer installs, uses, or enables third party services that interoperate with the Hosted Applications then the Hosted Applications may allow such third party services to access, use, or otherwise process and transmit Customer Data. Coupa's Security Program does not apply to any processing, storage, or transmission of any such Customer Data, and Coupa is not responsible for the security practices (or any acts or omissions) of such third party service providers with respect to data transmitted to and from such third party services. The Security Program excludes: (i) data or information shared with Coupa that is not stored in the applicable Coupa Platform; (ii) data in Customer's virtual private network (VPN) or a third party network other than one that is under a subcontract with Coupa to assist Coupa in fulfilling its obligations in the Agreement; or (iii) any data used, processed, stored or transmitted by Customer or Users in violation of this Agreement.

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**Coursera, Inc.**

381 East Evelyn Avenue  
Mountain View, CA 94041

**EC America Rider to Coursera, Inc. Terms and Conditions (for U.S. Government End Users)**

**Scope.** This Rider and the attached Coursera, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, to the extent that they are consistent with Federal law, including but not limited to GSAR 52.212-4(u) Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee” or “Organization”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-82, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) shall take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Termination shall be governed by the FAR. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act (41 U.S.C. §§ 7101-7109), the Tucker Act (28 U.S.C. § 1491), the Administrative Procedures Act (5 U.S.C. §§ 701-706), and the Federal Tort Claims Act (28 U.S.C. § 1346(b)), and other applicable Federal law, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States, except as otherwise set forth in the Manufacturer’s Specific Terms. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** While equitable remedies are generally not awarded against the Government absent a statute providing therefore, it is not the intention of either party to waive any rights it may have to seek an equitable remedy in any court of competent jurisdiction. All clauses in the Manufacturer Specific Terms referencing equitable remedies which are expressly prohibited by applicable Federal Law are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.



**Excusable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall promptly notify the Contracting Officer in writing after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with commercially reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor when the Contractor is indemnifying the Government are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute. Notwithstanding the foregoing, Contractor shall not be bound by any settlement or waiver of rights that is entered into by the Government without the Manufacturer's prior written consent.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412). Notwithstanding the foregoing, the GSA Customer shall make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 C.F.R. Part 1315.

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, the Contract Disputes Act, and other applicable Federal Law.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a



Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider nor the Manufacturer's Specific Terms nor the Contractor's Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the Order of Precedence clause in FAR 52.212-4(s) shall govern. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



## TERMS AND CONDITIONS

### Obligations.

As of the Launch Date (as defined herein), Coursera grants to Organization and its users (“**Users**”) a non-exclusive, non-transferable, revocable right to access and use the User Services and Content Services (collectively, “**Services**”) subject to the terms and conditions set forth in this Order Form. “**Launch Date**” shall mean the date that Coursera gives “super administrator” access to Organization, which shall give Organization the ability to invite Users to access the Content Services. The Launch Date shall be evidenced by an email notification to Organization. “**User Services**” means (i) customized landing page featuring the Organization logo and selected courses, (ii) User engagement reports, (iii) payment solution(s) that allow Users to seamlessly access premium course experiences and skip checkout, and (iv) enterprise-level User support. “**Content Services**” means access to Coursera’s Course and/or Specialization certificate service, including access to Course assessments and grades, for certain massive online open content offerings to be mutually agreed upon in writing by Coursera and Organization. “**Courses**” or “**Specializations**” means courses and specializations from the world’s top universities and instructors, for consumption via the proprietary platform developed by Coursera (“**Platform**”). “**User License**” means the right for a single User to access the Content Services for an unlimited number of Enrollments. “**Enrollment**” means registration to participate in a single Course, and such Enrollment shall be deemed used once a User registers for a Course and does not either (i) manually opt out or (ii) automatically unenrolled due to low activity, in both cases during the trial period. User Licenses are transferable among Users, provided however, Users will lose paid access to all then enrolled Courses if they are not holding a User License (or other paid Enrollment) through completion of such Courses. If a Course or Specialization becomes unavailable prior to the end of the Term, Coursera may replace such Course or Specialization with a reasonable alternative Course or Specialization. The Courses and Specializations offered in the Coursera for Business catalogue are determined by such factors as availability, pricing, and other restrictions.

If Organization has opted to (1) create a learning plan for its users, (2) implement Single Sign-On (“SSO”) or (3) request that Coursera integrate with its learning management system (“LMS”), Organization shall reasonably and timely provide Coursera with all requested materials, APIs, systems information, Course and/or Specialization choices, and any other cooperation necessary to allow the Platform to be implemented (including testing and debugging) on or before the Launch Date.

Organization will collaborate with Coursera to jointly market and promote the relationship contemplated by this Order Form as well as the value of Coursera services to Organization. Coursera may, in accordance with Organization’s branding guidelines, use Organization’s name and logo(s) to list Organization as a customer and create mutually acceptable case studies highlighting the

<sup>1</sup> For internal accounting purposes, Coursera will allocate 70% of these fees for Content Services and 30% for User Services.

relationship of the Parties. Coursera may identify Organization and provide the number of participating Organization Users to the creators and instructors of Courses and/or Specializations accessed by Organization’s Users. Neither Party will, without the prior written approval of the other Party, issue any public statements or promotional materials disclosing the existence of this Order Form or the performance of Services hereunder. In addition, the Parties may, subject to mutual agreement as to the specific content, issue joint publicity materials, including, but not limited to, press releases. Other than as set forth herein, neither Party will, without the prior written approval of the other Party, issue any public statements or promotional materials disclosing the existence of this Order Form or the performance of Services hereunder. Coursera recognizes that when the end user is the Federal Government neither the Order Form nor this Agreement is confidential; provided, however, the Organization shall, in accordance with their regulations and standard operating procedures, give Coursera prior written notice and an opportunity to redact confidential or proprietary information prior to any public release or disclosure of this Agreement or an Order Form.

In order to allow the Parties to evaluate the effectiveness of Course content for Organization training purposes and for purposes of allowing Coursera to continually improve upon its Platform and related offerings, Coursera will provide aggregate level data about the participation of Users in Courses selected and paid for by Organization, subject to and in accordance with Coursera’s privacy policies attached hereto as Attachment A and incorporated by this reference. The Parties will cooperate to ensure each User’s compliance with Coursera’s user policies. Each party will respect the confidentiality and privacy of such User data and operate in accordance with applicable law with respect to its use and handling of same. Organization agrees to implement and maintain technical and organizational measures and procedures to ensure an appropriate level of security for participants’ personal information, including protecting such personal information against the risks of accidental, unlawful or unauthorized destruction, loss, alteration, disclosure, dissemination or access.

The rights set out in Section 1(a) do not include the right to, and Organization will not (either directly or indirectly): (i) copy, sublicense, rent, lease, barter, swap, resell, or commercialize the Platform, Courses, or Specializations, in whole or in part; (ii) transfer, transmit, enable, or allow access to or use of the Platform, Courses, or Specializations, whether in whole or in part, by any means, to a third party; (iii) create external derivative works of the Platform, Courses, or Specializations; (iv) use the Platform, Courses, or Specializations in any manner that is fraudulent, deceptive, threatening, harassing, defamatory, unlawful, illegal, obscene, or otherwise objectionable in Coursera’s reasonable discretion; (v) “crawl,” “scrape,” “spider,” or otherwise copy or store any portion of the Platform, Courses, or Specializations for any purpose not contemplated under this Order Form (e.g., in order to mimic the functionality and/or output of the Platform, Courses, or Specializations, in whole or in part); (vi) disassemble, reverse engineer, decompile, or otherwise attempt to obtain the source code or underlying logic of any portion of the

Platform, Courses, or Specializations; (vii) use the Platform, Courses, or Specializations as part of any machine learning or similar algorithmic activity; or (viii) publish or distribute the Platform, Courses, or Specializations, or materials derived from the Platform, Courses, or Specializations, to third parties.

**Intellectual Property.** Coursera retains all rights, titles, and interests in and to the Platform, Courses, and Specializations and improvements thereto, together with any tools, materials, specifications, guidelines, and instructions provided by Coursera to Organization, as well as all intellectual property rights, including all copyrights, trademarks, patents, rights in databases, goodwill, trade secrets, and moral rights. Organization will not remove, obscure, or alter any copyright or trademark notices or other notices provided in or through the Platform, Courses, or Specializations. Any rights not expressly granted to Organization in this Order Form are reserved by Coursera.

**Fees and Billing.** The GSA Schedule Contract Holder will invoice Organization for the Fees set forth herein upon execution of an Order Form. Organization will pay the invoice on the payment terms set forth in this Order Form in accordance with the GSA Schedule Pricelist.

**Taxes.** The GSA Schedule Contract Holder shall state separately on invoices taxes excluded from the fees, and the Organization agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Term.** The term of this Order Form shall commence on the Effective Date and shall continue in full force and effect for the agreed upon period from the Launch Date, unless terminated in accordance with Section 6 (Termination) (the "**Term**"). Upon expiration of the Term, access to the Platform will no longer be made available by Coursera under this Order Form (including paid access to uncompleted Courses).

#### **Termination.**

**Termination for Breach.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under FAR 52.233-1, Disputes. During the pendency of any dispute under FAR 52.233-1, Disputes, Coursera shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement.

**Effects of Expiration or Termination.** Upon expiration or termination of this Order Form for any reason: (i) all rights granted and obligations incurred by one Party to the other that are intended to cease upon expiration or termination will cease immediately; (ii) upon request each Party will promptly return or destroy all Confidential Information of the other Party; and (iii) all Services shall immediately cease.

#### **Confidential Information.**

**Obligations.** Each Party will: (i) protect the other Party's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (ii) not disclose the Confidential Information, except to affiliates, employees, and agents who need to know it and who have agreed in writing to keep it confidential and who are trained and reliable. Each Party (and any affiliates, employees, and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill obligations under this Order Form, while using reasonable care to protect it. Each Party is responsible for any actions of its affiliates, employees, and agents in

violation of this section. "**Confidential Information**" means information disclosed by a Party to the other Party under this Order Form that is marked as confidential or would normally be considered confidential under the circumstances.

**Exceptions.** Confidential Information does not include information that: (i) the recipient of the Confidential Information already knew; (ii) becomes public through no fault of the recipient; (iii) was independently developed by the recipient; or (iv) was rightfully given to the recipient by another Party.

**Required Disclosure.** Each Party may disclose the other Party's Confidential Information when required by law and must notify the other party of such disclosure. Coursera recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, ("FOIA") which may require that certain information be released, despite being characterized as "confidential" by the vendor. Organization shall give Coursera prior written notice and an opportunity to redact pricing and other sensitive information in connection with any FOIA request.

#### **Representations and Disclaimers.**

**Representations.** Each Party represents that: (i) it has full power and authority to enter into the Order Form; and (ii) it will comply with all laws and regulations applicable to its performance of its obligations under this Order Form. Notwithstanding any other provision of this Order Form, neither Party shall take any action or omit to take any action under this Order Form or in connection with its business that would cause it to be in violation, in any applicable jurisdiction, of: (i) anticorruption laws and regulations, including but not limited to the Foreign Corrupt Practices Act (U.S) and The Bribery Act 2010 (U.K.); or (ii) anti-money laundering laws or regulations. Organization represents that it is in compliance with its various economic sanctions programs administered by the U.S. Department of Treasury's Office of Foreign Assets Control and that Organization is not currently listed on any Excluded or Denied Party List maintained by any U.S. Government agency.

**Limited Warranty and Disclaimers.** COURSERA WARRANTS THAT THE PRODUCTS AND SERVICES WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH PRODUCTS AND SERVICES WRITTEN MATERIALS ACCOMPANYING IT. ORGANIZATION'S SOLE REMEDY, AND COURSERA'S SOLE OBLIGATION UNDER THE FOREGOING WARRANTY SHALL BE THE ENTERPRISE-LEVEL USER SUPPORT AND COURSERA'S USE OF COMMERCIALY REASONABLE EFFORTS TO HAVE THE PRODUCTS AND SERVICES PERFORM IN SUBSTANTIAL COMPLIANCE WITH THE WRITTEN MATERIALS ACCOMPANYING IT. ORGANIZATION'S RIGHTS AND COURSERA'S OBLIGATIONS ARE CONDITIONED ON COURSERA RECEIVING WRITTEN NOTICE FROM THE ORGANIZATION DURING THE WARRANTY PERIOD THAT PROVIDES A COMPLETE DESCRIPTION OF THE ALLEGED DEFECT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, AND NONINFRINGEMENT. COURSERA PROVIDES ITS PRODUCTS AND SERVICES "AS IS" AND DOES NOT WARRANT THAT THE OPERATION OF ITS PRODUCTS AND SERVICES WILL BE ERROR-FREE OR

UNINTERRUPTED. COURSERA MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH ITS PRODUCTS AND SERVICES.

**Government Contracts. If this Order Form is entered into by a U.S. Government agency, the Order Form shall be modified as follows:**

Add the following paragraph (c) to Paragraph 6, "Termination": "Termination for the Government's convenience. Organization reserves the right to terminate this Order Form, or any part hereof, for its sole convenience. In the event of such termination, Coursera shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Order Form, Coursera shall be entitled to receive and retain payment in the amount of the Order Form pro-rated price for products and services provided prior to the termination date, plus reasonable charges Coursera can demonstrate to the satisfaction of Organization using its standard record keeping system, have resulted from the termination. For clarity, subscription purchases are deemed consumed in their entirety upon purchase. Organization will only pay such reasonable fees as are legal. Coursera shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. Subject to GSA Schedule Contract Clause 552.215-70, Examination of Records by GSA (Multiple Award Schedule). This paragraph does not give the GSA Schedule Contract Holder any right to audit Coursera's records. Coursera shall not be paid for any work performed or costs incurred which reasonably could have been avoided."

Add the following to Paragraph 7(c), "Confidential Information – Required Disclosures": "Any provisions that require Organization to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. § 552."

Remove Paragraph 10(a), "Indemnification - By Organization."

Replace Paragraph 12(b), "Miscellaneous - Assignment" with the following: "All clauses regarding assignment are subject to FAR clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements."

Replace Paragraph 12(i), "Miscellaneous - Governing Law" with the following: "This Order Form shall be governed by and interpreted according to applicable federal law. Any disputes involving the Order Form shall be handled in accordance with FAR clause 52.212-4(d), "Disputes."

If this Order Form is entered into by a U.S. Government agency or in support of a U.S. Government contract, Coursera expressly rejects any Federal Acquisition Regulation (FAR) clause or FAR agency supplemental clause that is not a required flowdown for a firm-fixed-price, commercial item subcontract. Only the FAR clauses below are incorporated herein and are made part of this Order Form, provided the conditions described below apply to the Order Form, and all other FAR and FAR agency supplemental clauses are hereby rejected, unless Coursera expressly agrees to such clauses in writing.

- 52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015) (if the Order Form exceeds \$5.5M and has a performance period of more than 120 days)
- 52.219-8 Utilization of Small Business Concerns (Oct 2014)

- 52.222-21 Prohibition of Segregated Facilities (Apr 2015)
- 52.222-26 Equal Opportunity (Sep 2016)
- 52.222-35 Equal Opportunity for Veterans (Oct 2015) (if the Order Form equals or exceeds \$150,000)
- 52.222-36 Equal Opportunity for Workers with Disabilities (Jul 2014) (if the Order Form exceeds \$15,000)
- 52.222-37 Employments Reports on Veterans (Feb 2016) (if the Order Form equals or exceeds \$150,000)
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)
- 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011)
- 52.222-50 Combating Trafficking in Persons (Mar 2015)
- 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)

**Indemnification.**

Reserved.

By Coursera. Coursera will indemnify, have the right to intervene to defend, and hold harmless Organization from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that Coursera's technology used to provide the Platform or any Coursera brand features used in accordance with this Order Form infringe or misappropriate any intellectual property rights of such third party. Notwithstanding the foregoing, in no event shall Coursera have any obligations or liability under this section arising from: (i) use of the Platform or Coursera brand features in a modified form or in combination with materials not furnished by Coursera; or (ii) any content, information, or data provided by Organization, Users, or other third parties.

General. The Party seeking indemnification will promptly notify the other Party of the claim and cooperate with the other Party in defending the claim. The indemnifying Party has control and authority over the defense, except that: (i) any settlement requiring the Party seeking indemnification to admit liability or to pay any money will require that Party's prior written consent, such consent not to be unreasonably withheld or delayed; and (ii) the other Party may join in the defense with its own counsel at its own expense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., at its own sole expense and pursuant to its jurisdictional statute 28

U.S.C. §516. THE INDEMNITIES ABOVE ARE THE ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

**Limitation of Liability.**

Limitation on Indirect Liability. NEITHER PARTY WILL BE LIABLE UNDER THIS ORDER FORM FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

Limitation on Amount of Liability. NEITHER PARTY MAY BE HELD LIABLE UNDER THIS ORDER FORM FOR MORE THAN THE AMOUNT PAID OR PAYABLE BY ORGANIZATION TO COURSERA FOR THE PURCHASE ORDER(S) GIVING RISE TO THE CLAIM.

**Exceptions to Limitations.** These limitations of liability do not apply to breaches of confidentiality obligations, violations of a Party's intellectual property rights by the other Party, or indemnification obligations. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**Miscellaneous.**

**Notices.** All notices must be in writing and addressed to the attention of the other Party's legal department and primary point of contact. Notice will be deemed given: (i) when verified by written receipt if sent by personal or overnight courier, when received if sent by mail without verification of receipt, or within five business days of posting if sent by registered or certified post; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or by email to the fax number or email address, as applicable, explicitly provided by one Party to the other Party for this purpose, provided that if a notice is sent by email to Coursera, a copy must also be sent to legal-notices@coursera.org.

**Assignment.** Neither Party may assign or transfer any part of this Order Form without the written consent of the other Party.

**Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**No Waiver.** Failure to enforce any provision of this Order Form will not constitute a waiver.

**Severability.** If any provision of this Order Form is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose, and the remainder of this Order Form will

continue in full force and effect.

**No Agency.** The parties are independent contractors, and this Order Form does not create an agency, partnership, or joint venture.

**No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Order Form.

**Equitable Relief.** Nothing in this Order Form will limit either Party's ability to seek equitable relief if permitted by law.

**Governing Law.** This Order Form is governed by the applicable Federal law of the United States.

**Amendments.** Any amendment must be in writing and expressly state that it is amending this Order Form. The enforceability, terms and conditions of this Agreement shall not be affected, amended or superseded by the issuance or acceptance of a purchase order delivered for the Services that are the subject of this Agreement.

**Survival.** Those provisions that by their nature should survive termination of this Order Form, will survive termination of this Order Form.

**Entire Order Form.** This Order Form, and all documents referenced herein and attached hereto, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject.

**Counterparts.** The parties may enter into this Order Form in counterparts, including facsimile, PDF, or other electronic copies, which taken together will constitute one instrument.

*[The remainder of this page left intentionally blank]*



## Attachment A

# DATA PROTECTION ADDENDUM

**"Data Protection Laws"** means any laws and regulations in any relevant jurisdiction, relating to privacy or the use or processing of data relating to natural persons, including without limitation: (a) EU Regulation 2016/679 ("**GDPR**") and any laws or regulations ratifying, implementing, adopting, supplementing, or replacing GDPR; and (b) the California Consumer Privacy Act of 2018 ("**CCPA**") and any laws or regulations ratifying, implementing, adopting, supplementing, or replacing the CCPA; in each case, to the extent in force, and as such are updated, amended, or replaced from time to time.

**"DP Regulator"** means any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws. **"Privacy Shield"** means the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks as administered by the U.S. Department of Commerce.

## Data protection

The terms "Data Subject", "Data Controller", "Personal Data" and "processing" shall have the meanings set out in in GDPR, except to the extent that any personal data or information applies to a California resident, in which case the equivalent and/or additional meanings (including for "Business", "Service Provider", and "Resident") set out in the CCPA, shall apply.

Coursera shall comply with the provisions and obligations imposed on them by the Data Protection Laws at all times when processing Personal Data in connection with this Agreement. Ordering Activity shall comply with United States Federal Data Protection Laws, but is not bound by the obligations of the GDPR, or the CCPA.

Each party shall maintain records of all processing operations under its responsibility that contain at least the minimum information required by the Data Protection Laws, and shall make such information available to any DP Regulator on request.

For avoidance of doubt, Coursera is the processor of the Personal Data your organization provides in order to invite users to the Coursera platform (such as name and email address) ("**Invitation Data**"). Coursera is the controller of user data, information that is confirmed, inputted, or generated by users on the Coursera platform.



Coursera, in its capacity as a processor of Invitation Data, uses the following subprocessors to carry out its processing activities:

<b>Subprocessor Name</b>	<b>Purpose</b>	<b>Location</b>
Amazon Web Services, Inc.	Cloud service provider	Virginia, USA and Oregon, USA
Message Systems, Inc. (DBA Sparkpost)	Cloud-based email service	USA

Your organization grants Coursera permission to use the above named subprocessors (that may change from time to time) in order to send invitation messages to the employees you designate to Coursera.

To the extent that Coursera (the "Receiving Party") receives Invitation Data from the other party (the "Providing Party"), the Receiving Party, acting as a new Data Processor/Service Provider of such Invitation Data, shall:

comply with the provisions and obligations imposed on it as a Data Processor/Service Provider by Data Protection Laws at all times;

take reasonable steps to ensure the reliability of all its personnel who have access to such Invitation Data, and ensure that any such personnel are committed to binding obligations of confidentiality when processing such Invitation Data;

implement and maintain technical and organisational measures and procedures to ensure an appropriate level of security for such Invitation Data, including protecting such Invitation Data against the risks of accidental, unlawful or unauthorised destruction, loss, alteration, disclosure, dissemination or access;

not transfer such Invitation Data outside the European Economic Area unless in accordance with applicable Data Protection Laws and, as applicable, in accordance with;

the Privacy Shield framework; or

Standard Contractual Clauses;

inform the Providing Party within 48 hours of becoming aware that any such Invitation Data is (while within the Receiving Party or its subprocessor' or affiliates' possession or control) subject to a personal data breach (as defined in Article 4 of GDPR) or is lost or destroyed or becomes damaged, corrupted or unusable;

provide to the Providing Party and any DP Regulator all information and assistance necessary or desirable to demonstrate or ensure compliance with the obligations in this clause and/or Data Protection Laws;

notify the Providing Party within two (2) business days if it receives a request from a Data Subject to exercise their rights under the Data Protection Laws in relation to that Data Subject's Invitation Data; and

provide the Providing Party with its full co-operation and assistance in relation to any request made by a Data Subject to exercise their rights under the Data Protection Laws in relation to that Data Subject's Invitation Data.

To the extent that a Receiving Party receives any Personal Data from the Providing Party, the Providing Party warrants and represents that it has the right under applicable Data Protection Laws to share such Personal Data with the Receiving Party and that, where applicable, it has obtained all necessary consents from the Data Subjects whose Personal Data is being shared to do so.

If either party receives any complaint, notice, or communication which relates directly or indirectly to the processing of Personal Data by the other party or to either party's compliance with the Data Protection Laws, it shall as soon as reasonably practicable notify the other party and it shall provide the other party with reasonable co-operation and assistance in relation to any such complaint, notice or communication.

To the extent that a party is a Service Provider, as that term is defined in the CCPA, that party certifies that it shall not (a) sell the Invitation Data, (b) retain, use, or disclose the Invitation Data for any purpose other than for the specific purpose of performing its obligations under the Agreement, or (c) retain, use, or disclose the Invitation Data outside of the direct business relationship between the parties.

Please note that we review our privacy practices from time to time, and that these practices are subject to change. Any change, update, or modification will be effective immediately upon posting.

# STANDARD CONTRACTUAL CLAUSES (Processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: Organization specified in the relevant order form Address: As specified in the order form Tel.: As specified in the order form; fax: As specified in the order form; e-mail: As specified in the order form

(the data exporter)

And

Name of the data importing organisation: Coursera, Inc. Address:

381 E. Evelyn Ave., Mountain View, CA 94041

Tel.:(650) 963-9884; fax: (650) 265-2681; e-mail: [privacy@coursera.org](mailto:privacy@coursera.org)

(the data importer)

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions

For the purposes of the Clauses:

‘personal data’, ‘special categories of data’, ‘process/processing’, ‘controller’, ‘processor’, ‘data subject’ and ‘supervisory authority’ shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

‘the data exporter’ means the controller who transfers the personal data;

‘the data importer’ means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

‘the subprocessor’ means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

‘the applicable data protection law’ means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

‘technical and organisational security measures’ means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## Clause 2

### Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

## Clause 3

### Third-party beneficiary clause

The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

## Clause 4

### Obligations of the data exporter

The data exporter agrees and warrants:

that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

that the data importer will provide sufficient guarantees in respect of the technical and organisational

security measures specified in Appendix 2 to this contract;

that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

that it will ensure compliance with the security measures;

that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

that it will ensure compliance with Clause 4(a) to (i).

## Clause 5

### Obligations of the data importer

The data importer agrees and warrants:



to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

that it will promptly notify the data exporter about:

any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

any accidental or unauthorised access, and

any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

to make available to the data subject upon request a copy of the Clauses, or any existing contract for

subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

that the processing services by the subprocessor will be carried out in accordance with Clause 11;

to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

## Clause 6

### Liability

The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

## Clause 7

### Mediation and jurisdiction

The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject: to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority; (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

### Clause 8

#### Cooperation with supervisory authorities

The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

### Clause 9

#### Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely the location of the data exporter.

## Clause 10

### Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

## Clause 11

### Subprocessing

The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely the location of the data exporter.

The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

## Clause 12

### Obligation after the termination of personal data processing services

The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless

legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

## APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

**Data exporter** The data exporter is: The Organization that will be using the data importer's learning platform.

**Data importer** The data importer is: An online learning and training platform.

**Data subjects** The personal data transferred concern the following categories of data subjects: Employees or affiliates of the data exporter

**Categories of data** The personal data transferred concern the following categories of data: Primarily name and email address, potentially other fields such as employee ID to properly send invitations.

**Special categories of data (if appropriate)** The personal data transferred concern the following special categories of data: None

**Processing operations** The personal data transferred will be subject to the following basic processing activities: Inviting data subjects to the data importer's platform.

## APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES



This Appendix forms part of the Clauses and must be completed and signed by the parties. Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):

## **INFORMATION, PHYSICAL, AND ORGANISATIONAL SECURITY STANDARDS**

Data Importer maintains a risk-based approach to security assessments and will provide adequate and appropriate administrative, physical, technical, and organizational safeguards to uphold the protection, confidentiality, integrity, availability, and security of information covered by these Standard Contractual Clauses. Data Importer will not materially decrease the security standards contemplated at the time of contracting.

Security measures will be designed to:

deny unauthorized persons access to equipment used for processing personal data;

prevent unauthorized reading, copying, modification, or removal of media containing personal data;

prevent unauthorized input of personal data and unauthorized inspection, modification, or deletion of personal data;

prevent use of automated data-processing systems by unauthorized persons;

provide that persons authorized to use an automated data-processing system only have access to the personal data covered by their access authorization;

enable Data Importer to verify and establish what personal data has been or may be transmitted or made available; and

include commercially reasonable disaster recovery procedures to provide for the continuation of services under the Agreement and backup of personal data.

Where appropriate, data will be encrypted in transmission and at rest, using industry-standard cryptographic techniques and secure management of keys.

Data Importer will take reasonable steps to ensure the reliability of its employees and other personnel having access to personal data covered by these Standard Contractual Clauses, and will limit access to such data to those personnel who have a business need to have access to such data, and have received reasonable training regarding the handling of personal data and pursuant to relevant Data Protection Laws.

CyberSponse Federal, Inc.  
14747 N. Northsight Blvd. Suite 111-115  
Scottsdale, AZ 85260

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

**Scope.** This Rider and the attached CyberSponse Federal, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**CYBERSPONSE FEDERAL  
CYBERSPONSE FEDERAL LICENSE, WARRANTY AND SUPPORT TERMS**

**ON PREMISE SERVICE AGREEMENT**

This On Premise Service Agreement (the "Agreement") sets forth the terms and conditions governing CyberSponse's provision to Customer of a On Premise incident response solution.

## ON PREMISE SERVICE AGREEMENT – ADDITIONAL TERMS AND CONDITIONS

### 1. DEFINITIONS.

**"Affiliate"** means, with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party (where "control" means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity).

**"Customer Data"** means all electronic data submitted by Customer to the On Premise Service network.

**"Deliverable"** is any work developed or created by CyberSponse during the course of providing support or Professional Services to Customer. A Deliverable does not include any Customer Data or Customer Confidential Information.

**"Documentation"** means the description of the software contained in the then current software datasheet, a copy of which will be provided by CyberSponse to Customer upon request.

**"On Premise Service"** means CyberSponse software provided, under a limited license, for Customer use on Customer systems.

**"Mobile SDK"** means CyberSponse's mobile/tablet Software Development Kits.

**"Professional Services"** means the activation, implementation, training, and other consulting and professional services provided by CyberSponse to Customer as specified in a Statement of Work.

**"Schedule"** means an ordering document for the On Premise Service that is signed by CyberSponse and Customer. Each Schedule will reference and be subject to this Agreement. The initial Schedule entered into under this Agreement is attached as Schedule A-1.

**"Statement of Work"** or **"SOW"** means the document that describes the Professional Services provided by CyberSponse to Customer. Each Statement of Work will reference and be subject to this Agreement.

**"Subscription Fees"** mean the fees paid by Customer for the right to access and use the On Premise Service and receive Support during the applicable Term.

**"Transaction"** has the meaning specified in the applicable Schedule.

**"Users"** means Customer's employees, agents, contractors, and consultants who are authorized by Customer to use the On Premise Service.

### 2. PROVISION OF THE ON PREMISE SERVICE.

**a. Availability and Use of the On Premise Service.** CyberSponse will make the On Premise Service available to Customer in accordance with each Schedule entered into by the parties and the then current Documentation. Customer's use of the On Premise Service is limited to its internal business purposes solely for the scope and use limitations specified in the applicable Schedule. **b. Software Provided for Use with the On Premise Service.**

**The Application.** Subject to the terms and conditions set forth in this Agreement, CyberSponse grants Customer the nonexclusive, non-transferable, worldwide, internal use only license during the Term to use the application and its component parts.

**Support for the On Premise Service.** CyberSponse will provide Customer with the support described in CyberSponse's then current technical support policy, a copy of which is attached to this Agreement as Exhibit A.

### 3. CUSTOMER RESPONSIBILITIES RELATING TO USE OF On Premise SERVICE.

**Access to the On Premise Service.** Customer is responsible for (i) all activities conducted under its User logins; and (ii) obtaining and maintaining any hardware, software and network infrastructure ("Customer Equipment") and any ancillary services needed to connect to, access or otherwise use the On Premise Service, and ensuring that the Customer Equipment and ancillary services comply with the configuration requirements specified in the Documentation.

**Use of the On Premise Service.** Customer agrees to use the On Premise Service solely for its internal business purposes. Customer will not: (i) resell, sublicense, lease, time-share or otherwise make the On Premise Service to any third party; (ii) send or store infringing or unlawful material; (iii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the On Premise Service or the data contained therein; (iv) modify, copy or create derivative works based on the On Premise Service; (v) reverse engineer the On Premise Service; (vi) access the On Premise Service for the purpose of building a competitive product or service or copying its features or user interface; (vii) use the On Premise Service, or permit its use, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without CyberSponse's prior written consent; or (viii) permit access to the On Premise Service, by a direct competitor of CyberSponse.

Reserved.

#### INTELLECTUAL PROPERTY OWNERSHIP RIGHTS.

**By CyberSponse.** CyberSponse retains all ownership rights in the On Premise Service (including Cybersponse software and other software utilized to provide the Service), including all intellectual rights in any of the foregoing. CyberSponse grants Customer the nonexclusive, paid-up right to use Deliverables solely for its internal business purposes in connection with its use of the On Premise Service.

**By Customer.** Customer retains all ownership rights in the Customer Data, including all intellectual rights in the Customer Data. Customer grants CyberSponse the nonexclusive, paid-up right to use the Customer Data to provide the On Premise Service to Customer, including to monitor and improve the Services.

**No Other Rights.** Except as expressly set forth in this Agreement, neither party grants any rights to the other including any license, right or interest in any CyberSponse or Customer trademark, copyright, trade name or service mark.

Reserved.

#### WARRANTIES.

**a. Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; and (ii) it will comply with all other applicable laws in its performance hereunder. **b. By CyberSponse.**

#### "AS IS" SERVICE.

**DISCLAIMER.** The CyberSponse warrants that the SOFTWARE will, for a reasonable period from the date of your receipt, perform substantially in accordance with CyberSponse; SOFTWARE PRODUCT written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, **THE SOFTWARE AND SERVICES PROVIDED ARE PROVIDED ON AN "AS IS" BASIS. CYBERSPONSE AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE ON PREMISE SERVICE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,**

**TITLE, AND NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CYBERSPONSE SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE.**

**FURTHER, CYBERSPONSE MAKES NO ADDITIONAL REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND SHALL HAVE NO LIABILITY WHATSOEVER, WITH RESPECT TO THE ACCURACY, DEPENDABILITY, PRIVACY, SECURITY, AUTHENTICITY OR COMPLETENESS OF DATA TRANSMITTED OVER THE INTERNET, OR ANY INTRUSION, VIRUS, DISRUPTION, LOSS OF COMMUNICATION, LOSS OR CORRUPTION OF DATA, OR OTHER ERROR OR EVENT CAUSED OR PERMITTED BY OR INTRODUCED THROUGH THE INTERNET OR THE SERVERS UPON WHICH THE ON PREMISE SERVICE IS PROVIDED. CUSTOMERS ARE SOLELY RESPONSIBLE FOR IMPLEMENTING ADEQUATE FIREWALL, PASSWORD AND OTHER SECURITY MEASURES TO PROTECT CUSTOMER SYSTEMS, DATA AND APPLICATIONS FROM UNWANTED INTRUSION, WHETHER OVER THE INTERNET OR BY OTHER MEANS.**

**NO LEGAL ADVICE. NOTHING CONTAINED WITHIN THE ON PREMISE SERVICE IS TO BE CONSTRUED AS LEGAL ADVICE. CUSTOMER EXPRESSLY AGREES TO CONSULT WITH ITS OWN INDEPENDENT COUNSEL AND TO NOT RELY ON ANYTHING CONTAINED WITHIN ANY OF CYBERSPONSE'S SYSTEMS, SOFTWARE, SERVICES, OR ANY OTHER COMMUNICATIONS FOR LEGAL MATTERS. ANY REFERENCE WITHIN THE SERVICES OR SOFTWARE TO LAWS OR REGULATIONS ARE FOR GENERAL REFERENCE ONLY. CUTOMER UNDERSTANDS THAT IT HAS THE OPPORTUNITY AT ANY TIME DURING THE USE OF THE SERVICES TO REVIEW ALL POTENTIAL COURSES OF ACTION WITH ITS OWN COUNSEL AND AGREES TO TAKE FULL RESPONSIBILITY FOR ITS OWN COMPLIANCE WITH ALL APPLICABLE LEGAL, REGULATORY, AND CONTRACTUAL REQUIREMENTS.**

Warranty for Professional Services. CyberSponse warrants (i) it will provide the Professional Services in a professional and workmanlike manner consistent with good industry standards and practices; and (ii) that for a period of three months after completion the Professional Services will conform to the applicable Statement of Work. In the event of any breach of the foregoing warranty, CyberSponse will re-perform the Professional Services or, if CyberSponse is unable to do so, return the fees paid to CyberSponse for the nonconforming Services.

**RESERVED.  
RESERVED.  
RESERVED.  
RESERVED.  
RESERVED.**

**EXHIBIT A TO**

**ON PREMISE SERVICE AGREEMENT**

**CyberSponse Support Policies**

CyberSponse provides support for the On Premise Service as described in this Exhibit. **Communication**  
Issues or problems (for convenience, each is referred to as an "issue") with the On Premise Service are reported via the web-based customer support tool. In the event the web-based customer support tool is unavailable, the path outlined in the Escalation Section may be used to seek assistance from CyberSponse.

**Severity Level Definitions / Response Time Targets / Resolution** Resolution of reported issues with the On Premise Service will depend upon a complete understanding of the variables unique to each situation. CyberSponse will provide routine updates on resolution efforts.

Level / Impact	Definition	Initial Response Target
Severity 1 – Critical	On Premise Service is down, business component is inoperable or critical interface has failed. Customer unable to use, or benefit from the On Premise Service resulting in a critical financial impact on Customer operation. The customer has gone through their internal troubleshooting process to eliminate any and all issues with customer-supplied infrastructure (hardware, network, etc). The condition requires immediate resolution.	Within two hours
Severity 2 – Significant	An issue other than a Severity 1 issue in which the condition makes use or continued use of any one or more functions of the On Premise Service difficult and which Customer, or CyberSponse on Customer's behalf, cannot reasonably circumvent or avoid on a temporary basis without expenditure of significant time or effort.	Within four business hours
Severity 3 – Moderate	An issue other than a Severity 1 or Severity 2 issue which is not critical in that no loss of data occurs and which Customer, or CyberSponse on Customer's behalf, cannot reasonably circumvent or avoid on a temporary basis without the expenditure of significant time or effort.	Within one business day
Severity 4 – Minimal	A non-critical function or component of the On Premise Service is malfunctioning causing minimal impact on Customer's business.	Within two business days

After CyberSponse completes its initial investigation of the issue, CyberSponse will label it with one of the following categories and responses:

- Known Defect
  - Fix or workaround is provided to circumvent or correct the issue.
- If no workaround is available and it is determined that one is required, CyberSponse will work with Customer to find the best feasible workaround.
- CyberSponse will advise Customer when the issue is resolved and ticket closed. • New

**Defect**

- If CyberSponse determines the defect has not been reported before, resolution efforts will be logged into the web-based customer support tool.
- If the defect is deemed to be high impact, a code fix will be created, tested and released in the On Premise Service. CyberSponse will advise Customer on how soon the fix will be implemented.
- If the defect is determined to be of lesser impact not requiring immediate implementation of a fix, then CyberSponse may defer the fix. In that event, Customer will be apprised accordingly.
  - Once a plan is created for a future fix, CyberSponse will work as appropriate to resolve the issue.

**Not Product-Related**

- If it is determined that the issue is not related to the On Premise Service, the problem resolution will be Customer's responsibility. NOTE: Professional Services are available (per an executed Statement of Work) to assist Customer in resolving the issue.
  - Ticket will be closed.

**Escalation**

Escalation may be initiated from either CyberSponse or Customer (via the following escalation path):

Online Support

E-mail Support

Phone escalation

- CyberSponse Escalation Criteria:

Severity 1 issue – If not resolved within 4 hours and no material progress has been made, the issue is escalated within CyberSponse for additional action and resources as needed. Executive management monitors the issue closely until it is resolved.

Severity 2 issues – escalated after one business day.

Severity 3 issues – escalated after three business days.

Severity 4 issues – escalated after five business days.

**Requests for Enhancements**

Customers are required to use the web-based support tool to submit recommendations or suggestions for enhancements to the On Premise Service. Using the tool for submitting enhancements assists CyberSponse in evaluating and prioritizing the suggestion.

**Releases to the On Premise Service**

CyberSponse provides and manages all software releases to maintain the On Premise Service at the latest version. **CyberSponse does not support versions older than 6 months.** Some resolutions may require an upgrade to the most recent release.

**Disaster Recovery.**

Customer is solely responsible for all Disaster Recovery and Business Continuity plans and operations. CyberSponse cannot make any guarantees for Customer systems.

**Data Storage.**

Customer is solely responsible for configuring appropriate backups and redundant systems. CyberSponse cannot make any guarantees for Customer data storage.



Cyviz, LLC  
2733 Crystal Drive, Suite 800  
Arlington, VA 22202

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Cyviz, LLC** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

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**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

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**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

CYVIZ, LLC

**CYVIZ LICENSE, WARRANTY AND SUPPORT TERMS**

**I. Return to Factory (RTF) Warranty**

All Cyviz solutions come with a two-year return to factory (RTF) hardware and software warranty included in the price of the solution. While under RTF warranty, all defective components will be replaced via advanced parts replacement. If the Ordering Activity operates in a 24/7 environment, 24/7 kits will need to be purchased separately. There are separate 24/7 kits, which cover the color wheels and the fans.

## II. Start of the RTF Warranty Period

The hardware and software RTF warranty period starts when the Cyviz Solution Architect (SA) obtains a system sign-off from the Ordering Activity. This normally happens at the completion of the installation of the Cyviz solution. The start of the SLA period will also coincide with the start of the RTF warranty period.

## III. Extension of the RTF Warranty Period

After the included two-year RTF Warranty for hardware and software, the Ordering Activity may purchase additional warranties in one-year increments up to a total of three (3) additional years. Therefore, the maximum time for the RTF Warranty period for hardware and software is five (5) years. However, certain conditions must be met. The ability to extend the RTF warranty after the initial purchase is an exclusive benefit from the Contractor, through Cyviz.

## IV. Conditions to Extend the RTF Warranty Period

During the initial two-year RTF warranty period, it is strongly encouraged for the Ordering Activity to have an SLA in place for preventative maintenance. Starting with the 3<sup>rd</sup> year, the customer can extend the warranty through hardware and software of the Cyviz solution for up to three (3) additional years, for a maximum of 5 years of RTF warranty. For each of the three additional years, it is strongly encouraged to also have an active SLA.

## V. Factory Location for the Warranty

The return to factory (RTF) location is Cyviz Houston, 5555 San Felipe, Suite 1700, Houston, TX 77056 (unless otherwise noted). The Ordering Activity is responsible for shipping defective equipment to the RTF location, and then Contractor, through Cyviz will pay the shipping back to the Ordering Activity. Cyviz will ship ground, but if an Ordering Activity wishes to expedite shipping, then they will have to incur the additional shipping charges. All RTF shipments must have an RMA number!

## VI. Ordering Activity Support During RTF Warranty

An Ordering Activity should e-mail [support@cyviz.com](mailto:support@cyviz.com) as a first step to document any issue(s). A telephone call can also be made to support at (CTC Houston) 713-350-6700 after the initial e-mail.

## VII. Covered Items Under the RTF Warranty

During the initial two-year RTF warranty period, if Contractor, through Cyviz, determines a product to be defective in material or workmanship, Cyviz will replace the defective part with a similar or like new part. If the issue is determined to be a manufacturing defect, then Cyviz will replace the product with a similar or like new product.

When a hardware and software warranty is in place, the Ordering Activity will receive advance parts replacement in the form of an equipment swap for such products as the Cyviz scalar, XR301 video processor, XPO cards, Xéd Blending Cards, Cyviz Touch Panel, Cyviz CDC computer, and CDC software BEFORE the defective equipment is shipped back to Cyviz. This will ensure minimal downtime of a Cyviz solution.

*The Cyviz projectors and flat panel monitors are not covered under advance parts replacement.* They would need to be sent back to the RTF site FIRST where they would need to be repaired or possibly replaced. It is highly recommended to those Ordering Activities who have a mission critical Cyviz solution to purchase one or more Cyviz spares kits. All LCD/LEDs must be shipped on a pallet (ideally in original packaging) and in a vertical position.

## VIII. Equipment Swap During RTF Warranty

It is the Ordering Activity's responsibility to swap out the defective components with the replacement components during the hardware and software warranty period. If an SLA is in place, and the Ordering Activity can wait, then Contractor, through a Cyviz Solution Architect (SA) or an authorised Cyviz reseller engineer, will visit at the normal SLA interval to swap out the equipment.

If the Ordering Activity does not have the ability to swap out possible defective equipment and cannot wait for the next SLA visit, then the Ordering Activity may purchase a Cyviz Emergency Site Visit (CESV). The Ordering Activity can also receive training on how to perform the equipment swap.

## IX. Cyviz Emergency Site Visit (CESV)

For Ordering Activities who purchase a CESV, the response time is 72 business hours. For example, if the Emergency Call happens on a Monday afternoon, one of the Cyviz SA's would be on-site at the Ordering Activity facility by Friday morning of the same week. If the CESV is not used within a one-year period, it will expire. The CESV cannot be converted to a regular SLA or any portion of an SLA

## X. Innovative Cyviz Technical Certification Training

Ordering Activities who wish to learn how to swap out or replace components may attend the Innovative Cyviz Technical Certification (ICTC) Training Level 1 at a separate cost. In order for a Ordering Activity to become certified at the ICTC Training Level 1, the Ordering Activity must attend a one and one-half day training class at one of the Cyviz Technology Centers (CTC). It is the Ordering Activity's responsibility to pay for travel and expenses for the training. A more advanced, ICTC Training Level 2 is held in Stavanger, Norway each year.

## XI. Service Level Arrangement (SLA)

The Cyviz (SLA) includes full preventative maintenance of the complete Cyviz solution, and will cover 'regular use' issues that might arise. A SLA is designed as one (1), two (2) or four (4) visits per year. An SLA4 coincides with a 24/7 environment. Contractor, through Cyviz, will initiate contact with the Ordering Activity and find a mutually agreeable time to schedule the next SLA visit. However, the Ordering Activity must take ultimate responsibility for scheduling the SLA visit.

If an Ordering Activity has more than eight (8) total channels of a Cyviz solution at each distinct location (i.e. a location separated by a reasonable distance), then a Cyviz SLA – Extra Channel charge may apply beyond 8 channels. The parties will discuss and determine if there will be an extra channel charge.

The SLA is not a replacement for the RTF (return to factory) warranty on Cyviz projectors, flat panels or on other Cyviz components.

## XII. Work Performed During an SLA Visit

Contractor, through a Cyviz solution architect, a Cyviz certified partner, or a Ordering Activity who has been certified at the Intermediate Cyviz Technical Certification (ICTC) Level 2, may perform the tasks associated with the SLA.

On the SLA visit, the following will happen, (1) Check lamp performance and replace lamps if necessary<sup>1</sup>, (2) replace any malfunctioning component<sup>2</sup>, (3) Fine adjustment of projector alignment, projector or flat panel monitor calibration of colors and brightness, (4) Upgrade of projector or flat panel monitor firmware if needed, (5) Source set up of additional Cyviz components if needed<sup>3</sup>, (6) Upgrade of Cyviz Display Control Software<sup>4</sup>, (7) Adjustment of the Cyviz flexible screen, and (8) Possible re-configuration of the complete system to its original state if the system has been changed/altered.

Note<sup>1</sup> – Extra lamps or projector bulbs must be purchased separately and will need to be delivered to the Ordering Activity PRIOR to the SLA visit.

Note<sup>2</sup> – It is the Ordering Activity's responsibility to inform Cyviz of any malfunctioning equipment. If the Ordering Activity would like an equipment swap to be performed at the next Cyviz SLA visit, then Cyviz will either send the equipment prior to the SLA visit or have the Cyviz SA bring the equipment to the next SLA visit.

Note<sup>3</sup> – If the Ordering Activity would like to add additional secondary sources such as monitors, TV tuners, DVD or Blu-ray player, etc., (i.e. non-Cyviz components), then this service will need to be communicated to the Contractor. Additional Cyviz Installation charges may apply.

Note<sup>4</sup> – During the time of an SLA visit, the Ordering Activity's CDC software may be upgraded to the latest version. Unless the Ordering Activity has purchased a Cyviz Multi-touch monitor, it is possible certain versions of the CDC software will not be compatible with a non-Cyviz personal computer system for controlling the Cyviz solution.

### XIII. Failure to Purchase an SLA

If the Ordering Activity decides not to purchase an SLA at the time of the equipment purchase, then two things will happen: (a) the maximum RTF warranty period for hardware and software maintenance will be two (2) years, and (b) it will be the Ordering Activity's responsibility to perform preventative maintenance.

### XIV. Equipment Outside of the RTF Warranty Period

An Ordering Activity's RTF may expire at the end of two-years, three-years, four-years or at the end of five-years. At the time of the expired Cyviz RTF warranty, it is the Ordering Activity's responsibility to send defective equipment back to Contractor, through Cyviz, at the Ordering Activity's cost for possible repair or replacement. Cyviz will determine if said equipment is repairable, and if so, how much to invoice the Ordering Activity before equipment is sent back. All LCD/LEDs must be shipped on a pallet (ideally in original packaging) and in a vertical position.

### XV. Cyviz Spares Kits

For Ordering Activities who have multiple projectors or multiple flat panels, it is recommended to purchase one or more Cyviz Spares Kits. A Cyviz Spares Kit for Viz3D includes; 1 EVO-2 projector, an extra set of glass filters, 10 pair of stereo glasses, and 2 replacement bulbs. The Cyviz Spares Kit for Bizwall, Vizwall or Clusterwall includes; 1 F32 series projector, 4 replacement bulbs, an XPO.3 or XPO.4 card (if applicable), a Cyviz Scalar, and an edge blending card (if applicable). A Cyviz Spares Kit for Flat Panel Monitor includes 1 46" or 55" LCD/LED with redundant power supply, an XPO.3 or XPO.4 card (if applicable), 5 dynamic CDC clients, and a Cyviz Scalar.

### XVI. Other Warranty and SLA Items

(a) The RTF warranty and SLA is non-transferrable, (b) The Ordering Activity should have all serial numbers of projectors, flat panel monitors, electronic components and software handy for smoother support. (c) the Contractor reserves the right to refuse RTF warranty coverage to a Ordering Activity who is not current on his or her warranty payments. (d) the Contractor does not make any claims express or otherwise listed outside of this RTF Warranty and SLA document.

Dataiku, Inc.  
902 Broadway, 8th Floor  
New York, NY 10010

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Dataiku, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.



- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- 3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



## ATTACHMENT A

## DATAIKU SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement and its Exhibits (“Agreement”) apply to an order that incorporates these terms and conditions entered into by and between GSA Multiple Award Schedule Contractor acting by and through its supplier, Dataiku Inc. (“Dataiku”), and the Ordering Activity purchasing from the GSA Schedule contract (“Customer” or “Ordering Activity”). This Agreement, the GSA Schedule contract, Schedule pricelist, and all applicable Ordering Documents (“ODs”) represent the complete agreement governing the use of Software provided by Dataiku to Customer. In general, the ODs set forth specific configuration and usage details for the Software. In the event of a conflict, an OD prevails over this Agreement.

**1. Definitions.** Capitalized terms not otherwise defined in this Agreement are defined as follows:

“**Affiliate**” means an entity Controlling, Controlled by, or under common Control with another entity, where “**Control**” and its variants means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of an entity through ownership of securities or partnership or other ownership interests, by contract or otherwise.

“**Documentation**” means end user or technical documentation provided with the Software.

“**Intellectual Property Rights**” means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, moral rights, know-how, and any other intellectual property rights recognized in any country or jurisdiction.

“**Internal Business Purposes**” means use of the Software solely for Customer or Customer Affiliates’ internal business projects, and deploying such projects in production mode. This definition does not include providing services using the Software to third parties.

“**License Term**” means the License Term identified on an OD, including renewals. If no term is specified, the License Term is 1 year.

“**Maintenance Releases**” takes its meaning from the Support and Maintenance **Exhibit A** attached below and incorporated by reference.

“**Software**” means the object code of Dataiku’s proprietary computer programs or modules identified in an OD, backup copies, Maintenance Releases, and modifications to any of the aforementioned.

“**User(s)**” means any individual authorized by Customer to use the Software.

**2. Software Use and License Grant**

**2.1 Software; Delivery.** The Software is an offering provided by Dataiku and is subject to support and maintenance as specified in **Exhibit A**. Customer will receive electronic license keys enabling activation of the Software after an OD becomes effective.

**2.2 License.** For the duration of the License Term, Dataiku grants to Customer and Users a non-exclusive, non-transferable, and non-sublicensable license to: (i) install the Software on computers owned or controlled by Customer; and (ii) use the Software to process data owned, licensed, or controlled by Customer or Customer Affiliates for Internal Business Purposes in accordance with the Documentation, this Agreement, and any applicable OD. Customer may maintain a reasonable number of copies of the Software on its systems only for backup purposes.

**2.3 Affiliates.** Both Dataiku Affiliates and Customer Affiliate may enter into ODs. When a Customer Affiliate enters into an OD, it will be deemed to have made the purchase directly, and be bound by the terms and conditions of this Agreement as a “Customer.”

**2.4 Restrictions.** Customer and Users will not (and will not permit any third party to): (i) copy or use the Software other than allowed by this Agreement or an applicable OD; (ii) use the Software with unauthorized equipment or products; (iii) modify the Software, create derivative works based upon the Software, reverse engineer, decompile, decrypt, disassemble, or otherwise reduce the Software to human-readable form; (iv) create programs similar or identical to the Software; (v) use the Software in violation of any applicable laws; (vi) distribute, sell, license or otherwise provide the Software to unauthorized third parties; (vii) install the Software on systems not under control by Customer or Customer Affiliates, or use or permit the Software to be used to perform services for third parties, including as a service bureau, SaaS, time sharing basis or otherwise; (viii) disclose the results of any performance or functional evaluation of the Software including benchmark results or competitive analyses; or (ix) alter or remove proprietary notices or legends contained on or in the Software. No implied licenses are granted by Dataiku under this Agreement. Customer is responsible for all use of the Software by anyone accessing the Software using User credentials.

**3. Reserved.**

**4. Ownership.** The Software is licensed and not sold or for perpetual use. Dataiku and its licensors own and retain all title, Intellectual Property Rights, and interest in and to the Software and all copies or portions thereof. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost. Suggestions or feedback provided by Customer to Dataiku relating to the Software will be Dataiku’s property and deemed Confidential Information of Dataiku, and Customer consents to assignment of suggestions and feedback to Dataiku.

**5. Warranties; Disclaimer.**

**5.1 Mutual Warranties.** Each party represents and warrants that: (i) it has full power to enter into this Agreement; and (ii) this Agreement does not conflict with any other agreement with any third party.

**5.2 Limited Software Warranty.** Dataiku warrants that the Software will materially conform to specifications described in the Documentation under normal use and circumstances.

**5.3 Malicious Code.** Dataiku will use standard industry practices to test the Software for “Malicious Code” and remove any “Malicious Code” discovered prior to delivery of the Software. “**Malicious Code**” means viruses, worms, time bombs, Trojan horses, and any other harmful code, files, scripts, agents, or programs which may cause harm to Customer’s files or systems. Malicious Code does not include standard routines in the Software intended to delete data and implicit in the standard functionality of the Software, or any software bugs or errors handled through Support and Maintenance Services specified in **Exhibit A**, or any license key or other equivalent code which may limit the functionality or scope of use of the Software to the Customer’s specific license.

**5.4 Restrictions.** The warranties specified above do not apply if the Software or any portion: (i) has been altered, except by Dataiku or an authorized representative; (ii) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and the Documentation; or (iii) is licensed for beta, evaluation, or testing purposes. These warranties only apply to the original licensee who

provides notice within the warranty period and does not apply if any bug, defect, or error is attributable to products or services not supplied by Dataiku.

**5.5 Disclaimers; Exclusion of Implied Warranties.** Except for the warranties specified above, the Software and Support and Maintenance Services are provided “as is.” Customer and Customer Affiliates assume sole responsibility for any results obtained from using the Software. Dataiku disclaims any and all warranties, conditions or representations (whether express or implied, oral or written), including without limitation any implied warranties of title, non-infringement, information, merchantability or fitness for any particular purpose (whether or not Dataiku knows or has reason to know of such purpose), whether arising by law, custom, usage in trade or by course of dealing. Dataiku and its licensors do not warrant the results of any use of the Software, or that it is bug or error free, or that its use will be uninterrupted. Dataiku does not warrant that the Software or any equipment, system, or network on which the Software is used will be free of vulnerability to intrusion or attack. Dataiku will in no way be held liable for any inability of, error, or fault of Customer or any third party appointed by Customer to install the Software. Data uploaded to the Software and any third-party databases, software, hardware, or services connecting from or to the Software (collectively, “**Third Party Materials**”) are not the responsibility of Dataiku and Dataiku does not make any warranties or promises with respect to the Third-Party Materials.

**6. Reserved.**

**7. Reserved.**

**8. Reserved.**

**9. Reserved.**

**10. General**

**10.1 Open Source.** The Software may contain or be provided with components subject to third party open source software licenses (“**Open Source Software**”). A list of current Open Source Software is provided at <https://doc.dataiku.com/dss/latest/thirdparty.html>. To the extent necessary, the license accompanying the Open Source Software will apply in lieu of the terms of this Agreement specifically with respect to such Open Source Software.

**10.2 Reserved.**

**10.3 Reserved.**

**10.4 Reserved.**

**10.5 Reserved.**

**10.6 Reserved.**

**10.7 Reserved.**

**10.8 Reserved.**

**10.9 Reserved.**

**10.10 Reserved.**

**10.11 Reserved.**

**10.12 Reserved.**

**10.13 Export.** The Software and Documentation, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, or other export or import laws and regulations in other jurisdictions. Customer agrees to comply with all applicable laws and regulations.

**10.14 Usage Information.** The Software contains a usage data tool that collects limited information about use of the Software. Customer agrees that Dataiku may use usage data for development and support purposes relating to the Software. Dataiku does not require, and Customer undertakes not to transmit any personal data to Dataiku.

**10.15 Data Privacy.** Each party undertakes to process personal data in accordance with all applicable laws and regulations. Dataiku undertakes to process personal data in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such personal data. The obligations of the GDPR shall not apply to the Ordering Activity.

## **Exhibit A**

### **Support and Maintenance**

“**Support and Maintenance Services**” are provided to all customers paying fees for licensed usage of the Software.

**1. Maintenance.** Dataiku shall provide access to all generally available Maintenance Releases. “**Maintenance Releases**” means Maintenance Updates (defined below) and Major Versions (defined below) that are generally released during the License Term free of charge to Dataiku customers receiving Support and Maintenance Services. “**Maintenance Update**” means error corrections, bug fixes, patches, workarounds, or minor enhancements to the Software designated by a change to the 3<sup>rd</sup> version digit (e.g. version 3.4.1 to 3.4.2). “**Major Version**” means a revision to the Software containing new functionalities, major improvements, and generally designated by a change into the 1<sup>st</sup> or 2<sup>nd</sup> version digit (e.g. a change from version 3.0 to 4.0 or from 4.1 to 4.2). “**Business Day**” means a day (other than Saturday or Sunday or U.S. Federal holidays) on which financial institutions are normally open for business in the United States. “**Business Hour**” means an hour between 9am and 5pm (EST) on any Business Day.

**2. Support. (i) Self Service Support Portal (Preferred method).** Customers submit cases online, update existing tickets, and track case status 24 x 7 x 365 through a web-based support ticket system including self-service access to an extensive knowledge base. Available at

<https://support.dataiku.com>. **(ii) Email.** Available at [support@dataiku.com](mailto:support@dataiku.com). Service levels and response times do not apply to questions submitted by email.

**3. Error Correction.** Customer may submit suspected errors or malfunctions to Dataiku’s case tracking system, or via email, and cooperate with Dataiku in any investigation. Dataiku will acknowledge with a ticket number (“**Ticket**”) and make commercially reasonable efforts to assign appropriate assets to resolve the issue according to the response expectation table below. Customer may use the ticket number to track the status of any confirmed failure of the Software to meet Dataiku specifications (“**Confirmed Error**”). If a Confirmed Error is discovered, the Customer will provide a description to Dataiku’s support team and co-operate with Dataiku to classify the error. Failure by Customer to respond to Dataiku’s requests within 5 business days may result in Dataiku closing the Ticket. Customer may add a new Ticket at any time.

**4. Classifications of Errors; Service Levels.** Dataiku offers the service levels and response times as shown in table below. Classification of Confirmed Errors will be determined by Dataiku based on factors including input obtained from Customer.

**5. Limitations.** Dataiku shall be responsible for any Confirmed Error. However, Dataiku shall not be responsible for errors that cannot be reproduced by Dataiku on unmodified Software, for software, firmware, or hardware not supplied by Dataiku, or for information or data contained in, stored on or integrated with any Software returned to Dataiku. Support and Maintenance Services do not include support for any failure, defect, or damage of the Software caused by Customer or User(s) through unauthorized use, accident, abuse, or misuse of the Software, or if the Software has not been used or maintained in conformance with the Documentation or the Agreement, or if Software is used by Customer or User(s) on an unsupported platform or hardware, beyond the licensed capacity, or altered or modified by Customer or User(s). Service or repair of the Software by anyone other than Dataiku (or an authorized representative) will void Dataiku’s obligations under this Support and Maintenance Exhibit. Dataiku’s support and maintenance obligations for the Software are applicable to: (a) the latest Major Version; and (b) any Major Version publicly released during the past 1 year for Enterprise Server modules and the past 6 months for Team server modules; so long as the latest Maintenance Update for that Major Version has been installed. Support and Maintenance Services do not include on-site support, consulting (including custom work on Customer’s network) and system design, coding, project or facility management, or support for incompatible or third-party supplier products. If Dataiku agrees to remedy any errors or problems not covered as Support and Maintenance Services, Dataiku will perform such work after receiving Customer’s instruction to proceed at Dataiku’s then-current standard time and material rates.

**6. Customer Obligations.** Customer will appoint up to 2 individuals knowledgeable in the operation of the Software as primary contacts to initiate support calls with Dataiku (“**Designated Support Contacts**”). Dataiku shall only be responsible for providing Designated Support Contacts with Support and Maintenance Services. Customer may change Designated Support Contacts at any time with written notification to Dataiku or appoint additional primary contacts by paying additional fees. Customer may not share login credentials or other benefits of Support and Maintenance Services with any other persons unless Customer has purchased additional services. If necessary, Customer will provide Dataiku with administrative access to the Software components (including remote access to end points and console).

**7. Changes.** Dataiku may make changes at any time to this Exhibit with written notice to Customer; provided the changes do not materially degrade the support and maintenance services to which Customer is entitled.

**Classification of errors**

Error level	P1	P2	P3	P4
<b>Description</b>	Critical error. “System is down” or Software is completely inoperative, or a condition severely and significantly impacting the API nodes, design nodes, or automation nodes. No procedural work around exists. For example, all API nodes crash, or the design or automation node crashes and the Software does not restart after the crashes.	Serious or high-impact business condition affecting substantial number of users. The Software operates in a severely restricted/reduced capacity causing significant impact to portions of the Customer’s business. No procedural work around exists.	Medium to low-impact problem. Involves partial non-critical functionality loss. May be a minor issue with limited or no loss of functionality or impact to the Customer’s operation for which there is a workaround available. For example, a data transformation function does not work as expected, and a workaround in code is required.	Software is functional. Relates only to proposed feature enhancements or proposed modifications. No material impact on quality, performance or functionality of Software. For example, errors in Documentation, or a proposed feature enhancement.
<b>“Enterprise” and “Team” server module support service levels by error level</b>				
<b>Initial Response</b>	<b>Enterprise:</b> 4 Business Hours <b>Team:</b> 8 Business Hours	<b>Enterprise:</b> 8 Business Hours <b>Team:</b> 2 Business Days	<b>Enterprise:</b> 8 Business Hours <b>Team:</b> 2 Business Days	<b>Enterprise:</b> 2 Business Days <b>Team:</b> 2 Business Days
<b>Update Frequency</b>	<b>Enterprise:</b> Every 2 hours <b>Team:</b> Every 4 hours	<b>Enterprise:</b> Every Business Day <b>Team:</b> Every Business Day	<b>Enterprise:</b> As needed <b>Team:</b> As needed	<b>Enterprise:</b> As needed <b>Team:</b> As needed
<b>Level of Effort</b>	<b>Enterprise:</b> Continuous 24x7 effort; escalation in 24h to VP of Support	<b>Enterprise:</b> Continuous Business day effort; escalation in 72h to VP of Support	<b>Enterprise:</b> Best efforts <b>Team:</b> Best efforts	<b>Enterprise:</b> Reasonable efforts <b>Team:</b> Reasonable efforts

	<b>Team:</b> Continuous Business Day effort; escalation in 72h to VP of Support	<b>Team:</b> Best efforts		
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**DevonWay, Inc.****EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)**

**Scope.** This Rider and the attached DevonWay, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.



**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded. **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31

U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end



user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the

confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## **MASTER SOFTWARE AGREEMENT**

**IMPORTANT – PLEASE READ CAREFULLY:** THIS MASTER SOFTWARE AGREEMENT ("**AGREEMENT**") IS A LEGAL AGREEMENT BETWEEN THE ORDERING ACTIVITY UNDER GSA SCHEDULE CONTRACTS IDENTIFIED IN THE PURCHASE ORDER, STATEMENT OF WORK, OR SIMILAR DOCUMENT ("**YOU**" OR "**CUSTOMER**") AND DEVONWAY, INC. ("**DEVONWAY**") AND GOVERNS YOUR USE OF THE DEVONWAY PRODUCTS. BY ACCEPTING THIS AGREEMENT, BY BOTH PARTIES EXECUTING AN ORDER FORM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE DEVONWAY PRODUCTS.

This Agreement was last updated on January 9, 2019. It is effective between Customer and DevonWay as of the date Customer accepts this Agreement ("**Effective Date**") as set forth above.

**You may not access the DevonWay Products if you are DevonWay's direct competitor, except with DevonWay' prior written consent. In addition, you may not access the DevonWay Products for purposes of monitoring its availability, performance or functionality, or for any other benchmarking purposes.**

### **SCOPE OF SERVICES**

**Deployment and License Models.** Subject to the terms and conditions of this Agreement and the applicable Order Form, DevonWay will make the DevonWay Product available to the Customer during the License Term. The DevonWay Product may be used under the following Deployment and License Models:

Deployment Models: The DevonWay Product may be deployed either as: (a) the online, Web-based platform and applications that are hosted by DevonWay, or a third party hosting facility designated by DevonWay ("**On-Demand**"), or (b) installed by or for Customer at Customer's premises, or on a Customer-controlled server within a third party data center ("**On-Site**").

License Models: DevonWay grants Customer either (a) a perpetual, non-exclusive, revocable, non-transferable right to install, use and modify the DevonWay Product solely for Customer's own internal business purposes ("**Perpetual License**"), or (b) a non-exclusive, revocable, non-transferable right to install, use and modify the DevonWay Product solely for Customer's own internal business purposes during the applicable License Term ("**Subscription License**").

The Deployment and License Model selected by Customer is as indicated on the Order Form. Customer may elect to migrate from one Deployment Model to another at any time during the License Term. Such migration may be subject to the applicable DevonWay migration fees in effect at the time of the migration in addition to additional terms and conditions that apply to the new deployment model. The parties acknowledge and agree that the terms and conditions contained in this Agreement and the terms of use applicable to the Deployment and License Models selected by Customer, which are set forth in the applicable Order Form, will govern Customer's use of the DevonWay Product, unless explicitly stated otherwise in a written agreement between the parties.

**Professional Services and Support.** The terms of the Professional Services Agreement ("**PSA**") detailed in Exhibit A shall apply to the configuration, implementation or installation services offered by DevonWay as set forth in the applicable Order Form ("**Professional Services**"). The PSA is hereby incorporated into the Agreement by this reference. During the License Term, and at no additional charge to Customer, DevonWay will provide Customer with the standard level of Support Services. DevonWay reserves the right, from time to time, to make modifications to the Support Services or particular components thereof and will use commercially reasonable efforts to notify Customer of any material modifications by posting a notice of the modification on DevonWay's Technology Blog or by otherwise notifying Customer in accordance with Section 16. Upgraded Support Services may be purchased by Order Form.

### **EVALUATION**

**Evaluation Terms.** If Customer receives a free or pilot evaluation of the DevonWay Product(s), DevonWay will make one or more DevonWay Products available to Customer on an evaluation basis until the earlier of (a) the end of the evaluation period for which Customer registers to use the applicable DevonWay

Product(s), (b) the start date of any DevonWay Product(s) ordered by Customer, or (c) termination by DevonWay at DevonWay's sole discretion. Additional evaluation terms and conditions may appear on the Order Form. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

**2.2 Data and Customization.** ANY DATA CUSTOMER ENTERS INTO THE DEVONWAY PRODUCT(S), AND ANY CUSTOMIZATIONS MADE TO THE DEVONWAY PRODUCT(S), BY OR FOR CUSTOMER, DURING CUSTOMER'S EVALUATION MAY BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A LICENSE TO THE SAME DEVONWAY PRODUCT(S) AS THOSE COVERED BY THE EVALUATION, PURCHASES APPLICABLE UPGRADED SERVICES, OR EXPORTS SUCH DATA, BEFORE THE END OF THE EVALUATION PERIOD.

**No Warranty.** NOTWITHSTANDING SECTION 10 (WARRANTIES), THE DEVONWAY PRODUCT(S) ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTY DURING THE FREE EVALUATION.

**Review.** Customer shall review the applicable DevonWay Products' Documentation during the evaluation period in order to become familiar with the features and functions of the DevonWay Product(s) before making a purchase.

## OUR RESPONSIBILITIES

**Provision of Products.** DevonWay will (a) make the DevonWay Products available to Customer pursuant to this Agreement and the applicable Order Forms, and (b) use commercially reasonable efforts to make the online DevonWay Products available 24 hours a day, 7 days a week, except for: (1) planned downtime (of which DevonWay shall give advance electronic notice as provided in the Documentation), and (2) any unavailability caused by circumstances beyond DevonWay's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving DevonWay employees), Internet service provider failure or delay, problems caused by Non-DevonWay Applications, or any denial of service attack. Additional Terms of Use and Service Level Agreements are as referenced in the Order Form.

**Protection of Customer Content.** DevonWay will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Content, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification, or disclosure of Customer Content by DevonWay personnel except (a) to provide the DevonWay Products and prevent or address service or technical problems, (b) as compelled by law, or (c) as Customer expressly permit in writing. By using the DevonWay Product Customer acknowledges that it meets Customer's requirements and processing instructions. DevonWay will provide Customer notice of any unauthorized third party access to Customer Content of which DevonWay becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Customer Content is lost or damaged, DevonWay will assist Customer in restoring it to the DevonWay Product from the last available backup copy in compatible format.

**European Economic Area Customers.** For Customers located in the European Economic Area (EEA) DevonWay may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the DevonWay Products. DevonWay may transfer such Customer's personal data across country borders including outside the EEA. A list of countries where content may be processed for a DevonWay Product is described in the Order Form. A list of subprocessors is available upon request. Upon request by either party, DevonWay, Customer or their affiliates will enter into additional agreements required by law for the protection of personal data included in Customer Content, such as the standard unmodified EU Model Clauses agreement pursuant to EC Decision 2010/87/EU with optional clauses removed. The parties agree (and will procure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

**DevonWay Personnel.** DevonWay will be responsible for the performance of its personnel (including DevonWay employees and contractors) and their compliance with DevonWay's obligations under this Agreement.

## USE OF THE SERVICES

**Customer Responsibilities.** Customer will (a) be responsible for all Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Content and the means by which Customer acquired Customer Content,

(c) use commercially reasonable efforts to prevent unauthorized access to or use of DevonWay Products, and notify DevonWay promptly of any such unauthorized access or use, (d) use DevonWay Products only in accordance with this Agreement, Documentation, Order Forms

and applicable laws and government regulations, and (e) comply with terms of service of any Non-DevonWay Applications with which Customer uses the DevonWay Products.

**Usage Restrictions.** Customer will not, and will not permit any third party to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the DevonWay Products (to the extent such restriction is permitted by law), (b) modify, translate, or create derivative works based on the DevonWay Products or use the DevonWay Products for timesharing or service bureau purposes or for any purpose other than its own use for the benefit of Users; (c) sell, resell, license, sublicense, distribute, make available, rent or lease the DevonWay Products; (d) use the DevonWay Product to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (e) use the DevonWay Product to store or transmit Malicious Code, (f) interfere with or disrupt the integrity or performance of the DevonWay Product or third-party data contained therein, (g) attempt to gain unauthorized access to any DevonWay Product or its related systems or networks, (h) permit direct or indirect access to or use of any DevonWay Product in a way that circumvents a contractual usage limit, or use any of the DevonWay Products to access or use any of DevonWay's intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (i) copy a DevonWay Product or any part, feature, function or user interface thereof, (j) frame or mirror any part of any DevonWay Product, other than framing on Customer's own intranets or otherwise for Customer's own internal business purposes or as permitted in the Documentation, or (k) access any DevonWay Product in order to build a competitive product or service that operates outside of or independently from the DevonWay Product. Any use of the DevonWay Products in breach of this Agreement, Documentation, or Order Forms, by Customer or Users that in DevonWay's judgment threatens the security, integrity or availability of the DevonWay Products, may result in immediate temporary suspension of Customer's use of the DevonWay Products, however, DevonWay will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.

## NON-DEVONWAY PROVIDERS

**Third-Party Services.** DevonWay or third parties may make available third-party products or services, including, for example, Non-DevonWay Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any third party provider, product or service is solely between Customer and the applicable third party. DevonWay does not warrant or support Non-DevonWay Applications or other third party products or services, whether or not they are designated by DevonWay as "certified" or otherwise.

**Non-DevonWay Applications and Customer Content.** If Customer chooses to use a Non-DevonWay Application with a DevonWay Product, Customer grants DevonWay permission to allow the Non-DevonWay Application and its provider to access Customer Content as required for the interoperation of that Non-DevonWay Application with the DevonWay Product. DevonWay is not responsible for any disclosure, modification or deletion of Customer Content resulting from access by such Non-DevonWay Application or its provider.

**Integration with Non-DevonWay Applications.** The DevonWay Products may contain features designed to interoperate with Non-DevonWay Applications. To use such features, Customer may be required to obtain access to such Non-DevonWay Applications from their providers, and may be required to grant DevonWay access to Customer's account(s) on such Non-DevonWay Applications. DevonWay cannot guarantee the continued availability of such DevonWay Product features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-DevonWay Application ceases to make the Non-DevonWay Application available for interoperation with the corresponding DevonWay Product features in a manner acceptable to DevonWay.

## CONFIDENTIALITY

**Confidential Information.** Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose Confidential Information.

**Obligations.**

**Receiving Party.** The Receiving Party agrees: (a) not to divulge to any third person any such Confidential Information, (b) to give access to such Confidential Information solely to those employees, contractors, service providers, and affiliates with a need to have access thereto for purposes of this Agreement, and (c) to take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that the party takes with its own Confidential Information, but in no event will a party apply less than reasonable precautions to protect such Confidential Information.

**Disclosing Party.** The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without fault of the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Confidential Information pursuant to any judicial or governmental order or as otherwise required by operation of law, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to allow Disclosing Party to contest such order.

DevonWay recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

**Restrictions.** Customer acknowledges that DevonWay does not wish to receive any Confidential Information from Customer that is not necessary for DevonWay to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, DevonWay may reasonably presume that any unrelated information received from Customer is not confidential or Confidential Information.

## INTELLECTUAL PROPERTY RIGHTS

**Reservation of Rights.** Except as expressly set forth herein, DevonWay alone (and its licensors, where applicable) will retain all intellectual property rights in and to the DevonWay Products. No rights are granted to Customer hereunder other than as expressly set forth herein. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the DevonWay Products, or any intellectual property rights.

**Suggestions.** DevonWay shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the DevonWay Products any suggestions, enhancement requests, recommendations or other feedback provided by Customer relating to the DevonWay Products.

**Customer Content.** Customer and its licensors shall retain all right, title and interest in and to the Customer Content.

## PAYMENT OF FEES

**Fees.** Unless otherwise provided in the applicable Order Form or Documentation, (a) fees are based on tiers according to the number of new Operational Records created each year, plus any add-ons, and (b) pricing does not vary according to the number of Users. Customer will pay DevonWay, or the GSA Schedule Contract Holder as applicable, the fees as set forth in the applicable Order Form in accordance with the GSA Schedule Pricelist. Any applicable storage fees are based on actual current usage, are due at the beginning of the License Term and are charged on an annual basis. Fixed fees are due at the beginning of the applicable License Term and are charged on an annual basis. Customer is responsible for all wire transfer and bank fees related to payments made to DevonWay.

**Purchase Orders.** If not otherwise specified, payments will be due within thirty (30) days of receipt of an invoice. If an annual purchase order is required for multi-year contracts, Customer shall issue the new purchase order at least 30 days prior to the beginning of each subsequent License Term. Any pre-printed or additional contract terms included on any purchase order shall be inapplicable and of no force or effect.

**Travel.** Travel-related expenses are actual costs incurred to be invoiced a month in arrears. Travel requirements are determined by the DevonWay and Customer project managers. DevonWay makes every effort to minimize travel-related expenses and will adhere to any specific travel guidelines requested by Customer, including the Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable.

**Late Payment.** Unpaid, undisputed fees are subject to a finance charge as specified by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

**Taxes.** Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Future Functionality.** Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by DevonWay regarding future functionality or features.

## TERMINATION

**Term of Agreement.** Subject to earlier termination as provided below, this Agreement commences on the Effective Date indicated on the Order Form and continues until all License Terms hereunder have expired or have been terminated.

**License Term and Renewal.** License Terms and corresponding payment obligations may be renewed for additional periods of one (1) year by both parties executing a new Agreement or purchase order incorporating this Agreement in writing.

**Termination for Cause.** When the Customer is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, DevonWay shall proceed diligently with performance of this Agreement according to the Contract Disputes Act, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer according to applicable law.

**Effects of Termination.** Termination of this Agreement shall not limit the parties from pursuing any other remedies available to it, including injunctive relief.

**Data Portability and Deletion.** Customer retains all rights to Customer Content. At any time during the License Term, Customer may use DevonWay Product's export facilities to download a copy of Customer Content. Upon termination or for any other reason whatsoever, Customer may request that DevonWay provide a full database backup of Customer Content, which DevonWay will work on providing as soon as the written request is received (additional fees may apply). In the event of termination or expiration of this Agreement or any applicable Order Form, and if requested by Customer within ninety (90) days of such termination or expiration, DevonWay will: (a) return to Customer Content to Customer; or (b) destroy or permanently erase such Customer Content. After such 90-day period, DevonWay will have no other further obligation to maintain or provide access to Customer Content.

**Application Portability.** If an Order Form specifies that Customer has purchased a Perpetual License for use of DevonWay Products, upon termination of the applicable License Term Customer has the right to receive the binaries and application metadata required to run the application in an On-Site configuration. DevonWay will make the application binaries available free of charge. If Customer requires assistance setting up the On-Site environment, DevonWay will provide that assistance at the Time & Materials rate according to the applicable Customer's support level in effect prior to termination.



**Surviving Provisions.** All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability and specifically sections 6, 7, 8, 9, 10.2, 12, 15, 16 and 17.

**WARRANTIES**

**DevonWay Warranties.** DevonWay represents and warrants that (a) it will provide the DevonWay Products and Support Services in a professional manner consistent with industry standards and practices; (b) the DevonWay Products will conform in all material respects to the Documentation; (c) the functionality of the DevonWay Product will not be materially decreased during a License Term; and (d) the DevonWay Product will not contain or transmit to Customer any Malicious Code (except for Malicious Code that may be uploaded by Users). The Professional Services warranty is set forth in the PSA.

**Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, THE DEVONWAY PRODUCTS, SUPPORT SERVICES, PROFESSIONAL SERVICES, DOCUMENTATION, DEVONWAY CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY OTHER WARRANTIES OF ANY KIND. DEVONWAY (AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

## INDEMNIFICATION

**Indemnification by DevonWay.** DevonWay shall hold Customer harmless from liability to an unaffiliated third party resulting from infringement by the DevonWay Product of any intellectual property right of such third party, provided DevonWay is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume control over defense and settlement. DevonWay will not be responsible for any settlement it does not approve. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. The foregoing obligations do not apply with respect to portions or components of the DevonWay Products (a) not created by DevonWay, (b) resulting in whole or in part from modifications according to Customer specifications, (c) that are modified after delivery, (d) combined with other products, processes or materials where the alleged infringement relates to such combination, (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, (f) where Customer's use of the DevonWay Products is not strictly in accordance with this Agreement and all Documentation, or (g) where Customer's use of any version of the DevonWay Products is not the most recent version of the DevonWay Products provided by DevonWay to Customer. Customer will indemnify DevonWay from all damages, costs, settlements, attorneys' fees and expenses related to any claim of infringement or misappropriation excluded from DevonWay's indemnity obligation by the preceding sentence.

Reserved.

**Exclusive Remedy.** This Section 11 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any kind of claim described in this Section.

**LIMITATION OF LIABILITY.** EXCEPT FOR (a) VIOLATIONS OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (b) BREACHES OF CONFIDENTIALITY OBLIGATIONS HEREUNDER (OTHER THAN ANY BREACH AS TO THE SECURITY OR CONFIDENTIALITY OF CUSTOMER CONTENT IN CONNECTION WITH CUSTOMER'S USE OF THE PRODUCTS, FOR WHICH DEVONWAY'S LIABILITY SHALL BE LIMITED BY THIS SECTION), OR (c) INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY (OR ANY OF ITS AGENTS, AFFILIATES, LICENSORS OR SUPPLIERS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE DEVONWAY PRODUCTS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE DEVONWAY PRODUCTS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF DEVONWAY, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID AND/OR PAYABLE TO DEVONWAY HEREUNDER FOR THE LENGTH OF THE TERM OF THE AGREEMENT. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND ONLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**U.S. GOVERNMENT MATTERS.** Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the DevonWay Products or any software or anything related thereto or any direct product thereof (collectively "**Controlled Subject Matter**"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, any software and documentation provided by DevonWay are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and

“commercial computer software documentation.” Consistent with FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

**PUBLICITY.** Customer agrees that DevonWay may publish a brief description describing Customer’s deployment of the DevonWay Products and identify Customer as a DevonWay customer on any of DevonWay’s websites, client lists, press releases, and/or other marketing materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

**INSURANCE.** DevonWay will procure at its sole cost and expense and maintain in effect during the term of this Agreement the following insurance coverages, which insurance shall be placed with insurance companies rated A minus VII or better by Best’s Key Rating Guide:

Commercial General Liability, including Bodily Injury, Property Damage, Personal Injury, Advertising Liability, Products-Completed Operations, and Contractual Liability coverage with the following limits of liability:

\$1,000,000 per occurrence; and

\$2,000,000 General Aggregate

Worker’s Compensation with statutory limits, or the local equivalent, if applicable, as dictated by law, statute, or custom.

Employers Liability, with a minimum of \$1,000,000 limit of liability per occurrence, or the local equivalent, if applicable, as dictated by law, statute, or custom.

Automobile Liability, with a minimum combined single limit of liability of \$1,000,000 per accident covering all owned, non-owned, and hired vehicles.

Excess or Umbrella Liability Insurance, with a minimum \$4,000,000 limit of liability.

Professional Liability Coverage (Errors and Omissions) Insurance, with a minimum limit of \$1,000,000.

Cyber Liability Insurance, with minimum limits of \$2,000,000 for each occurrence or claim and an annual aggregate of \$5,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, extortion, and network security.

**MISCELLANEOUS.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with DevonWay’s prior written consent. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. Excusable delays shall be governed by FAR 52.212-4(f). No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind DevonWay in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. DevonWay will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the Federal laws of the United States. DevonWay is permitted to disclose that Customer is one of its customers to any third-party unless Customer notifies DevonWay in writing in advance of such disclosure.

**CHANGES.** DevonWay may modify the non-material terms and conditions of its standard Agreements by posting revised versions at <https://legal.devonway.com/legal/> and by otherwise notifying Customer in accordance with Section 16. Since this agreement may apply to many future orders, DevonWay may modify the non-material terms and conditions of this agreement by providing Customer at least three months’ written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing use of the DevonWay products that do not expire, and renewals. For transactions with a defined renewable License Term, Customer may request that DevonWay defer the change effective date until the end of the current License Term. Customer accepts non-material changes by placing new orders or continuing use after the change effective date or allowing License Terms to renew after receipt of the change notice. Except as provided above, all changes to the Agreement must be in writing accepted by both parties. If there is a conflict, an Order Form prevails over the terms of this agreement.

## DEFINITIONS

**“Confidential Information”** means all confidential and proprietary information of a Disclosing Party disclosed to the Receiving Party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, Customer Content, the DevonWay Product, DevonWay’s environmental and operational details including associated security information, business and marketing plans, technology, financial and technical information, product designs, and business processes. Confidential Information (except for Customer Content) shall not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (d) is received from a third party without breach of any obligation owed to the Disclosing Party.

**“Customer Content”** means the electronic information submitted to the DevonWay Product by Customer or on Customer’s behalf.

“**DevonWay Product**” means the software application listed on an Order Form and made generally available by DevonWay.

“**Deployment Model**” means the On-Demand or On-Site deployment of the DevonWay Product as set forth in the applicable Order Form.

“**Documentation**” means DevonWay’s then-current guides and manuals it makes generally available for the DevonWay Product.

“**License Model**” means the Perpetual License or Subscription License set forth in the applicable Order Form according to which the DevonWay Product is licensed to Customer.

“**License Term**” means the period of time set forth on the Order Form in which Customer shall have access to the DevonWay Product, commencing on the Effective Date.

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“**Non-DevonWay Application**” means any software application not provided by DevonWay.

“**Operational Records**” are defined as those belonging to non-reference modules that are workflow-enabled or that contain a “Status” field. An operational record may contain child data, attachments, field history, and task information.

“**Order Form**” means an ordering document signed by an authorized representative of each party setting forth the DevonWay Products and Professional Services Customer has ordered, the License Term, and the Service Capacity.

“**Professional Services**” has the meaning ascribed to it in Section 1.2.

“**Service Capacity**” means any limitations set forth in an Order Form.

“**Support Services**” means the support services currently set forth at the following URL, corresponding to the DevonWay Product purchased by Customer: <https://docs.devonway.com/docs/common/resources/policies-and-procedures/>.

“**Technology Blog**” means the DevonWay blog currently made available at <http://dwaytechblog.blogspot.com/>.

“**User**” means individuals who are authorized by Customer to use the DevonWay Product, and who have been supplied user identifications and passwords by Customer (or by DevonWay at Customer’s request). Users may include but are not limited to Customer’s employees, consultants, contractors and agents, or third parties with whom Customer transacts business.

## EXHIBIT A – PROFESSIONAL SERVICES AGREEMENT

### Professional Services Provisions

**Description of Professional Services.** DevonWay will provide the Professional Services and deliverables (“**Deliverables**”) to Customer as described in one or more “**Statements of Work**” executed by an authorized representative of each party. Each Statement of Work is hereby deemed incorporated into this Agreement, and shall be governed by the terms herein.

**Customer’s Obligations.** Customer shall provide assistance, cooperation, information, equipment, data, a suitable work environment and resources reasonably necessary to enable DevonWay to perform the Professional Services. Customer acknowledges that DevonWay’s ability to provide Professional Services as set forth herein may be affected if Customer does not provide reasonable assistance as set forth above. Customer-caused delays may be subject to additional fees as specified in Section B.1.

**Project Management.** Each party shall designate a project manager who shall work together with the other party’s project manager to facilitate an efficient delivery of Professional Services.

**Change Order.** In order to change the scope of Professional Services set forth in a Statement of Work, Customer will submit a written request to DevonWay specifying the proposed changes in detail and DevonWay will provide an estimate of the charges and anticipated changes in the delivery schedule that will result from the proposed change in Professional Services. DevonWay will continue performing the Professional Services in accordance with the applicable Statement of Work until the parties agree in writing on the change in scope of work, scheduling, and fees.

**Proprietary Rights.** DevonWay shall retain all title, copyrights, patents, patent rights, trade secrets, trademarks and other proprietary or intellectual property rights in the Deliverables.

**Warranty.** DevonWay warrants for ninety (90) calendar days from the performance of any Professional Services by DevonWay pursuant to this Professional Services Agreement, that such Professional Services shall be performed in a manner consistent with generally accepted industry standards. Customer must report in writing any breach of this warranty to DevonWay during the relevant warranty period, and Customer’s exclusive remedy and DevonWay’s entire liability for any breach of such warranty shall be the re-performance of the Professional Services, or if DevonWay is unable to perform the Professional Services as warranted, Customer shall be entitled to recover the fees paid to DevonWay for the nonconforming Professional Services.

**Acceptance.** Upon completion of any Deliverable, DevonWay shall submit the Deliverable to Customer. At Customer’s request, DevonWay will demonstrate to Customer the functionality of the Deliverable. Customer shall be responsible for any additional review and testing of such Deliverable in accordance with any applicable acceptance criteria and test suites. If Customer, in its reasonable discretion, determines that any submitted Deliverable does not perform the functional requirements specified for such Deliverable in the applicable Statement of Work, Customer shall have five (5) calendar days after DevonWay’s submission of the Deliverable (“**Acceptance Period**”) to give written notice thereof to DevonWay specifying the deficiencies in detail. DevonWay shall use reasonable efforts to promptly cure any such deficiencies. After completing any such cure, DevonWay shall resubmit the Deliverable for review and testing as set forth above. Upon accepting any Deliverable submitted by DevonWay, Customer shall provide to DevonWay a written acceptance of such Deliverable. Notwithstanding the foregoing, if Customer fails to reject any Deliverable within the Acceptance Period in the manner described above, such Deliverable shall be deemed accepted at the end of the Acceptance Period. In the event any Deliverable is not accepted by Customer as specified above after the third submission and Acceptance Period, either party may terminate the applicable Statement of Work without further liability to either party, provided however, that Customer shall not be relieved of its payment obligations with respect to the accepted Professional Services delivered prior to any such termination.

**DevonWay Service and Products.** The Professional Services provided under this Agreement are provided in support of Customer’s license, under the Agreement, to use the DevonWay Product and the Agreement shall govern such use. Neither this Agreement nor any Statement of Work hereunder grants Customer any license or rights to use such DevonWay Product. In addition, Customer agrees that Customer’s purchase of Professional Services under this Agreement is not contingent upon the delivery of any future functionality or features in the DevonWay Product, nor is it dependent upon any oral or written public comments made by DevonWay with respect to future functionality or features.

**Third Party Sub-contractors.** DevonWay reserves the right to use third-parties (who are under a strict covenant of confidentiality with DevonWay), including, but not limited to, offshore sub-contractors to assist with the data migration, configuration, implementation and custom code development processes. DevonWay will remain responsible for the acts and omissions of its third party contractors as if it were performing the services itself.

### Payment Provisions

**Fees.** Professional Services shall be provided under this Professional Services Agreement at the rates and terms set forth in the applicable Order Form in accordance with the GSA Schedule Contract.

**Expenses.** Customer will also be responsible for reimbursing DevonWay for all of its customary travel expenses (“**Expenses**”) incurred in each services engagement in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. All Expenses will be pre-authorized by Customer, invoiced promptly and due upon receipt.

**Cancellation.** Customer will be responsible for payment of any unpaid, uncontested fees for Professional Services rendered prior to the cancellation date if Customer cancels the project and the cancellation is not due to breach of Warranty as specified in Section A.6.



**Miscellaneous**

**Product Mix.** Customer acknowledges that the Professional Services acquired hereunder were ordered separately from the DevonWay Product described on DevonWay's Order Form and Customer may acquire either the DevonWay Product or Professional Services without acquiring the other.

**Independent Contractor.** With respect to one another, the parties are independent contractors and, as such, neither DevonWay nor its personnel shall be considered Customer's employee(s). As a consequence, Customer is not responsible for withholding or deducting any sums for federal or state income taxes, social security, health, workers' compensation, and disability insurance coverage, pension or retirement plan, or the like.

**Non-Solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, Customer shall not solicit for hire, on behalf of itself or any other organization, any employee or sub-contractor of DevonWay's, unless Customer has first obtained DevonWay's written consent. The foregoing shall not apply to general solicitations for employment.

## On-Demand Terms of Use and Service Level Agreements

**Service.** Subject to the terms of this Agreement, DevonWay will make the DevonWay Product available to Customer and its Users through a web browser and/or mobile application and grants Customer a license to use the DevonWay Product according to the License Model set forth on the applicable Order Form.

**DevonWay Product Releases.** During the License Term, if Customer has paid the applicable fees and is in compliance with the terms and conditions of the Agreement, DevonWay shall provide automatic updates to Customer's instance of the DevonWay Product with DevonWay Product Releases.

**Customizations.** If Customer decides to customize the DevonWay Product for Customer's environment, Customer agrees that such customization will be DevonWay-certified customizations using the DevonWay-approved methods and procedures and compliant with established industry security standards.

**Testing Environments.** DevonWay will provide, at no additional charge, one testing environment that is created as a duplicate of Customer's production environment (data application logic, representative data, and configuration) referred to as the User Acceptance Test environment, ("UAT") and two testing environments created without duplication of Customer's production environment ("Build" and "Test"). Any requests for additional test environments or updating of the UAT environment outside of scheduled updates shall be performed through the use of support requests or subject to DevonWay's then-current fees for such services. UAT, Build, and Test are intended to be used for development, testing, or staging of any modifications to Customer's production environment instance, and not for use as a production environment instance. DevonWay rigorously tests all software releases and incident patches in a multi-step quality assurance process before making them available to Customer. As a final pre-production test, DevonWay tests releases and incident patches in UAT, which is configured with Customer data and interfaces.

DevonWay tests new releases and incident fixes in the UAT environment before moving new software to Production. Customer will have the opportunity to use the UAT environment to preview changes or enhancements to DevonWay functionality.

If DevonWay applications interface with Customer applications, Customer is responsible for providing and operating UAT environments for Customer applications to test these interfaces before new DevonWay software is moved to Production.

**Monitoring and Administration.** DevonWay provides 24/7/365 monitoring and administration of the application environment. DevonWay uses a suite of standard and custom monitors, many running more than once a minute, to pro-actively detect, alert on, and escalate issues to DevonWay on-call staff so they can resolve most issues before they affect end-users. Additionally, DevonWay has automated processes that detect and resolve issues without human intervention.

**Incident and Request Management.** DevonWay provides 24/7/365 support for issues that cause production operations to cease. DevonWay provides on-line incident reporting for all other issues and responds to incidents or requests that Customer reports under the following terms.

DevonWay accepts support pages and on-line incidents from people whom Customer names as DevonWay support contacts. Customer may identify up to five support contacts. The people whom Customer names as DevonWay support contacts provide first-line support and accept incident reports from other members of Customer organization.

DevonWay responds to incidents differently depending on severity. Details and definitions regarding Severity One through Four incidents are documented at <https://docs.DevonWay.com/docs/common/resources/policies-and-procedures/#maintenance-policy>.

DevonWay takes changes to Production environments seriously, and strives to minimize such changes outside normal upgrade cycles. For this reason, the acceptable resolution of an incident may not always be a patch to the application, but could also be a workaround deemed viable by DevonWay and the Customer business users.

Customer is responsible for maintaining all application-configuration and end-user data. For example, if an end-user forgets his password, Customer application administrators are responsible for resetting it.

DevonWay will provide Customer support contacts a triage document to help them resolve common issues and to explain what constitutes a Severity One incident. The improper filing of Severity One incidents may incur time & materials or support request charges.

Non-incident requests, including data subject requests, are covered under the support procedure documented at <https://docs.devonway.com/docs/common/resources/policies-and-procedures/#support>.

**No-downtime Maintenance.** DevonWay seeks to reduce the number and amount of scheduled downtime for maintenance (for example, OS patching, software upgrades, server maintenance, etc.) by using its redundant production hardware to transparently perform most maintenance activities. DevonWay communicates these no-downtime maintenances through the DevonWay Technology Blog at least five calendar days in advance, although DevonWay reserves the right to perform no-downtime maintenances of an urgent nature with less notice than that.

**Scheduled Downtimes.** When downtime is unavoidable for maintenance, DevonWay will communicate the planned downtime to Customer at least seven calendar days in advance. DevonWay never schedules maintenance or downtime during business hours, defined to be 5am CST/CDT to 8pm CST/CDT,

Monday through Friday without Customer request or explicit approval. DevonWay seeks to schedule most system maintenance requiring a downtime on Friday or Saturday nights after 8pm CST/CDT. DevonWay seeks to have one or less scheduled downtime lasting one hour or less in duration per month. At no time will DevonWay schedule more than three downtimes per month lasting more than four hours in total duration without Customer explicit approval.

**Unscheduled Downtimes.** DevonWay maintains fully redundant, highly available production hardware, software, and network architecture. However, from time to time, individual components can fail. Depending on the exact component and nature of the failure, end-users may experience

unscheduled application downtime. When a failed component leads to unscheduled application downtime, DevonWay brings the application back up through a combination of automated and manual processes. DevonWay provides 99.9% availability with no more than 2 unscheduled downtimes per month, excluding an event that would trigger a disaster recovery to the secondary datacenter or a database restore, both of which are described in more detail below. Unscheduled application downtime excludes failures within Customer datacenters or the Customer's connection to the internet since DevonWay's level of control ends at the perimeter of its datacenters. It is worth noting that DevonWay's datacenters have several connections to the internet from different vendors, and internet connectivity at DevonWay's datacenter is included in the unscheduled application downtime.

**Data Backup and Recovery.** DevonWay backs up Customer production application data on a regular basis using a variety of strategies, including on-site disk and tape backups, as well as copies stored off-site in the secondary datacenter on both disk and tape. DevonWay backs up Customer end-user generated data at least hourly and static files and underlying systems at least daily. DevonWay keeps backups for two weeks and can restore data from backup within a timeframe appropriate to the severity and circumstances of the situation. For Customer-caused data loss, the restoration of data may require the use of support requests. DevonWay does not automatically delete any Customer end-user generated data, although DevonWay does rotate log files on a periodic basis.

**Disaster Recovery.** DevonWay located its primary datacenter in Dallas, TX due to its generally low risk to disasters common to other parts of the country, including low risk to earthquakes, hurricanes, snowstorms, etc. However, in order to mitigate a disaster in the primary datacenter, DevonWay maintains a geographically separate, secondary datacenter in Ashburn, VA. In the unlikely event of a natural disaster, extended power outage that exhausts the UPS and generator systems, or other calamitous event, DevonWay will recover the Customer application in its secondary datacenter with a maximum one hour of lost data. The datacenter space is provisioned and dedicated to DevonWay and its Customers, so there is not a "first-come, first-served" policy to worry about. In the unlikely event of a failover to the secondary datacenter, DevonWay will recover the Customer application in 6 hours or less.

**Performance.** DevonWay applications will perform as well as or better than reasonably expected, with the majority of actions taking 1-3 seconds to complete. Due to the wide variety in which DevonWay applications can be configured, DevonWay does not offer a Service Level Agreement related to specific response times, but instead makes performance testing a required step in the final acceptance cycle of an implementation. If after go-live performance degrades beyond acceptable levels because of software, hardware, or network problems within DevonWay's control, DevonWay will treat these conditions as either Severity One or Severity Two incidents, depending on the scope and degree of the problem.

**Data Security Services.** DevonWay provides these data security services with the applications that Customer licenses:

**Security:** DevonWay primary and secondary datacenters are SSAE 16 Type II certified and its servers are Cisco-firewalled, virus-protected, and safeguarded from unauthorized access by biometric sensors and a full security detail. In addition, low-level network-based Intrusion Detection Systems protect against cracking. DevonWay and/or authorized datacenter personnel (at DevonWay's direction) apply critical operating system and software security patches within 30 days or sooner, depending on criticality, applicability to the DevonWay operating environments, and subject to testing and scheduling any appropriate downtimes.

**Encryption:** DevonWay allows only secure https access to the Customer application, backed by a 256bit SSL/TLS certificate. All backups are transferred to on-site tape backups and the secondary off-site datacenter through encrypted tunnels and are stored with 256bit encryption.

**End-User Passwords:** DevonWay encrypts all end-user passwords during logon. However, DevonWay cannot be responsible for unauthorized access to the Customer application caused by the Customer's users sharing or misusing their logon information.

**Capacity Planning Policy.** DevonWay manages growth by maintaining a 2x capacity in its datacenters as measured against peak load. DevonWay tracks percentage utilization on a daily, weekly, and monthly basis and uses a predictive formula to requisition any additional hardware necessary for new Customers well in advance of hosting them. DevonWay does not publish this formula.

**Notifications of Notable Events.** DevonWay communicates Notable Events through its Technology Blog, by targeted emails, or both. Notable Events include, but are not limited to:

- Changes to the operating environment, such as planned maintenance
- Descriptions and effects of unplanned downtimes
- End-of-life announcements for deprecated software, such as old browser versions
- Security warnings or breaches

The communication may be to the entire DevonWay community or to affected Customers when the event only applies to them. In the case of a security breach, DevonWay will communicate directly with the affected Customer(s) to develop a plan for mitigating its effects. The

communication will occur as soon as possible, but in no case later than 72 hours of DevonWay becoming aware of the breach. Note that to date, no such breach has occurred.

**Miscellaneous Statement of Responsibilities.** DevonWay is not responsible for the following:

Network issues originating from within the Customer's intranet.

General Internet outages, defined as the Customer's inability to connect to both the Dallas, TX and Ashburn, VA datacenters.

Customer computers that are unsupported or running less than the minimum required configuration as determined and mutually agreed upon during implementation or as specified at <https://docs.DevonWay.com/docs/common/Advanced-documentation/Recommended-Client-Configuration/>.

Customer browsers that are unsupported or running less than the minimum required version as determined and mutually agreed upon during implementation.



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**Handling of Customer Content Post Termination.** Upon any expiration or termination of this Agreement, and upon expiration of the License Term, the rights and licenses granted hereunder will automatically terminate, and Customer may not continue to use the DevonWay Product. If Customer is using the On-Demand DevonWay Product as of the effective date of termination, upon written request by Customer made within ninety (90) days of the effective date of expiration or termination of the Agreement (the "Post-Term Period"), DevonWay agrees to make available to Customer, a copy of Customer's production data. Further, during the Post-Term Period and upon the Customer's request, DevonWay shall grant the Customer limited access to the DevonWay Product for the sole purpose of permitting the Customer to retrieve Customer Content, provided that the Customer has paid in full all good faith undisputed amounts owed to DevonWay. Upon expiration of the Post-Term Period, DevonWay will have no further obligation to maintain for or provide to Customer any of the Customer Content and may thereafter, unless legally prohibited, delete all Customer Content in its systems or otherwise in its possession or under its control.

## Service Level Agreement

This Service Level Agreement (“SLA”) describes the availability of the DevonWay Product and is made a part of any DevonWay Master Software Agreement (the “Agreement”) which references its terms and applies when the Order Form specifies a support plan that covers credits for missing SLAs in the DevonWay On-Demand environment. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Agreement.

**Availability.** DevonWay shall make the DevonWay Product available 99.9% of the time, except as provided below. Availability will be calculated per calendar quarter, as follows:

$$\left( \frac{\text{total} - \text{downtime}}{\text{total}} \right) \geq .999$$

Where:

*total* means the total number of minutes in the calendar quarter;

*downtime* means any period of unavailability of the DevonWay Product, where the majority of users cannot log on and view data;

Exclusions to *total* and *downtime* calculations:

Any planned or scheduled unavailability of the DevonWay Product, including for the purposes of maintenance or upgrades. DevonWay will use commercially reasonable efforts to schedule all planned downtime during the hours from 8:00 p.m. Friday to 5:00 a.m. Monday, U.S. Central Time.

Non-environmental errors, such as those caused by application configuration changes or data updates.

Any period of unavailability lasting less than 15 minutes.

Any unavailability caused by circumstances beyond DevonWay’s reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving DevonWay employees), or third-party internet service provider failures or delays, including denial of service attacks.

For any partial calendar quarter during which Customer subscribes to the DevonWay Product, availability will be calculated based on the entire calendar quarter, not just the portion for which Customer subscribed.

**Remedies.** If DevonWay fails to make the DevonWay Product available as set forth in Section 1 above, Customer may receive a credit for 1% of the then-current quarter’s subscription fee for the affected DevonWay Product for each full or partial hour of unavailability in violation of Section 1. In no case shall the total credit for any quarter exceed the lesser of \$100,000 or 80% of the subscription fees paid by Customer for the then-current quarter. If DevonWay fails to make the DevonWay Product available as set forth in Section 1 above in two consecutive calendar quarters, Customer may, in lieu of receiving the above-described credit for the second quarter, terminate the Agreement by providing notice of termination in accordance with Section 3 below, in which case DevonWay will refund to Customer any prepaid fees for the remainder of the License Term following the date of termination. The remedies described in this paragraph shall be the sole remedies available to Customer for breach of this SLA.

**Reporting, Claims and Notices.** To claim a remedy under this SLA, Customer shall send DevonWay a written notice, via email addressed to [notices@devonway.com](mailto:notices@devonway.com), containing the following details:

Billing information, including company name, billing address, billing contact and billing contact phone number

Downtime information with dates and time periods for each instance of downtime during the relevant period

An explanation of the claim, including any relevant calculations.

Claims may be made on a calendar-quarter basis only and must be submitted within 10 business days after the end of the applicable quarter, except where a License Term ends on a date other than the last day of a calendar quarter, in which case any claim related to that subscription must be submitted within 10 business days after the License Term ends.

All claims will be verified against DevonWay's system records. If DevonWay disputes any period of unavailability alleged by Customer, DevonWay will provide to Customer a record of availability for the applicable period. DevonWay will provide such records only in response to claims made by Customer in good faith.

**General:** Services designated as beta, limited release, developer preview, development or test bed environments, or by descriptions of similar import are excluded from this SLA.

## On-Site Terms of Use and Service Level Agreements

**License Grant.** Subject to the terms of this Agreement, DevonWay will make the DevonWay Product available to Customer and its Users for use at the Customer's premises or on a Customer-controlled server within a third party datacenter, and grants Customer a license to use the DevonWay Product according to the License Model set forth on the applicable Order Form.

**Delivery.** DevonWay shall electronically deliver or make available the DevonWay Product and the information necessary for Customer's use and installation of the DevonWay Product.

**DevonWay Product Releases.** During the License Term, DevonWay will provide updates to the DevonWay Product. Customer understands and agrees that Customer may not have immediate access to new or improved features or newer versions of the DevonWay Product until the update is issued to On-Site customers by DevonWay.

**Termination.** Upon termination of the Agreement, if Customer has purchased a Perpetual License for use of the DevonWay Products, Customer may continue (i) to use DevonWay Products subject to its compliance with the terms of the Agreement; and (ii) may continue to receive maintenance and support from DevonWay, provided that Customer pays DevonWay the then-current fees for such maintenance and support.

**Production and Testing Environments.** The DevonWay Product must be installed in "appliance mode," meaning on a single web server/app server configuration, with the database server optionally segregated. Multi-server configurations are possible but carry an additional cost. Customer is allowed to create one Production instance and one Testing instance per licensed configuration .

**Incident Management.** DevonWay is responsible for rigorously testing all software releases and incident patches in a multi-step quality assurance process before making them available to customers. As a final pre-production test, Customer is responsible for testing DevonWay releases and incident patches in a User Acceptance Testing (UAT) environment configured with Customer data and interfaces. In addition to adhering to pre- production testing processes, DevonWay provides on-line incident reporting for all other issues and responds to incidents that Customer reports under the following terms.

DevonWay accepts support pages and on-line incidents from people whom Customer names as DevonWay support contacts. Customer may identify up to five support contacts. The people whom Customer names as DevonWay support contacts provide first-line support and accept incident reports from other members of Customer organization.

Regardless of the root cause, off-hours phone support is still subject to the fee defined by Customer support plan. Beyond that initial fee, the effort expended by DevonWay to address incidents due to platform defects is covered under maintenance, unless the defect leads to a Severity One or Two incident that is uncovered in Production due to insufficient testing or poor change management on Customer's part (for example, if Customer made an environmental change in Production without first validating it in a UAT area). In that case, the effort expended by DevonWay to resolve or address the issue in Customer's Production area is not covered by maintenance.

DevonWay responds to incidents differently depending on severity. Details and definitions regarding Severity One through Four incidents are documented at <https://docs.devonway.com/docs/common/resources/policies-and-procedures/#maintenance-policy>.

DevonWay takes changes to Production environments seriously, and strives to minimize such changes outside normal upgrade cycles. For this reason, the acceptable resolution of an incident may not always be a patch to the application, but could also be a workaround deemed viable by DevonWay and the Customer business users.

Customer is responsible for maintaining all application-configuration and end-user data. For example, if an end-user forgets his password, Customer application administrators are responsible for resetting it.

DevonWay will provide Customer support contacts a triage document to help them resolve common issues and to explain what constitutes a Severity One incident. The improper filing of Severity One incidents may incur time & materials or support request charges.

If Customer files an incident but is not on the latest DevonWay Product or platform release, DevonWay may request that Customer update a Testing environment to the latest release and reproduce the incident before DevonWay investigates, so as to ensure the incident has not already been resolved.

**Server Specifications and Third-party Licenses.** Customer is responsible for providing a Windows Server 2016 operating system license, a Microsoft Office license, a SQL Server 2016 database license, including SQL Server Reporting Services (SSRS), and licenses for supporting software such as anti-virus and backup tools. DevonWay is responsible for all third-party licenses required by the DevonWay platform, such as Jasper reporting and scheduling software. Customer is also responsible for configuring physical or virtual servers that meet the hardware specifications in the DevonWay On-premise Preparation document, which is provided during the procurement process.

**Administration.** Customer is responsible for:

Monitoring and administration of the application environment. DevonWay can train Customer to use DevonWay's suite of monitors, or Customer may use its own central monitoring technology.

Data backup and recovery.

Database server maintenance and administration, such as index maintenance, statistics updates, integrity checks, and database server health monitoring.

Disaster recovery.

Data security.

Scheduled and unscheduled downtimes.

Capacity planning.

Hardware and Operating System upgrades and patches, including security updates. Note that this does not include upgrades to components required by the DevonWay platform, such as the Java Virtual Machine, Java Servlet Container (Tomcat), etc. Those must be coordinated with and performed at the same time as upgrades of the DevonWay platform or if needed to be installed ahead of a scheduled upgrade for security reasons, DevonWay must certify that the patch is compatible with the platform version prior to being installed.

DevonWay platform and application upgrades.

Providing and maintaining VPN access to named DevonWay personnel for remote troubleshooting purposes. Implementations that do not allow VPN connections due to internal security policies are encouraged to enable a screen sharing solution or support may require additional fees.

**Support.** Purchase of a Gold or Platinum plan is required so DevonWay may provide support when needed.

**Miscellaneous Statement of Responsibilities.** DevonWay is not responsible for the following:

Client computers that are unsupported or running less than the minimum required configuration as determined and mutually agreed upon during implementation or as specified at <https://docs.devonway.com/docs/common/Advanced-documentation/Recommended-Client-Configuration/>.

Client browsers that are unsupported or running less than the minimum required version as determined and mutually agreed upon during implementation.

**DELTA BRAVO  
331 EAST MAIN STREET  
SUITE 400  
ROCK HILL, SC 29730**

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**DELTA BRAVO**

**DELTA BRAVO LICENSE, WARRANTY AND SUPPORT TERMS**

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**DELTA BRAVO MASTER AGREEMENT**

This Master Agreement (the "Agreement") is by and between the undersigned Ordering Activity under GSA Schedule contracts customer identified in an Order that references this Agreement (the "Customer" or "You" or "Ordering Activity") and Dynamic Data Management, Inc. d/b/a Delta Bravo ("Dynamic Data Management" or "Delta Bravo" or "We" or "Us"). This Agreement governs your use of our service offering and its related documentation (collectively, the "Service") and any related software and/or other technology that we provide you for use in conjunction with the Service, including any updates, modifications or enhancements thereto (collectively, the "Software"). Certain Software is required to access the Service.

**LICENSE**

**Grant of License.** Subject to the terms of this Agreement, including any usage restrictions set forth in the applicable Order and the restrictions in your service tier, Delta Bravo grants you a limited, revocable, non-exclusive and non-transferable right and license during the Term to do the following, in each case solely in accordance with documentation or instructions that may be provided by Delta Bravo for such purposes: (a) install, integrate, perform and use the Software on the number of instances set forth in your Order solely to access and use the Service; and (b) access the features and functions of the Service. To the extent Delta Bravo provides you with any updates or upgrades to the Software or Service, such updates and upgrades shall be deemed to constitute part of the Software or Service and shall be subject to all terms and provisions set forth in this Agreement, including, without limitation, terms and provisions related to licenses, use restrictions and ownership of the Software or Service. By both parties executing this Agreement in writing, any download or use of the Software will be governed by this Agreement. 1.2. **Access.** We will provide or make available to you the Software and any necessary passwords, protocols, or other relevant procedures, as may be necessary to allow: (a) administrative users authorized by you to create accounts for server instances and users; and (b) your users to access the Service. User accounts may only be created for individuals (e.g., team or departmental accounts are prohibited). Use of the Service will be subject to the service limitations based on the service tier set forth in your Order. You must ensure that all information associated with each user account remains complete and accurate. You shall ensure your users keep these passwords and protocols to themselves and do not share them with anyone else, and you shall let us know if there is any breach of the confidentiality of these passwords and protocols. You are solely responsible for any and all use of your user accounts and all activities that occur under or in connection with your passwords and protocols. Each user must provide his or her full legal name, a valid email address, and any other information requested during the account signup process in order to obtain an account.

**Availability.** We will use commercially reasonable efforts to make the Service available during any calendar month (excluding planned maintenance and force majeure events). If such availability drops below 85% in two (2) consecutive calendar months (excluding planned maintenance or force majeure events), you may, as your sole and exclusive remedy for such unavailability, terminate the Service upon 10 days prior written notice with no penalty. If you choose to terminate the Service due to unavailability, you will receive a prorated refund for any unused portion of the Term for which you have prepaid. We consider our Service to be available if you can log into our Service and access Usage Data (as defined in Section 2.1 below).

**Restrictions.** Unless otherwise agreed in writing by us, you will not: (a) assign, sublicense, market, sell, lease, rent, distribute, convey or otherwise transfer the Software to any third party; (b) use the Software for any purposes other than accessing and using the Service; (c) adapt, alter, modify, translate or create derivative works of the Software; (d) use the Software or Service in any manner not in compliance with applicable laws; (e) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which the Software or any software component of the Service are compiled or interpreted, and you acknowledge that nothing in this Agreement will be construed to grant you any right to obtain or use such code; (f) allow third parties other than users you authorize to gain access to the Service or use the Service as a service bureau; (g) access or attempt the access the Software or Service by any means other than what Delta Bravo provides or expressly allows; or (h) interfere with or disrupt the integrity or performance of the Service or the data contained therein. You shall only use the Software and Service for your internal purposes, and you agree that you will not use the Software or Service in the provision of services to any third party without the express written permission by Delta Bravo.

**Open Source Software.** The Software may contain certain components that are subject to "open source" or "free software" licenses ("Open Source Software"). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of Section 1.1. Nothing herein shall bind the Ordering Activity to any Third Party Open Source Software terms unless the terms are provided for review and agreed to in writing by all parties. Nothing in this Agreement limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Delta Bravo makes such Open Source Software, and its modifications to that Open Source Software, available by submitting a request to support@deltabravo.ai.

**Retained Rights.** Except for the rights granted you in this Agreement, Delta Bravo retains all right, title and interest in and to the Software and Service, and you acknowledge that you neither own nor acquire any additional rights in and to the Software or the Service not expressly granted by this Agreement. You further acknowledge that Delta Bravo retains the right to use the Software and Service for any purpose in Delta Bravo's sole discretion. Delta Bravo may choose to modify the Service to enhance a previously purchased capability, add capabilities to, or otherwise improve the functions of the Software, including any portions of the Service as we update our offerings and add more features.

**USE**

**Data.** To provide the Service, Delta Bravo will collect data about your databases, infrastructure, networks and applications ("Usage Data") and you hereby authorize such collection. You own such Usage Data, but grant Delta Bravo the right to make use of such Usage Data in order to provide the Service. You also grant us the perpetual right to use, reproduce, adapt, aggregate and otherwise exploit the Usage Data in an anonymized, aggregated format to



enhance and improve the licensed Delta Bravo products and services. No Usage Data may be disclosed to or utilized for the benefit of any third party if such disclosure or use would allow a third party to identify Customer from the Usage Data.

Feedback. We may send you questionnaires or surveys on a periodic basis in written or electronic form. You acknowledge and agree that any comments, ideas and/or reports you provide to Delta Bravo regarding installation, product experience, functionality, performance, accuracy, consistency and ease of use of the Software or Service ("Feedback") will be considered Delta Bravo proprietary and confidential information, and you hereby irrevocably transfer and assign to Delta Bravo all intellectual property rights embodied in or arising in connection with such Feedback, and any other rights or claims that you may have with respect to any such Feedback. Delta Bravo, in its sole discretion, may freely utilize all Feedback, whether written or oral, furnished by you to Delta Bravo. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

Excluded Countries. You may not use, export, import or transfer the Software or Service except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Software or Service and any other applicable laws. In particular, but without limitation, the Software or Service may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone of the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Software or Service, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S.

Government list of prohibited or restricted parties. You also will not use the Software or Service for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Delta Bravo are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer the Software or Service, or any portion thereof, either directly or indirectly, to any country in violation of such laws and regulations. If you are found using the product from these countries, your account will be subject to immediate termination.

#### LIMITED WARRANTY; LIMITATION OF LIABILITIES

General Disclaimer. Delta Bravo warrants that the SOFTWARE AND SERVICE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE AND SERVICE written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, YOU AGREE THAT THE SOFTWARE AND SERVICE ARE PROVIDED "AS IS" AND "WITH ALL DEFECTS." DELTA BRAVO DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND/OR QUIET ENJOYMENT. THE SOFTWARE AND SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. DELTA BRAVO IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

Exclusions of Remedies; Limitation of Liability. IN NO EVENT WILL DELTA BRAVO BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING

FROM ANY SOURCE, EVEN IF DELTA BRAVO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL DELTA BRAVO BE LIABLE FOR THE LOSS OF DATA OR THE PROCUREMENT OF SUBSTITUTE SERVICES. EXCEPT FOR LIABILITY ARISING FROM SECTION 7 (INDEMNIFICATION), THE CUMULATIVE LIABILITY OF DELTA BRAVO FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE CONTRACT PRICE PAID TO DELTA BRAVO BY YOU UNDER THIS AGREEMENT.

3.3. No Professional Advice. All information, materials, content and/or advice in the Service is for informational purposes only and is not intended to replace or substitute for any professional advice. Delta Bravo expressly disclaims, and you expressly release Delta Bravo from, any and all liability concerning any diagnosis, treatment, or action arising or learned from the information offered or provided within or through the Service.

3.4. Essential Basis of Agreement. You acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 3 form an essential basis of this Agreement, and that, absent any of such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

#### TERM; SUSPENSION; TERMINATION.

Term. The term of this Agreement ("Term") will commence on the date an Order between you and Delta Bravo is executed and continue as long as such Order remains in effect.

Suspension. We reserve the right to temporarily suspend Service at any time at our discretion and without notice if you use the Service in a manner that would cause legal liability to Delta Bravo or otherwise disrupt the Service.

Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Delta Bravo shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

4.4. Effect of Termination. Upon the expiration or any termination of this Agreement, the license and all rights granted to you under this Agreement will immediately terminate, and you will promptly purge and destroy all copies of the Software in your possession. Termination of your account includes: (a) removal of access to all offerings within the Service; (b) deletion of your password and all related information; and (c) barring of further use of the Service. The provisions of Sections 1.6, 2.1, 2.2, 3, 5, 7 and 9 will survive termination or expiration of this Agreement. Any Usage Data generated through the Service will be permanently lost upon termination of this Agreement. Delta Bravo will not have any liability whatsoever to you for any temporary suspension or termination pursuant to the Contract Disputes Act, including for deletion of your Usage Data. All provisions of these Terms, which by their nature should survive, shall survive termination of Services, including without limitation ownership provisions, warranty disclaimers and limitations of liability.

CONFIDENTIALITY. We and you acknowledge that, in the course of performance of this Agreement, either may obtain information from the other party which it knows or has reason to know is of a confidential and/or proprietary nature ("Confidential Information"). Without limiting the above, the Software, Service, the documentation, the Feedback and any product roadmap is our Confidential Information and Usage Data is your Confidential Information. Except as expressly stated in this Agreement, during the Term and at all times thereafter, neither party may disclose any such Confidential Information to any third party, nor may either party use such Confidential Information of the other party for any purpose, other than as permitted herein. Confidential Information will not include any information which: (i) are or become readily available to the trade or public through no fault of the recipient of the Confidential Information; (ii) is subsequently lawfully and in good faith obtained by a party from an independent third party without breach of this Agreement; (iii) the recipient can establish that the information was in its possession prior to the date of disclosure of such Confidential Information; or (iv) is developed independently by the recipient without reference to any Confidential Information of the other party. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent such disclosure is required by applicable law, a court of competent jurisdiction or a governmental agency; provided that such party promptly notifies the other party to the extent legally permissible of such required disclosure to provide the other party an opportunity to object to such disclosure and seek a protective order or other appropriate relief. Delta Bravo recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

FEES; TAXES. In consideration for the Service and license to the Software, Customer will pay Delta Bravo the fees ("Fees") set forth in the Order in accordance with the GSA Schedule Pricelist. All Fees will be billed at the frequency specified in the Order and are due within thirty (30) days of receipt of invoice by Customer. Any unpaid and uncontested balance due and owing will incur late interest at the rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Delta Bravo shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

#### INDEMNIFICATION.

Reserved.

By Delta Bravo. Delta Bravo will defend Customer from any claim brought by a third party that any use of, or access to, the Service or Software by Customer violates, infringes or misappropriates, as applicable, any third-party intellectual property right. Notwithstanding the foregoing, Delta Bravo shall have no obligation or liability to the extent that the alleged infringement or misappropriation arises from Customer's use of the Services or Software other than in accordance with this Agreement. Upon the occurrence of any claim for which indemnification is or may be due under this Section, or in the event that

Delta Bravo believes that such a claim is likely, Delta Bravo may, at its option (i) modify the Service or Software so that it becomes non-infringing but functionally similar, or substitute a functionally similar alternative; (ii) obtain a license to the applicable third-party intellectual property at no cost to Customer; or (iii) terminate the applicable Order on written notice to Customer and refund any unused, pre-paid fees. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. 7.3. Procedures. The indemnifying party shall pay all damages finally awarded or paid in settlement of any such Claims. The indemnified party must notify the indemnifying party promptly in writing of any claim for indemnification hereunder, and provide, at the indemnifying party's expense (to the extent of out-of-pocket expenses only), all reasonably necessary assistance, information and authority to allow the indemnifying party to control the defense and settlement of such Claim; provided that the failure of the indemnified party to promptly inform the indemnifying party of any Claim shall not excuse the indemnifying party of its obligations hereunder except to the extent such failure materially prejudices the indemnifying party. Notwithstanding the foregoing, the indemnifying party shall not enter into any settlement of the defense of such action, other than with respect to the payment of monies, without the

Indemnified party's prior written consent, which consent shall not be unreasonably withheld or delayed.

The indemnified party may participate at its expense in the defense and/or settlement of any such action with counsel of its choosing and at its sole expense.

FORCE MAJEURE. Excusable delays shall be governed by FAR 52.212-4(f).

GENERAL. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, and each Order constitute the complete and exclusive agreement between you and Delta Bravo. The terms and conditions of this Agreement will not be modified unless both you and a Delta Bravo authorized representative execute a separate written instrument. Any notice required to be given under this Agreement will be sent to the address indicated in the Order, or such other address provided by the party in writing. If any provision of this Agreement is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable, and such decision will not affect the enforceability of such provision under other circumstances and in other jurisdictions, or of the remaining provisions under all circumstances. Any delay or failure by either party to this Agreement to exercise any of its rights hereunder will not constitute or be deemed a waiver or forfeiture of such rights. Neither party will assign this Agreement, whether voluntarily or by operation of law, nor will either party delegate its duties hereunder without consent from the other party and any attempt to do so will be null and void. This Agreement will be construed and enforced in accordance with the Federal laws of the United States. The Software and any software components of the Service are a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212, all U.S. Government end users acquire the Software and Service with only those rights set forth therein. For contractual purposes, you (i) consent to receive communications from us in an electronic form; and (ii) agree that all terms and conditions, agreements, notices, documents, disclosures, and other communications ("Communications") that we provide to you electronically satisfy any legal requirement that such Communications would satisfy if it were in writing. Your consent to receive Communications and do business electronically, and our agreement to do so, applies to all of your interactions and transactions with us.

**DOCKER, INC.**  
**144 TOWNSEND STREET**  
**SAN FRANCISCO, CA 94107**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Docker, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the

commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**DOCKER, INC.**

**DOCKER, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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This U.S. Government Supplement ("**Supplement**") and the Docker Software End User Subscription Agreement (<https://www.docker.com/docker-software-end-user-subscription-agreement>) ("**Enterprise Agreement**"), establish the terms and conditions enabling Docker, Inc. ("**Docker**") to provide Docker's products and services to U.S. Government agencies, including any "Ordering Activity", defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2H ADM (the "**Customer**"). Unless otherwise indicated herein, any capitalized terms which are defined in the Enterprise Agreement shall have the same meaning where used in this Supplement.

The Enterprise Agreement and this Supplement cover the use of Supported Software or Subscription Services by any Ordering Activity. Notwithstanding anything to the contrary, the use of Software or Services from Docker by an Ordering Activity *does not* constitute that Ordering Activity's assent or acceptance of the Enterprise Agreement. Docker agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; and 41 U.S.C. 423 relating to procurement integrity. This Supplement modifies the terms and conditions of the Enterprise Agreement for U.S. Government agencies as follows:

#### **1.0 Enterprise Agreement – Preamble**

The following is modified from Enterprise Agreement Preamble "BETWEEN DOCKER, INC., LOCATED AT 475 BRANNAN STREET, SUITE 330, SAN FRANCISCO, CA 94107 ("**DOCKER**") AND THE INDIVIDUAL OR LEGAL ENTITY" and is replaced with the following: "BETWEEN DOCKER, INC., LOCATED AT 475 BRANNAN STREET, SUITE 330, SAN FRANCISCO, CA 94107 ("**DOCKER**") AND THE LEGAL ENTITY".

The following is deleted from Enterprise Agreement Preamble "OR IS USING THE APPLICABLE SOFTWARE MADE AVAILABLE BY DOCKER".

#### **2.0 Enterprise Agreement Section 1.0 Definition:**

The following is modified from **Enterprise Agreement Section 1.11** "Subscription Services means standard support and maintenance services and software updates provided by Docker for the Supported Software, as set forth at: <https://www.docker.com/legal/subscription-services/>" and is replaced with **Enterprise Agreement Section 1.11** "Subscription Services means standard support and maintenance services and software updates provided by Docker for the Supported Software, as set forth at: <https://www.docker.com/support/>".

#### **3.0 Enterprise Agreement Section 2.0, License:**

The following is deleted from **Section 2.3, License Keys**: "Customer acknowledges and agrees that any attempt to exceed the use of the Licensed Software beyond the limits configured into the Key will automatically and immediately terminate the licenses granted under this Agreement".

#### **4.0 Enterprise Agreement Section 6.0 Records and Audit:**

The following is modified from **Enterprise Agreement Section 6.0 Records and Audit** "Upon prior notice, Docker or its representative may inspect such records to confirm Customer's compliance with the terms of this Agreement" and is replaced with **Enterprise Agreement Section 6.0 Records and Audit** "Upon prior notice and in accordance with Customer's security requirements, Docker or its representative may inspect such records to confirm Customer's compliance with the terms of this Agreement".

The following is deleted from **Enterprise Agreement Section 6.0 Records and Audit** "Prompt adjustments shall be made by Customer as directed by Docker to compensate for any errors or breach discovered by such audit, such as underpayment of the Subscription Fee, with the applicable late payment interest. Additionally, if Customer has underpaid Docker or its authorized reseller by more than 5% of the total amount owed hereunder, the cost of the audit shall be borne by Customer." and is replaced with **Enterprise Agreement Section 6.0 Records and Audit** "During the term of this Agreement and for one (1) year thereafter: (a) If Customer's security requirements are met, Docker or its designated agent may inspect Customer's facilities and records to verify Customer's compliance with this Agreement. Any such inspection will take place only during Customer's normal business hours and upon no less than ten (10) days prior written notice from Docker. Docker will give Customer written notice of any non-compliance, including without limitation the number of underreported units of Supported Software or Subscription Services ("Notice"); or (b) If Customer security requirements are not met and upon Docker's request, Customer will run a self assessment with tools provided by and at the direction of Docker ("Self Assessment") to verify Customer's compliance with this Agreement. Within thirty (30) days from Docker's request, Customer will finalize the Self Assessment and provide Docker with the results in the form of a written report certified by Customer's authorized officer including the number of underreported Units of Software or Services (the "Report"). In either event, after providing Notice(s) or Report(s) and receipt of an invoice, Customer will make payment to Docker or its authorized channel partner for any errors or breach discovered by such audit, such as underpayment of the Subscription Fee. Notwithstanding the foregoing, nothing in this section prevents the Government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109)."

#### **5.0 Enterprise Agreement Section 7.0 Term:**

The following is deleted from **Enterprise Agreement Section 7.0 Term** "Either party may terminate this Agreement and any Order Form incorporating the terms of this Agreement (if Docker is a party to such Order Form) if the other party materially breaches this Agreement and fails to cure such breach within 30 days of receiving written notice thereof." and is replaced with **Enterprise Agreement Section 7.0 Term** "Recourse against the Customer for any alleged breach of this Agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. Docker shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer".

#### **6.0 Enterprise Agreement Section 9.0 Confidentiality:**

The following is deleted from **Enterprise Agreement Section 9.0 Confidentiality sub-section 9.5 Injunctive Relief** is deleted in its entirety.

The following section heading is deleted from **Enterprise Agreement Section 9.0 Confidentiality sub-section 9.6 Return of Confidential Information** is replaced with **Enterprise Agreement Section 9.0 Confidentiality sub-section 9.5 Return of Confidential Information**.

#### **7.0 Enterprise Agreement Section 10. Warranties:**

The following section heading is modified from **Enterprise Agreement Section 10.0 No Warranties** is replaced with **Enterprise Agreement Section 10. Limited Warranties**.

The following is deleted from **Enterprise Agreement Section 10.0 Limited Warranties** "CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT ALL USE OF THE SUPPORTED SOFTWARE IS AT CUSTOMER'S SOLE RISK AND THAT THE SUPPORTED SOFTWARE AND SUPPORT SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." " is replaced with **Enterprise Agreement Section 10. Limited Warranties** "DOCKER WARRANTS THAT (a) THE SUPPORTED SOFTWARE WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF CUSTOMER'S RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH DOCKER'S WRITTEN MATERIALS ACCOMPANYING IT, AND (b) ANY SUPPORT SERVICES PROVIDED BY DOCKER SHALL BE SUBSTANTIALLY AS DESCRIBED IN APPLICABLE WRITTEN MATERIALS PROVIDED TO CUSTOMER BY DOCKER. EXCLUDING THE FOREGOING..."

#### **8.0 Enterprise Agreement Section 11. Indemnification:**

The following section is modified from **Enterprise Agreement Section 11. Indemnification sub-section 11.1 By Docker** "(b) tenders to Docker sole control of the defense and settlement of the claim, and" is replaced with **Enterprise Agreement Section 11. Indemnification sub-section 11.1 By Docker** "(b) tenders to Docker control of the defense and settlement of the claim to the extent permitted by 28 USC 516, and".

The following is deleted from **Enterprise Agreement Section 11. sub-section 11.3 By Customer** is deleted in its entirety.

#### **9.0 Enterprise Agreement Section 12. Limitation of Liability:**

The following section is deleted from **Enterprise Agreement Section 12. Limitation of Liability sub-section 12.2 Liability Cap**. "THE GREATER OF USD \$100 OR".

The following section is amended from **Enterprise Agreement Section 12. Limitation of Liability sub-section 12.2 Liability Cap**. "The foregoing exclusion/limitation shall not apply to (1) personal injury or death resulting from Docker's negligence; (2) for fraud committed by Docker; or (3) for any other matter for which liability cannot be excluded by law."

#### **10.0 Enterprise Agreement Section 13. Export Restrictions:**

The following section is deleted from **Enterprise Agreement Section 13. Export Restrictions**. "Customer will defend, indemnify, and hold harmless Docker and its suppliers and licensors from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors or employees."

#### **11.0 Enterprise Agreement Section 14. Miscellaneous:**

The following section is deleted from **Enterprise Agreement Section 14. Miscellaneous** "Agreement will be governed by the laws of the State of California without reference to conflict of law principles." is replaced with **Enterprise Agreement Section 14. Miscellaneous** "Agreement will be governed by the Federal laws of the United States without reference to conflict of law principles."

The following section is deleted from **Enterprise Agreement Section 14. Miscellaneous** "Each party agrees to submit to the exclusive jurisdiction of the courts located within the county of San Francisco, California to resolve any legal matter arising from this Agreement. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Docker may assign the entirety of its rights and obligations under this Agreement, without consent of the Customer, to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets."

The following section is deleted from **Enterprise Agreement Section 14. Miscellaneous** "Together with any Order Forms, this is the entire Agreement between the parties relating to the subject matter hereof." is replaced with **Enterprise Agreement Section 14. Miscellaneous** "Together with any Order Forms, this is the entire Agreement between the parties relating to the subject matter hereof, namely the licensing of the Supported Software."

The following section is modified from **Enterprise Agreement Section 14. Miscellaneous** after "...signed by both parties and clearly understood by both parties to be an amendment or waiver." is replaced with **Enterprise Agreement Section 14. Miscellaneous** "...signed by both parties and clearly understood by both parties to be an amendment or waiver. The terms of this Agreement shall not supersede the terms of the underlying GSA Schedule Contract".



**DUO SECURITY, INC.  
123 N. ASHLEY STREET, SUITE 200  
ANN ARBOR, MI 48104**

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**DUO SECURITY, INC.**

**DUO SECURITY, INC. TERMS AND CONDITIONS**

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**AGREEMENT**

(Government Customers – GSAMultiple Award Schedule Contract) This agreement (“Agreement”) is entered into effective as of \_\_\_\_\_, 20\_\_\_\_, (the “Effective Date”) between Cisco Systems, Inc., on behalf of itself and for the benefit of its affiliates, including, without limitation, Duo Security, Inc., a Delaware corporation with a registered address at 123 N. Ashley Street, Ann Arbor, MI 48104 (“Duo Security”), and the Federal Customer purchasing from the GSA Multiple Award Schedule (MSA) contract (“Customer”). This Agreement, including the Terms and Conditions containing, among other things, warranty disclaimers, liability limitations and use limitations, includes and is effective for the Order Form and any subsequent renewals, purchase orders or Order Forms (submitted in written or electronic form) related to Customer’s subscribing to the Services unless different or additional terms are expressly agreed to in writing and signed by both parties. There will be no force or effect given to any different or additional terms contained in any purchase order or similar form issued by either party, even if signed by the parties unless such terms are included in an amendment in accordance with the terms of Section 14.3 of this Agreement. Each party’s acceptance of this Agreement was and is expressly conditional upon the other’s acceptance of the terms contained in this Agreement to the exclusion of all other terms. Capitalized terms shall have the meanings ascribed to them in the Terms and Conditions.

**TERMS AND CONDITIONS**

**DEFINITIONS**

“Customer” means the U.S. Government customer that has placed an order with for the Services and thereby signed up for the Services and agreed to the terms of this Agreement under the GSA MAS contract. The Department of Veterans Affairs shall not be a Customer and cannot purchase from Duo Security under the GSA MAS contract.

“Customer Data” means any information or data about Customer or Users (and its and their staff, customers or suppliers, as applicable), that is supplied to Duo Security by or on behalf of Customer or any User in connection with the Services, or which Duo Security is required to access, generate, process, store or transmit pursuant to this Agreement, including (but without limitation) information about Customer’s and Users’ respective devices, computers and use of the Services.

“Customer Personal Data” means any Customer Data that is personal data (as defined under the DPA).

“Data Protection Laws” means the DPA, EC Directive 95/46/EEC, EC Directive 2002/58/EC, the UK Privacy and Electronic Communications (EC Directive) Regulations 2003 and any other applicable data protection laws, regulations and legally binding codes of practice from time to time in force applicable to the performance of a party’s obligations under this Agreement.

“Documentation” means guides, instructions, policies and reference materials provided to Customer by Duo Security in connection with the Services, including the documentation located at <https://www.duosecurity.com/docs>, which may be amended from time to time.

“DPA” means the UK Data Protection Act of 1998.

“Duo Mobile Software” means all Duo Security proprietary mobile applications (available on iPhone, Android, Palm, Blackberry, Windows Mobile and other supported mobile devices) used in providing the Services, and any updates, fixes and/or patches developed from time to time.

“Fees” means the applicable fees as set forth on the Order Form.

“Hardware Tokens” mean hardware security tokens purchased by Customer under an Order Form.

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“Integration Software” means (a) Duo Security proprietary software and (b) open source software used in providing the Services which integrates with Customer’s network or application, including SSL or other VPN, Unix operating system, Microsoft application, and/or web application, as provided in the Documentation and any updates, fixes and/or patches developed from time to time.

“Intellectual Property Rights” means all patents, registered designs, unregistered designs, design rights, utility models, semiconductor topography rights, database rights, copyright and other similar statutory rights, trade mark, service mark and any know how relating to algorithms, drawings, tests, reports and procedures, models, manuals, formulae, methods, processes and the like (including applications for any of the preceding rights) or any other intellectual or industrial property rights of whatever nature in each case in any part of the world and whether or not registered or registerable, for the full period and all extensions and renewals where applicable.

“Order Form(s)” means the order forms through which the Government customer purchases the Duo Security Services from Duo Security under the GSA MAS contract for the initial order for the Service, and any subsequent order forms issued to Duo Security, specifying, among other things, the maximum number of Users, the initial Term, the purchase of any Hardware Tokens, the Fees, telephony credits (if any), and such other charges and terms as agreed between the parties.

“Performance Data” means data with respect to usage and other aggregate measures of the Services’ performance that Duo Security may collect from time to time.

“Services” means the products and services that are ordered by and/or made available to Customer under a free trial or an Order Form (including, where applicable, the Software, Hardware Tokens and services using only the Duo Mobile Software) and made available online by Duo Security, including associated offline components, as described in the Documentation.

“Service Level Agreement” or “SLA” means the description of support provided to Customers and its Users and of the availability of the Services attached to this document as Appendix A.

“Software” means the Integration Software and Duo Mobile Software.

“Telephony Credits” mean credits for Customer’s Users to provide authentication by telephone or SMS.

“Term” means the subscription term indicated on the Order Form and any subsequent renewal terms.

"User" means any user of the Services who Customer may authorize to enroll to use the Services under the terms of this Agreement.

#### SERVICES FOR CUSTOMER; DUO SECURITY OBLIGATIONS

Subject to and conditioned on the GSA MAS Contractor's receipt of payment of the Fees and in any event, subject to full compliance with all other terms and conditions of this Agreement, Duo Security grants Customer and Users a non-exclusive, nonsublicensable, non-transferrable license to access and use the Services, along with such Documentation as Duo Security may make available during the Term.

The Services and SLA are subject to modification from time to time at Duo Security's sole discretion, provided the modifications do not materially diminish the functionality of the Services provided by Duo Security and the Services continue to perform according to the description of the Services specified in Section 2.3 in all material aspects. Customer shall have the right to terminate the Agreement pursuant to Section 10.2 without any penalty if (i) a material modification to the Services or the SLA is made which materially diminishes the functionality of the Services or materially diminishes the SLA, (ii) Duo Security has not obtained Customer's consent for such modifications and (iii) Duo Security does not provide a remedy in the cure period stated in Section 10.2.

Duo Security will make the Services available and the Services will perform substantially in accordance with the description of the services found at <http://www.duosecurity.com/editions>. Notwithstanding the foregoing, Duo Security reserves the right to suspend Customer's (or any of its Users') access to the Services: (i) for scheduled or emergency maintenance, or (ii) as it deems reasonably necessary to respond to any actual or potential security concerns.

Subject to full compliance with the terms and conditions of this Agreement, Duo Security will use commercially reasonable efforts to provide support to Customer as described in the Service Level Agreement. In the event that Customer earns 15 days of service credits, determined in accordance with the terms of the Service Level Agreement, in each of three consecutive months, Customer may notify Duo Security of its intention to terminate the Services and may terminate its Agreement with Duo Security for the provision of the Services to Customer and, as the sole and exclusive remedy, Customer will receive a refund of any pre-paid subscription Fees paid for Services not rendered as of the termination date.

Duo Security collects certain information about Customer and its Users as well as their respective devices, computers and use of the Services. Duo Security uses, discloses and protects this information as described in this Agreement and Duo Security's Privacy Policy (the "Privacy Policy") dated March 24, 2016, attached to this document as Appendix B.

#### CUSTOMER RESPONSIBILITIES

Customer may only use the Services in accordance with the Documentation and as explicitly set forth in this Agreement. Customer will cooperate with Duo Security in connection with the performance of this Agreement as may be necessary, which may include making available such personnel and information as may be reasonably required to provide the Services or support. Customer is solely responsible for determining whether the Services are sufficient for its purposes, including but not limited to, whether the Services satisfy Customer's legal and/or regulatory requirements.

Use of the Services may require Users to install Duo Mobile Software on their mobile devices. In addition, third party terms may apply with respect to third party products and software accessible via the Services and with respect to devices using third party operating systems or software or in the event that Duo Mobile Software is downloaded from third party sites (collectively,

"Third Party Services"). Customer's access and use of Third Party Services is governed solely by the terms and conditions of such Third Party Services. Duo Security does not endorse, is not responsible or liable for, makes no representations or warranties and provides no indemnification with respect to any aspect of the Third Party Services, notwithstanding anything in this Agreement to the contrary. Duo Security is not liable for any damage or loss caused or alleged to be caused by or in connection with enablement, access or use of any such Third Party Services, or Customer's reliance on the privacy practices, data security processes or other policies of such Third Party Services. Duo Security does not provide customer support or assistance with respect to the Third Party Services. Users may be required to register for or log into such Third Party Services on their respective websites or apps.

Customer acknowledges that the Services will require the Users to share with Duo Security certain information for the purposes of providing the Services, such as user names, password and other login information. This information may include personal information (such as email address, and/or phone number) regarding the Users, and Duo Security will use such information for the purposes of providing the Services to Customer and Users. Prior to authorizing an individual to become a User, Customer is fully responsible for obtaining the consent of that individual, in accordance with all applicable laws, to the use of his/her information by Duo Security for purposes of providing the Services, which use shall be governed by the terms of the Privacy Policy. Customer represents and warrants that all such consents have been or will be obtained prior to authorizing any individual to become a User.

Customer will be fully responsible for Users' compliance with this Agreement. Any breach of this Agreement or such other terms by a User shall be deemed to be a breach by Customer. Customer is solely responsible for determining whether the Services are sufficient for Customer's purposes.

There will be no force or effect given to any different or additional terms contained in any purchase order or similar form issued by either party, even if signed by the parties after the date hereof unless such terms are included in an amendment in accordance with the terms of Section 14.3 of this Agreement. Each party's acceptance of this Agreement was and is expressly conditional upon the other's acceptance of the terms contained in the Agreement to the exclusion of all other terms.

#### RESTRICTIONS

Customer will not, and will not permit any of its Users nor any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services, Software, Hardware Tokens or any data related to the Services (except to the extent such prohibition is contrary to applicable law that cannot be excluded by the agreement of the parties); modify, translate, or create derivative works based on the Services or Software; share, rent, lease, loan, resell, sublicense, distribute, use or otherwise transfer the Services or Software for timesharing or service bureau purposes or for any purpose other than its own use; or use the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any European privacy laws and intellectual property laws).

#### PAYMENT OF FEES

Customer will pay the GSA MAS Contractor and the GSA MAS Contractor will pay Duo Security the Fees plus all applicable sales, use and other purchase related taxes (or provide Duo Security with a valid certificate of exemption from the requirement of paying sales, use or other purchase related taxes) in accordance with the Prompt Payment Act and the Order Form. Except as otherwise indicated in the applicable Order Form, all fees and expenses shall be in U.S. dollars. Duo Security will not charge users any fees for their use of the Services or Duo Mobile Software without Customer's authorization. Users' carriers or service providers may charge fees for data usage, messaging, phone calls or other services that are required for them to use the Services.

Customer's Order Form will indicate an initial allotment of Telephony Credits, if applicable. Customer may purchase additional Telephony Credits separately via the billing section of Customer's administrative interface or by contacting a sales representative. U.S. and international rates for telephony can be found at [https://www.duosecurity.com/docs/telephony\\_credits](https://www.duosecurity.com/docs/telephony_credits).

At any time during the Term, and unless otherwise agreed to in writing by the parties, any increase or overage in the maximum number of Users specified in the Order Form will be treated in accordance with this Section 5.3 (a "Subscription Upgrade"). The maximum number of Users shall be increased as follows: For Subscription Upgrades (i) for Customers where the maximum number of Users on the Order Form is fewer than 500 Users, the maximum number of Users will be increased automatically in increments equal to 50 Users, (ii) for Customers where the maximum number of Users on the Order Form is 500 - 1000 Users, the maximum number of Users will be increased automatically in increments equal to 100 Users, and (iii) for Customers where the maximum number of Users on the Order Form is 1001 or greater, the maximum number of Users will be increased automatically in increments equal to 250 Users.

Duo Security shall invoice Customer for the increase in the maximum number of Users at the subscription rate and payment terms specified in the most recent Order Form, which will be prorated for the remainder of the then applicable subscription Term. For any future subscription Term, the number of Users and applicable Fees will reflect any Subscription Upgrades.

#### CONFIDENTIALITY

Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology, Users or business (hereinafter referred to as "Confidential Information" of the Disclosing Party).

The Receiving Party agrees: (i) not to disclose the Confidential Information to any third person other than those of its employees, investors and potential acquirers with a need to have access thereto and who have entered into non-disclosure and non-use agreements applicable to the Disclosing Party's Confidential Information or are subject to the Federal Trade Secrets Act (18 USC §1905), and (ii) to use such Confidential Information solely as reasonably required in connection with the Services and/or this Agreement. The Receiving Party further agrees to take the same security precautions to protect against unauthorized disclosure or unauthorized use of such Confidential Information of the Disclosing Party that the party takes with its own confidential or proprietary information, but in no event will a party apply less than commercially reasonable precautions to protect such Confidential Information. Each party acknowledges that the use of such precautions is not a guarantee against unauthorized disclosure or use. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession without a duty of non-disclosure or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Confidential Information pursuant to any judicial or governmental order, provided that, to the extent permitted by law, the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For the avoidance of doubt, Customer acknowledges that Duo Security utilizes the services of certain third parties in connection with the provision of the Services (such as data hosting and telephony service providers) and the provision of the Third Party Services and such third parties will have access to Customer's Confidential Information, subject to compliance with this Section 6. The parties agree that Performance Data and any other de-identified information in any form or format is not Confidential Information and will not be subject to any confidentiality restrictions or obligations.

Customer acknowledges that Duo Security does not wish to receive any Confidential Information from Customer that is not necessary for Duo Security to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, Duo Security may reasonably presume that any unrelated information received from Customer is not confidential or Confidential Information, unless such information is marked as "Confidential".

#### INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP

Except as expressly set forth herein, Duo Security alone (and its licensors, where applicable) will retain all Intellectual Property Rights relating to the Services or the Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Services and/or the Software, which are hereby assigned to Duo Security. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. As between the parties, Duo Security will own all Performance Data, all other forms of aggregated information, and all de-identified data relating to any User and/or the Services. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services or Software, or any Intellectual Property Rights.

**US Government Rights.** The Services and Software are "commercial items" as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Duo Security provides the Services and Software, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Duo Security to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government's needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Services and return the Software, unused, to Duo Security. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

#### DATA PROTECTION

In this Section 8, the terms "personal data", "data processor", "data subject", "process and processing" and "data controller" shall be as defined in the DPA. For the purposes of the Data Protection Laws, as between Customer and Duo Security, the parties agree that Customer shall at all times be the data controller and Duo Security shall be the data processor with respect to the processing of Customer Personal Data in connection with this Agreement.

By entering into this Agreement, Customer agrees that Duo Security may collect, retain and use certain Customer Personal Data (which may include, without limitation, names, mobile telephone numbers, IP addresses and email addresses of Users) in connection with the Services. As the data controller of such Customer Personal Data, Customer shall be responsible for ensuring that, and warrants and represents to Duo Security that it shall ensure that any processing of Customer Personal Data in connection with the Services shall comply with the Data Protection Laws. This shall include (without limitation) ensuring that Customer: (a) has given adequate notice and made all appropriate disclosures to the data subjects regarding Customer's and/or Duo Security's use and disclosure of Customer Personal Data, including (but without limitation) for the provision of the Services; and (b) has and/or obtains all necessary rights, and where applicable, all appropriate and valid consents from the data subjects to share such personal data with Duo Security and to permit use of Customer Personal Data by Duo Security for the purposes of the provision of the Services and performing its obligations under this Agreement or as may be required by applicable law ("Purpose"), including (but without limitation) notifying the data subject of the transfer of Customer Data outside of the European Economic Area to countries whose laws they have acknowledged may provide a lower standard of data protection than exists in the European Economic Area ("EEA"). At the request of Customer, Duo Security and Customer shall negotiate a separate data processing agreement, setting forth each Party's obligations in respect of any processing of Customer Personal Data, which agreement will be incorporated herein by reference once executed by the Parties.

Customer acknowledges that Duo Security is reliant on Customer for direction as to the extent to which Duo Security is entitled to use and process Customer Data. Consequently, Duo Security will not be liable for any claim brought by a data subject to the extent that such action or omission resulted directly from Customer's instructions. Customer undertakes to comply in all respects with any applicable laws, regulations, standards and guidelines applicable to personal data and shall use all reasonable endeavors to where possible anonymize personal data sent to Duo Security.

#### INDEMNIFICATION.

For Customers enrolled in one of the editions of Services requiring purchase, Duo Security shall indemnify and hold Customer harmless from liability to third parties resulting from infringement by the Services of any United States or United Kingdom patent or any copyright or misappropriation of any trade secret, provided Duo Security is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity (subject to the requirements of 28 USC §516, if applicable) to assume sole control over defense and settlement; Duo Security will not be responsible for any settlement it does not approve. The foregoing obligations do not apply with respect to portions or components of the Services (i) not created by Duo Security, (ii) resulting in whole or in part from Customer specifications, (iii) that are modified after delivery by Duo Security, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of Services is not strictly in accordance with this Agreement and all related Documentation. If Duo Security receives information about an actual or alleged infringement or misappropriation claim that would be subject to indemnification rights set forth in this Section 9, Duo Security shall have the option, at its expense, to (i) modify the Software to be non-infringing; or (ii) obtain for Customer a license to continue using the Software. If Duo Security determines it is not commercially reasonable to perform either of the above options, then Duo Security may at its option elect to terminate the license for the Services and refund the unearned portion of any pre-paid subscription Fees, pro-rated on a monthly basis. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT, MISAPPROPRIATION AND/OR CLAIMS ALLEGING INFRINGEMENT OR MISAPPROPRIATION.

#### TERM; TERMINATION

Subject to earlier termination as expressly provided for in this Agreement, the initial Term of this Agreement shall be for the Term specified in the Order Form, or in the event of multiple Order Forms, until the Term of all Order Forms has expired. Each Order Form and this Agreement shall terminate upon expiration or termination in accordance with this Section 10 unless Customer provides at least forty-five (45) days prior written notice to Duo Security that it wishes to renew by placing an order directly with Duo Security or renews the Services through GSA MAS contract. The Fees per User for each renewal Term will be in accordance with the GSA MAS contract or, if renewed directly with Duo Security, equal to the Fees per User for the immediately prior Term plus a price increase to be agreed upon by Duo Security and Customer. Any pricing increase will not exceed seven percent (7%) per year, unless the pricing was designated in the applicable Order Form as promotional or one-time; provided, however, the Fees for each renewal Term shall not exceed the list price as of the start date of such renewal Term.

In the event of any material breach of this Agreement, the GSA MAS Contractor, on behalf of Duo Security, shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in GSAR 552.212-4(d).

The Sections of this Agreement which by their nature should survive termination or expiration of this Agreement, including but not limited to Sections 3.1 and 4 through 14 (inclusive), will survive termination or expiration of this Agreement. No refund of Fees shall be due in any amount on account of termination by Duo Security pursuant to this Section 10. In the event of termination by Customer pursuant to this Section 10, Customer shall be entitled as its sole and exclusive remedy, to receive a refund of any pre-paid subscription Fees paid by Customer to Duo Security for Services not rendered as of the termination date. When this Agreement expires or terminates, Duo Security shall cease providing the Service to Customer.

#### WARRANTIES AND DISCLAIMER OF ADDITIONAL WARRANTIES

For Customers enrolled in one of the editions of Services requiring purchase, Duo Security represents and warrants that it will not knowingly include, in any Duo Security software released to Users and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or User data. If, at any time, Duo Security fails to comply with the warranty in this Section 11.1, Customer may promptly notify Duo Security in writing of any such noncompliance. Duo Security will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate this Agreement and receive a refund of any pre-paid but unearned subscription Fees, pro-rated on a monthly basis, as its sole and exclusive remedy for such noncompliance.

For Customers that have purchased Hardware Tokens as part of the Services, Duo Security warrants to Customer only that Hardware Tokens will be free of defects in material and workmanship at the time of sale and for a period of six (6) months thereafter. This limited warranty is limited to replacement of defective Hardware Tokens. This limited Hardware Token warranty is Customer's exclusive remedy for defective Hardware Tokens.

EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION 11, THE SERVICES AND DUO SECURITY CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. DUO SECURITY HEREBY DISCLAIMS FOR ITSELF AND ITS SUPPLIERS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PURPOSE OR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT.

#### LIMITATION OF LIABILITY

NOTHING IN THIS AGREEMENT (OR ANY ORDER FORM) SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR THE NEGLIGENCE OF ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.

SUBJECT TO SECTION 12.1, IN NO EVENT WILL DUO SECURITY OR ITS SUPPLIERS BE LIABLE TO CUSTOMER (OR ANY PERSON CLAIMING UNDER OR THROUGH CUSTOMER) FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, (I) LOSS OF REVENUE OR ANTICIPATED PROFITS (WHETHER DIRECT OR INDIRECT) OR (II) LOST BUSINESS OR (III) LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE AND STRICT LIABILITY) BREACH OF STATUTORY DUTY OR OTHERWISE, EVEN IF DUO SECURITY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

SUBJECT TO SECTION 12.1, THE TOTAL LIABILITY OF DUO SECURITY FOR ANY CLAIM, WHETHER BASED IN CONTRACT, TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID OR TO BE PAID TO DUO SECURITY HEREUNDER IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT SUCH CLAIM IS FIRST ASSERTED, PROVIDED, HOWEVER THAT THE MAXIMUM LIABILITY OF DUO SECURITY FOR ALL CLAIMS SHALL BE THE THEN CURRENT ANNUALIZED VALUE OF THE APPLICABLE ORDER FORM. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

U.S. GOVERNMENT MATTERS

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

MISCELLANEOUS

Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

Assignment. This Agreement is not assignable, transferable or sublicensable by either party except with the other party's prior written consent, which shall not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

Entire Agreement; Amendment. Both parties agree that this Agreement and the GSA MAS Contract into which the Agreement is incorporated is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers, amendments and modifications must be in a writing signed by both parties and specifically reference the provision of this Agreement being waived, amended or modified, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Duo Security in any respect whatsoever.

Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. Duo Security may provide notice using the information provided in the most recent Order Form and Customer may provide notice using the contact information provided on duosecurity.com.

Force Majeure. Any delay or failure in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay or failure is due to a labor dispute, fire, earthquake, flood or any other event beyond the reasonable control of a party, provided that such party promptly notifies the other party thereof and uses reasonable efforts to resume performance as soon as possible.

Governing Law; Arbitration. This Agreement will be governed by the Federal law.

Publicity. Upon the Customer's prior written consent, Duo Security may mention Customer's name in press announcements, case studies, trade shows, or other marketing or advertising materials.

Appendix A  
Service Level Agreement

**Duo Security SLA** During the term of your Duo Security license (the "Agreement", the Duo web admin interface and web services will be operational and available to Customer at least 99.9% of the time in any calendar month (the "Duo Security SLA"). If Duo Security does not meet the Duo Security SLA, and if Customer meets its obligations under this Duo Security SLA, Customer will be eligible to receive the Service Credits described below. This Duo Security SLA states Customer's sole and exclusive remedy for any failure by Duo Security to meet the Duo Security SLA.

**Definitions** The following definitions shall apply to the Duo Security SLA.

"Downtime" means when there is more than a five percent user error rate across all of a Customer's users.

Downtime is measured based on server side error rate.

"Service" means the Duo Security multifactor authentication service.

"Monthly Uptime Percentage" means total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.

"Service Credit" means the number of days of Service to be added to the end of the Service term, at no charge to Customer calculated as follows:

Uptime	Days Credited
< 99.9% - ≤ 99.0%	
< 99.0% - ≤ 95.0%	3
	7
< 95.0%	15

**Customer Must Request Service Credit** In order to receive any of the Service Credits described above, Customer must notify Duo Security within thirty days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer's right to receive a Service Credit. Customer may check whether Duo Security's systems are operational by visiting <https://status.duo.com>.

**Maximum Service Credit** The aggregate maximum number of Service Credits to be issued by Duo Security to Customer for all Downtime that occurs in a single calendar month shall not exceed fifteen days of Service (or the value of 15 days of Service in the form of a monetary credit to a monthly-billing Customer's account). Service Credits may not be exchanged for, or converted to, monetary amounts.

**Duo Security SLA Exclusions** The Duo Security SLA does not apply to any services that expressly exclude this Duo Security SLA (as stated in the documentation for such services) or any performance issues: (i) caused by "Force Majeure" or (ii) that resulted from one or more of Customer's equipment or third party equipment not within the primary control of Duo Security.

*Duo Security reserves the right to modify this Service Level Agreement at any time by updating the terms on <https://www.duo.com/legal/sla>.*



Appendix B  
Privacy Policy

**PRIVACY POLICY**

Last updated: March 24, 2016

**Who We Are**

Duo Security, Inc. is a company incorporated under the laws of the State of Delaware, USA and whose principal office is located at 123 North Ashley Street, Suite #200, Ann Arbor, Michigan 48104, USA.

In this Privacy Policy when we refer to "**Duo Security**" or "**we**", "**us**" or "**our**", we mean either Duo Security Inc. or the relevant Duo Security group company which provides you with our services and mobile and web-based applications, (including Duo Security UK Limited) as more completely described on our Website (collectively, the "**Services**"). Duo Security is committed to protecting the privacy of individuals who visit our websites, including, but not limited to <https://www.duo.com> (collectively, the "**Website**") and the customers and users of our services and mobile and web-based applications.

Terms not otherwise defined in this Privacy Policy have the meanings assigned to them in Duo Security's Service Terms and Conditions. When you access and use the Services, the Service Terms and Conditions and this Privacy Policy apply.

If you have any questions about how we collect, store and use personal information, or if you have any other privacy-related questions, please contact us by any of the following means:

By post: Duo Security, Inc., 123 North Ashley Street, Suite #200, Ann Arbor, MI 48104, USA

By facsimile: 1-866-760-4247

By email: [security@duosecurity.com](mailto:security@duosecurity.com)

**Introduction**

This Privacy Policy describes how we collect, use, share and transfer Personal Information (as defined below) created, inputted, submitted, posted, transmitted, stored or displayed by individuals who interact with and use the Duo Security Website and Services. This Privacy Policy does not apply to Personal Information (as defined below) we obtain in our capacity as an employer; employment related data is covered under separate policies and/or notices.

This Privacy Policy covers information we collect online, not offline.

Any Personal Information we collect through the Services will be used only in a manner consistent with this Privacy Policy. When you sign up for or access the Services, including blog updates or newsletters, or when you email us for information, you expressly agree to the use of your information for the purposes described in this Privacy Policy.

If you do not agree with the use of personal information as described in this Privacy Policy or any changes to it, you should not sign up for, use or access the Services or any features of the Services.

**Changes to Our Privacy Policy**

We may revise this Privacy Policy from time to time. The most current version of this Privacy Policy will govern your use of your Personal Information. If we decide to change our Privacy Policy, we will post the updated Privacy Policy on the Website and update the Privacy Policy modification date. Please check back regularly to review any changes to this Privacy Policy. By continuing to use the Service after those changes become effective, you agree to be bound by the revised Privacy Policy.

**Personal Information**

"**Personal Information**" is defined slightly differently across the world, but we define "Personal Information" as any information that could be used to identify you or another individual, such as (but not limited to) an individual's name, email address, or telephone number, and that is not otherwise publicly available. Personal Information may include other types of information as well, such as some of the information referred to under the subheadings "**Device-Specific Information**" and "**Service Log Information**."

We also collect non-personal information that does not, on its own, identify any individual person. When non-personal information is combined with other information so that it does identify an individual person, we treat that information as Personal Information.

**What Information do we collect?**

When you use the Services we may collect, store and process certain information about you, including:

**Contact Information.**

Duo Security may collect, store and process the following contact information in order to provide the Services:

**For Organization Users:** If your user profile is created by or at the request of an organization (an "**Organization**") of which you are an employee, contractor, member, agent or other participant (each such user referred to as an

"**Organization User**") your "**Organization's Administrator**" may provide us with certain Personal Information, such as your name, email address, and telephone number. We also collect your Organization name and assign you an account name based on your Organization name. Prior to authorizing you to become a user of the Services, your Organization is responsible for notifying you and/or obtaining your consent to the collection of such information, in accordance with applicable laws. Even though your Organization has notified you and/or received your consent to provide us with your Personal Information, when you begin using the Services, you are also providing your consent to the terms in this Privacy Policy and our Service Terms and Conditions.

**For Personal Edition Users:** If you establish a "Personal Edition" account (as compared to an Organization account), and/or if you sign up for our newsletters and email updates we may collect your name, email address, and telephone number.

**For Organization Administrators:** for each Organization account we may collect the name, email address, and telephone number of any Organization Administrators, or similar points of contact, within the Organization in order to be able to provide you and the Organization with the Services and to manage your account.

We also collect your email address when you email us for information or sign up for our newsletters and email updates. You can unsubscribe from our newsletters and updates by clicking "Unsubscribe" at the bottom of the newsletter or email update or by emailing [mops@duosecurity.com](mailto:mops@duosecurity.com).

**Public Forums:** We collect other information, including Personal Information that you submit to our Website or as you participate in certain interactive features of our Services (such as the publicly accessible blogs or community forums). You should be aware that any information (including Personal Information) you provide in these areas may be read, collected, and used by others who access them. To request removal of your Personal Information

from our blog or community forum, contact us at [security@duosecurity.com](mailto:security@duosecurity.com). In some cases, we may not be able to remove your Personal Information, in which case we will let you know if we are unable to do so and why.

**Testimonials/Reviews/Feedback:** We may post customer testimonials on our Website, which may contain Personal Information. We do obtain the customer's consent via email prior to posting the testimonial to post their name along with their testimonial. If you want your testimonial removed, please contact us at [security@duosecurity.com](mailto:security@duosecurity.com).

**Surveys:** We may provide you the opportunity to participate in contests or surveys. If you participate, we will request and collect certain Personal Information from you at the time of the survey. Participation in these surveys or contests is completely voluntary and you have a choice whether or not to disclose this information. The requested information typically includes contact information, such as email or phone number.

When you use the Service we may collect, store and process certain information collected by us from your web browser or from interactions with the Services, including:

**Device-Specific Information.** We also collect device-specific information (e.g. mobile and desktop) from you in order to provide the Services. Device-specific information includes:

attributes (e.g. hardware model, operating system, web browser version, as well as unique device identifiers and characteristics (such as, whether your device is "jailbroken," whether you have a screen lock in place and whether your device has full disk encryption enabled));

connection information (e.g. name of your mobile operator or ISP, browser type, language and time zone, and mobile phone number); and

device locations (e.g. internet protocol addresses and Wi-Fi).

We may need to associate your device-specific information with your Personal Information on a periodic basis in order to confirm you as a user and to check the security on your device.

**Service Log Information.** When you use the Services, we may automatically collect and store certain information in server logs. This may include which users (by reference to certain Personal Information such as the user's: username; email address; name; and other information that may be included in open textual fields) are accessing the Services, how users are accessing the Services (including the device-specific information referenced above and type of integration (i.e. application) being protected), the dates and times you are accessing the Services, from where you are accessing the Services (by internet protocol address) and device event information such as crashes, system activity, and hardware settings. We may need to associate this information with other information we collect about you on a periodic basis in order to confirm you as a user and to check the security on your device. We may also do this to improve the Services that we offer you.

**Social Media Widgets:** Our website includes plugins of social media platforms, such as facebook.com of Facebook Inc., 1601 S. California Ave, Palo Alto, CA 94304, USA; Twitter.com of Twitter Inc., 795 Folsom St., Suite 600, San Francisco CA 94107, USA; and google+ of Google Inc., 1600 Amphitheatre Parkway Mountain View, California, 94043, USA. Social Media Features and Widgets are either hosted by a third party or hosted directly on our websites.

You can generally identify the plugins by the respective network's logo, for instance in combination with a pictogram of a clenched hand with a raised thumb or the addition of a "recommendation", "like" or "comment."

Details about purpose and extent of data collection as well as processing and usage of the data by the social media networks can be obtained by reading the privacy policies of Facebook [<http://www.facebook.com/policy.php>], Twitter [<http://twitter.com/privacy>] and Google [<https://www.google.com/policies/privacy/>].

#### **How do we use the Information We Collect?**

Information we collect may be used for the following purposes:

to provide the Services;

for billing purposes;

to personalize the Services and improve your experience;

improving our products, technology and services;

for analytical purposes, including use of "**Performance Data**". Performance Data includes aggregate, de-

identified usage information and other aggregate measures of the Services' performance. We may share aggregated, de-identified Performance Data with third parties to help us better understand our customers' needs and improve the Services;

for marketing and advertising purposes, including sending you promotional email messages about our products and services and registering you for our events. If you do not want us to use your data in this way, please opt out here: <https://go.duosecurity.com/UnsubscribePage.html> or send an email to [mops@duosecurity.com](mailto:mops@duosecurity.com). For more information about how to change your preferences and to unsubscribe from promotional materials, then please see the section headed "Choice and Consent". Duo Security does not market or advertise to Organization Users;

to prevent, detect, identify, investigate, respond and protect against potential or actual claims, liabilities, prohibited behavior, and criminal activity;

to comply with and enforce applicable legal requirements, agreements and policies;

to perform other activities consistent with this Privacy Policy;

to improve the Services and where you have agreed, to provide you updates on how we are improving the Services based on any feedback you might have given; and

with respect to Organization Users, to provide you and the Organization with the Services and to manage your account.

#### **Data Retention**

The time periods for which we retain your Personal Information depend on the purposes for which we use it. We will retain your information for as long as your account is active or as needed to provide you the Services, unless we are required by law to dispose of it earlier or to keep it longer. We will also retain and use your information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements. Please contact us as retained in the Notice section below if you have any questions about the information we collect and/or how we use the information we collect.

#### **Sharing of Personal Information Collected**

Duo Security does not sell, rent, or trade and, except as described in this Privacy Policy, does not share any Personal Information with third parties for their promotional purposes.

Duo Security may transmit or share Personal Information as follows:

We may share Personal Information, with our authorized third party vendors, consultants, service providers and hosting partners (currently Amazon Web Services) who perform services for Duo Security (including hardware, software, networking, storage, and other technology and services required to operate, maintain and provide support related to the Services) based on Duo Security's instructions. These third parties may only use or disclose such Personal Information obtained from Duo Security to perform the Services on Duo Security's behalf or comply with legal obligations.

If you have an Organization account, we may also share Personal Information and/or Device-Specific Information with your Organization and/or your Organization's third party vendors (with your employer's consent) in order to operate and maintain the Services. Your device may be subject to your Organization's policies and practices, which are separate from this Privacy Policy. We have no control over your

Organization and your Organization's third party vendors' privacy practices, so please read their applicable privacy policies. Our Privacy Policy does not apply to, and Duo Security is not responsible for, use of your Personal Information by these other companies.

We may share your Personal Information with third parties to send emails on our behalf, and/or for cobranded and/or co-sponsored marketing and promotional events (such as conference events) offered in conjunction with another company or companies. If you register for or participate in such marketing and promotional events, both Duo Security and such other companies may receive information collected in conjunction with the co-branded and/or co-sponsored marketing and promotional events. Our Privacy Policy will apply to you with respect to our use of your Personal Information. We have no control over any other companies' privacy practices, so please read their applicable privacy policies before providing any Personal Information. Our Privacy Policy does not apply to, and Duo Security is not responsible for, use of your Personal Information by these other companies.

Duo Security may share information internally with other members of the Duo Security family of companies, including Duo Security UK Limited (a company registered in England and Wales) for the purposes described in this Privacy Policy.

We may also disclose Personal Information; (i) if we are required to do so by law or legal process; (ii) to respond to subpoenas, court orders, or legal process, or to establish or exercise our legal rights or defend against legal claims; (iii) as may be required for the purposes of national security; (iv) when we believe disclosure is necessary and appropriate to prevent physical, mental, financial or other harm, injury or loss; or (v) in connection with an investigation of suspect or actual illegal or inappropriate activity or exposure to liability. We may also share such information if we believe it is necessary in order to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the physical safety of any person, violations of our Service Terms and Conditions and any other agreements, or as otherwise required by law or to comply with any legal obligation.

When we share Personal Information with a third party, they must contractually agree to comply with privacy and security standards at least as stringent as Duo Security's when it is handling similar data. When you provide data directly to the third party, the processing is based on their standards (which may or may not be the same as Duo Security's) and your own independent relationship with that provider.

By accessing, signing up for or using the Services, sending us email, or by signing up for email updates, you provide your express consent to our disclosure of your Personal Information to our third party service providers (such as credit card processors, managed hosting service providers, sub-processors of service data, and technology partners) in order to supply our Services. We do not permit our service providers to use your Personal Information for their own marketing purposes or for any other purpose than in connection with the services they provide to us.

#### **Credit Card Information**

Some of our customers use credit cards, debit cards or other means to pay for our Services. We do not collect credit card, debit card or personal financial account information through our Website. We use a third party vendor, currently Recurly, Inc., to process our subscription billing. When you provide payment information to pay for the Services, you provide it directly to Recurly, and not to Duo Security. You will automatically be routed to the Recurly website to provide the information Recurly requires to process your transaction. Recurly is a third party vendor and has its own privacy policy, which may be different from this Privacy Policy. This Privacy Policy does not cover information collected by Recurly and Duo Security is not covered by, or responsible for, Recurly's privacy practices or policy. To learn about Recurly's privacy practices, please read their privacy policy at <http://recurly.com/legal/privacy>.

#### **Accessing and Updating Your Personal Information**

You can modify your account information at any time by using the Service administrative interface available at <https://admin.duosecurity.com> or by emailing our customer support at [support@duosecurity.com](mailto:support@duosecurity.com). We will respond to your request to access promptly and within no more than 30 days.

#### **Cookies and other Tracking Technologies**

When you visit our Website or use our Services, we use "cookies" and other tracking technologies like "web beacons" to allow us to remember your user preferences, to maximize the performance of our Website and Services, enhance and personalize your experience and provide marketing communications. They also help ensure that advertisements you see while you are on our Website are more relevant to your interests.

**For further information about cookies and the other tracking technologies we use, along with information about how to disable or block cookies, please see our Cookie Policy at <https://www.duo.com/legal/cookies>.**

#### **Security of Information**

Duo Security maintains and uses reasonable administrative, organizational, technical and physical safeguards to protect your information from loss, destruction, misuse, unauthorized access or disclosure as required by applicable law. These technologies help ensure that your data is safe, secure, and only available to you and to those you provided authorized access (e.g., your users). For example, when you enter confidential information (such as login credentials or information submitted from within the Service), we encrypt the transmission of that information using secure socket layer technology (SSL). SSL technology is designed to prevent you from inadvertently revealing personal information using an insecure connection. However, no electronic transmission over the Internet or information storage technology can be guaranteed to be 100% secure, so you should take care in deciding what information you send us in this way. If you have any questions about security on our Website, you can contact us at [security@duosecurity.com](mailto:security@duosecurity.com).

#### **Links to Other Sites**

Our Website may contain links to other sites that are not owned or controlled by Duo Security. Please be aware that Duo Security is not responsible for the privacy practices of these other sites. We encourage you to review the privacy policies and statements of other sites to understand their information practices. Our Privacy Policy applies only to information collected by our Website and Services.

#### **Choice and Consent**

We offer certain choices about how we communicate with our users and what Personal Information we obtain from them.

You can opt out of receiving promotional emails or text messages from us by clicking the "unsubscribe" link in the email or by emailing [mops@duosecurity.com](mailto:mops@duosecurity.com);

Many Duo Security products contain settings that allow users or

administrators to control how the products collect information. Please refer to the relevant product documentation or contact us through the appropriate technical support channel for assistance.

To remove your Personal Information from a Duo Security website

testimonial, please contact us at [security@duosecurity.com](mailto:security@duosecurity.com).

If you choose to no longer receive marketing information, Duo Security may still communicate with you regarding such things as your security updates, product functionality, responses to service requests, or other transactional, non-marketing/administrative related purposes.

**Cross-Border Transfer of Your Personal Information**

Please be aware that Duo Security may host and process your data and information (including Personal Information), in the United States and other countries through the Duo Security group of companies and third parties that we use to operate and manage the Website and Services, including Amazon Web Services ("AWS"). You may view the AWS privacy policy at <http://aws.amazon.com/privacy>. By signing up for or using the Services, and/or by communicating with us by email, you acknowledge and expressly consent to the transfer and processing of your Personal Information in this way. Any such transfer or processing of your Personal Information will be in accordance with all applicable laws.

**Your controls and choices**

You may request and obtain from us once a year, free of charge, certain information about the Personal Information (if any) we disclosed to third parties for direct marketing purposes in the preceding calendar year. If applicable, this information would include a list of the categories of Personal Information that was shared and the names and addresses of all third parties with which we shared information in the immediately preceding calendar year. If you would like to make such a request, please submit your request in writing as follows:

By post: Duo Security, Inc., 123 North Ashley Street, Suite #200, Ann Arbor, MI 48104, USA

By facsimile: 1-866-760-4247

By email: [security@duosecurity.com](mailto:security@duosecurity.com)

In addition, we currently do not honor Do Not Track signals.

**Children's Online Privacy Protection Act Compliance**

We are in compliance with the requirements of COPPA (Children's Online Privacy Protection Act), as we do not collect any information from anyone under 13 years of age. The Website and its content are directed to people who are at least 18 years of age or older.

**Children**

We do not collect any information from anyone under 18 years of age. The Website and its content are directed to people who are at least 18 years of age or older. If you are under the age of 18, you may not use this Website unless you have the consent of, and are supervised by, a parent or guardian.

**Access to Your Information**

You have a right to access, review, change, update or delete your Personal Information at any time by contacting us at [security@duosecurity.com](mailto:security@duosecurity.com) or by postal mail at Duo Security, Inc., 123 North Ashley Street, Suite #200, Ann Arbor, MI 48104, USA. Please note that we may impose a small fee for access and disclosure of your Personal Information where permitted under applicable law, which will be communicated to you. We do not charge you to update or remove your Personal Information.

**Contact Us**

Duo Security commits to resolving complaints about your privacy and our collection or use of your Personal Information. If you need to provide a Notice to us under this Privacy Policy or if you have complaints about our compliance with this Privacy Policy, you should first contact us as follows:

By post: Duo Security, Inc., 123 North Ashley Street, Suite #200,

Ann Arbor, MI 48104, USA

By facsimile: 1-866-760-4247

By email: [security@duosecurity.com](mailto:security@duosecurity.com)

**Business Transactions**

Duo Security may assign or transfer this Privacy Policy, and your user account and related information and data, to any person or entity that acquires or is merged with Duo Security.

**COOKIE POLICY**

Last updated: March 24, 2016

The Website and/or Services use cookies to distinguish you from other users of our Website. This helps us provide you with a good experience when you browse the Website and also allows us to improve our Website.

This cookie policy provides you with information about the cookies we use and the purposes for using them. To review the privacy policies that apply to users of duo.com, please read our Privacy Policy at <https://www.duo.com/legal/privacy>. For further information about this policy, please contact [privacy@duosecurity.com](mailto:privacy@duosecurity.com).

**What is A Cookie?**

A cookie is a small file of letters and numbers that we store on your browser or the hard drive of your computer or other device. Cookies send data back to the originating website on each subsequent visit, or share data with another website that recognizes that cookie. Unless you have adjusted your browser setting so that it will refuse cookies, our system will issue cookies as soon as you visit our Website or use the Services.

Cookies are useful because they allow a website to recognize a user's device. They do lots of different jobs, like letting you navigate between pages efficiently, remembering your preferences, and generally improving the user experience. They can also help to ensure that the advertisements you see online are more relevant to you and your interests.

Cookies do not typically identify you as an individual, just the device you are using. For further information on cookies, including how to see what cookies have been set on your device and how to manage and delete them see the section below headed "Information About Cookies".

**What Cookies Do We Use And Why?**

When you visit our Website or use our Services, we use cookies, web beacons and other technologies for a variety of purposes, such as, to allow us to remember your user preferences; to maximize and analyze the performance of our Website and Services; and to analyze our performance. We also use cookies to provide, enhance and personalize certain aspects of the Services. Cookies are also used for targeting purposes as described below.

There are four different types of cookies we use:

**Essential cookies.** These are cookies that are required for the operation of our Services. For example, when you download certain online technologies, a cookie is set that identifies the software, version, and when it expires. We may use this information to alert you that a newer version of such software is available and/or if your subscription is going to expire. These cookies are necessary for the Services to operate properly. Without these cookies, services that you have asked for cannot be provided. We want you to understand these essential cookies, and why we use them, but we don't need to get your consent to use them on our Services as we use these cookies only to provide you with services that you have requested.

**Functionality cookies.** These cookies allow our Services to remember choices you make, such as: remembering your username, preferences and settings; remembering if you've filled in a survey or taken part in a poll or contest or otherwise reacted to something on or through the Services, so you're not asked to do it again; remembering if you've used any of our Services before; restricting the number of time you are shown a particular advertisement; remembering your location; and enabling social media components like Facebook or Twitter. The aim of these cookies is to provide you with a more personal experience so that you don't have to reset your preferences each time you use our Services. We also use functionality cookies to enable you to comment on an article or provide enhanced services such as enabling you to view a video through the Services. As described below, you may disable any of these functional cookies; but if you do so, then various functions of our Services may be unavailable to you or may not work the way you want them to.

**Analytical/Customization cookies.** These cookies collect information about how visitors use and interact with our Services, for instance which pages they go to most often. These cookies also enable us to personalize content, greet you by name, and remember your preferences (e.g., your choice of language, country, or region). These cookies help us improve the way our websites work and provide a better, personalized user experience. Some of our analytical/customization cookies are managed for us by third parties. However, we don't allow the third party to use the cookies for any purpose other than those listed above.

**Advertising/ targeting cookies.** These cookies record your visit to our websites, the pages you have visited, and the links you have clicked. They gather information about your browsing habits and remember that you have visited a website. We (and thirdparty advertising platforms or networks) may use this information to make our websites, content, and advertisements displayed on them more relevant to your interests (this is sometimes called "behavioral" or "targeted" advertising). These types of cookies are also used to limit the number of times you see an advertisement as well as to help measure the effectiveness of advertising campaigns.

To find out more about interest-based ads and your choices, visit these sites: Digital Advertising Alliance, the Network Advertising Initiative, and the Interactive Advertising Bureau (IAB) Europe and these links: <http://www.allaboutcookies.org> or <http://www.youronlinechoices.com>.

**What Specific Cookies Do We Use In the Website and the Services?**

Some of the cookies we commonly use are listed in our cookies chart below This list is not exhaustive, but it is intended to illustrate primary reasons for certain types of cookies set by Duo Security and third parties on our Website and Services. Third parties may also set certain cookies on your device when you use our Services. In some cases, the third party has been hired to provide certain services on Duo Security's behalf (e.g., website analytics).

Service	Purpose	Cookie Name	Duration	Strictly Necessary	Category
Google Analytics	Web analytics	__utma	2 years	No	Analytics/Customization
		__utmb	1 day	No	
		__utmc	Session	No	Analytics/Customization
		__utmz	6 months	No	Analytics/Customization
		_ga	2 years	No	Analytics/Customization
		_gat	1 day	No	Analytics/Customization
Olark	Live chat	_ok	Session	No	Functionality
		_okbk	Session	No	Functionality
		_oklv	Session	No	Functionality

		hblid	2 years	No	Functionality
		okfsk	2 years	No	Functionality
		wcsid	Session	No	Functionality
Optimizely	A/B testing		10 years	No	Functionality
		optimizelyBu ckets			
			10 years	No	Functionality
		optimizelyEn dUserId			
		optimizelyPen dingLogEvent s	1 day	No	Functionality
			10 years	No	Functionality
		optimizelySeg ments			
Shareaholic	Content sharing	apq	5 years	No	Functionality
		kpq	5 years	No	Functionality
		rpq	5 years	No	Functionality
		p1	5 years	No	Functionality
		si	5 years	No	Functionality
		ss	5 years	No	Functionality
		gguuid	1 month	No	Functionality



AddThis		__atuvc	2 years	No	Functionality
	Content sharing				
		loc	2 years	No	Functionality
		uid	2 years	No	Functionality
		uit	1 day	No	Functionality
Wistia	Video hosting	__distillery	1 year	No	Functionality
Marketo		_mkto_trk	2 years	No	
	Marketing automation				Advertising / Targeting
		__cdrop	1 year	No	Advertising / Targeting
Duo				No	Functionality
	Trusted duo Endpoint security	1 day device feature			
				No	Functionality
	capability Trusted device	trc xxxx yyyy	forever		
	feature	fdc xxxx yyyy	Depends on		
			admin config	No	Functionality

**Google Analytics**

We use Google Analytics, a web analysis-tool of Google Inc., 1600 Amphitheatre Parkway Mountain View, California, 94043, USA, ("Google"). Google Analytics uses "cookies" to track visitor interactions, which are textfiles being saved to your computer to help us analyze visits of our Website and how our Services are used. For example, by using cookies, Google can tell us which pages our users view, which are most popular, what time of day our websites are visited, whether visitors have been to our websites before, what website referred the visitor to our websites, and other similar information.

For more information about Google analytic cookies, please see Google's help pages and privacy policy:

Google Privacy Policy: <https://www.google.com/policies/privacy/>

Google Analytics Help: <https://developers.google.com/analytics/devguides/collection/analyticsjs/cookieusage>

If you do not want your usage of our Website and Services to be analyzed by Google, you can disable Google Analytics by using an add-on in your Internet browser. You can download and install the add-on at: <https://tools.google.com/dlpage/gaoptout?hl=fr>.

**Google AdWords**

We use Google AdWords Remarketing to advertise Duo Security. AdWords Remarketing will display relevant ads tailored to you based on what parts of the Duo Security website you have viewed by placing a cookie on your machine. This cookie does not identify you or give access to your computer. The cookie is used to identify you as a visitor to certain of our web pages and enables use to show you ads relating to that page. Google AdWords Remarketing allows us to tailor our marketing to better suit your needs and only display ads that are relevant to you.

If you do not wish to participate in our Google AdWords Remarketing, you can opt out by visiting Google's Ads Preferences Manager. You can also opt out of any third-party vendor's use of cookies by visiting <http://www.networkadvertising.org/choices/> or <http://www.youronlinechoices.com>. Another way to opt out is to use a Google browser plugin: <https://tools.google.com/dlpage/gaoptout/>

If you wish to opt-out of Google Advertising, you may visit <https://www.google.com/settings/ads> and under "Ads on Google" and/or under "Google Ads Across the Web," and click the "Opt out" link.

#### **Targeting**

We give users the option to share our stories on social networks such as Facebook and Twitter. To deliver this service we link to the third party websites AddThis and Shareaholic. If you use our share buttons, you will be directed to a website controlled by AddThis and Shareaholic. We have no control over the cookies that AddThis and Shareaholic set when you use its services. You can opt out of AddThis cookies at <http://www.addthis.com/privacy/opt-out> and Shareaholic cookies at <https://shareaholic.com/privacy/choices>.

#### **Additional Third Party Cookies**

We occasionally link to external websites or other third party content. If you click on external links, you will be directed to a website controlled by a third-party. We have no control over the cookies that the third-party sets when you use its service.

#### **How to Delete And Block Our Cookies**

You can disable and/or delete cookies by activating the setting on your browser that allows you to refuse the setting of all or some cookies. However, if you use your browser settings to block all cookies (including essential cookies), you may not be able to access all or parts of our Website. Unless you have adjusted your browser setting so that it will refuse cookies, our system will issue cookies as soon as you visit our Website.

These settings are usually found in the "options" or "preferences" menu of your internet browser. In order to understand these settings, the following links may be helpful. Otherwise you should use the "Help" option in your Internet browser for more details.

The following links provide information on how to modify the cookie settings on some popular browsers.

Internet Explorer: <http://windows.microsoft.com/en-us/internet-explorer/delete-manage-cookies>

Firefox: <https://support.mozilla.org/en-US/kb/cookies-information-websites-store-on-your-computer>

Chrome: <https://www.google.com/policies/technologies/managing/>

Safari: <http://support.apple.com/kb/HT1677>

#### **Can I Withdraw My Consent?**

If you wish to withdraw your consent at any time, you will need to delete your cookies using your Internet browser settings. For further information about deleting or blocking cookies, please visit: <http://www.aboutcookies.org> and <http://www.youronlinechoices.com>. While many companies involved in using advertising cookies and serving online behavioral advertising appear at the above links, not all do. Therefore, even if you choose to turn off cookies used by all of the companies listed, you may still receive some advertising cookies and some tailored advertisements from other companies.

You can also manage this type of cookie in the privacy settings on the web browser you are using. Please see above for more information.

#### **Your Consent**

By continuing to use the Website or the Services, you are agreeing to our placing cookies on your computer or other device in order to analyze the way you use the Website and in order for us to provide the Services. Please read this cookie policy carefully for more details about the information we collect when you use this Website and the Services.

If you do not wish to accept cookies in connection with your use of this Website or Services, you must stop using our Website and Services.

#### **Information About Cookies**

**All About Cookies:** Useful information about cookies can be found at: <http://www.allaboutcookies.org>

**Internet Advertising Bureau:** A guide to behavioral advertising and online privacy has been produced by the Internet advertising industry, which can be found at: <http://www.youronlinechoices.com>

#### **Our use of Web Beacons**

We may also use electronic images known as web beacons on our Services - sometimes called "clear GIFs," "single-pixel GIFs," or "web bugs." Web beacons are used to deliver cookies on our Services, count clicks/users/visitors, and deliver co-branded content or services. We may include web beacons in our promotional email messages or newsletters to determine whether messages have been opened and acted upon.

The Services may also contain web beacons from third parties to help us compile aggregated statistics regarding the effectiveness of our promotional campaigns or other website operations. These web beacons may allow the third parties to set or read cookies on your device.

#### **Other Similar Technologies**

In addition to the aforementioned cookies and web beacons, our Website also uses other technologies to store and retrieve data from your device. This may be done to maintain your preferences or to improve speed and performance by storing certain files locally.

**ECCENTEX**  
**6101 WEST CENTINELA AVE**  
**SUITE 110**  
**CULVER CITY, CA 90230**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Eccentex** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the

commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**ECCENTEX**

**ECCENTEX LICENSE, WARRANTY AND SUPPORT TERMS**

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This Agreement describes the terms and conditions that will apply to (i) subscription of Eccentex's proprietary platform, applications templates, or software products that Ordering Activity purchases from time to time as set forth in an applicable order (the "**Subscription Schedule**"), (ii) maintenance and support services relating to such products as described in Schedule B (referred to herein collectively as the "**Services**").

**Privacy & Security.** For informational purposes only, Eccentex's privacy and security policies may be viewed at <http://www.eccentex.com>. Eccentex reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Eccentex occasionally may need to notify all users of Eccentex's products and services of important announcements regarding the operation of the products and services.

**License Grant & Restrictions**

a. Eccentex hereby grants Ordering Activity a non-exclusive, non-transferable (except as permitted under Section 23), worldwide right for the number of Users paid for by Ordering Activity to use Eccentex's proprietary platform, applications templates, or software identified on the applicable Subscription Schedule (the "**Licensed IP**"), solely for Ordering Activity's own internal business purposes set forth on the applicable Subscription Schedule, and subject to the terms and conditions of this Agreement, including those provided in the applicable Subscription Schedule. As used herein, "**User**" means a designated employee or contractor of Ordering Activity who is authorized by Ordering Activity to use the Licensed IP. Access to the Licensed IP will be via a website operated and hosted by Eccentex and provided under a "Platform as a Service" or "Software as a Service" model ("**Software Service**").

b. The license granted herein does not include the right to sublicense without the prior written consent of Eccentex, except Ordering Activity may sublicense to an affiliate of Ordering Activity and to one or more independent contractors retained by Ordering Activity, but solely for the benefit of Ordering Activity.

c. The license granted above is based on a per User, per case, and per environment subscription basis. Therefore, if Ordering Activity desires for additional employees or contractors beyond the number of authorized Users, cases, and/or environments stated in the Subscription Schedule, Ordering Activity must purchase additional subscriptions for such individuals, cases and environments.

d. Ordering Activity acknowledges that the Licensed IP contains valuable trade secrets of Eccentex and its suppliers. Accordingly, except as expressly permitted under this Agreement, Ordering Activity shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute, timeshare, outsource, lease, rent, or otherwise commercially exploit or make available to any third party the Licensed IP or any data, information, graphics, materials, or other content provided to Ordering Activity through the use of the Licensed IP (the "**Content**") in any way; (ii) modify or make derivative works based upon the Licensed IP or the Content or merge the Licensed IP or the Content with other software or data; (iii) create Internet "links" to the Licensed IP or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer, decompile, or access the Licensed IP in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Licensed IP, or (c) copy any ideas, features, functions or graphics of the Licensed IP.

e. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Licensed IP. Ordering Activity will ensure that each username and password issued to a User will be used only by that individual. Ordering Activity is responsible for maintaining the confidentiality of all Users' usernames and passwords and is solely responsible for all activities that occur under these usernames.

f. Ordering Activity may use the Licensed IP only for Ordering Activity's internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) use, send, or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violate third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Licensed IP or the data contained therein; (v) attempt to gain unauthorized access to the Licensed IP or its related systems or networks; or (vi) otherwise use the Licensed IP to carry out any infringing or unlawful activities.

**Maintenance and Support.** Eccentex will provide the maintenance and support services for the Licensed IP to Ordering Activity as set forth in Schedule B.

**Ordering Activity Responsibilities**

a. Ordering Activity is responsible for all activities occurring under Ordering Activity's User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Ordering Activity's use of the Licensed IP, including those related to data privacy, international communications and the transmission of technical or personal data. Ordering Activity shall: (i) notify Eccentex immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Eccentex immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Ordering Activity or Ordering Activity's Users; and (iii) not impersonate another Eccentex user or provide false identity information to gain access to or use the Licensed IP.

b. To the extent Ordering Activity is licensed to use Eccentex's proprietary platform and/or applications templates to develop or configure a customized application ("**Ordering Activity Application**"), Ordering Activity acknowledges that it shall be responsible for the accuracy, quality, integrity and legality of the Ordering Activity Application, content and data and for the quality and configuration of the Ordering Activity Application and the performance of the Ordering Activity Application.

**Account Information and Data**

a. Eccentex does not own any data, information or material that Ordering Activity submits to Eccentex in the course of using the Software Service ("**Ordering Activity Data**"). Eccentex will not modify the Ordering Activity Data or disclose the Ordering Activity Data; provided however, Eccentex may retain, use, and disclose to any third parties Ordering Activity Data if Ordering Activity Data is aggregated with similar data collected from other Ordering Activity's and does not disclose Ordering Activity as the source of the Ordering Activity Data.

b. Ordering Activity, not Eccentex, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Ordering Activity Data, and Eccentex shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Ordering Activity Data.

c. During the term of this Agreement and upon termination, Eccentex will make available to Ordering Activity a file of the Ordering Activity Data within 30 days of Ordering Activity's written request. Ordering Activity agrees and acknowledges that Eccentex has no obligation to retain the Ordering Activity Data, and may delete such Ordering Activity Data, if this Agreement is terminated, unless Ordering Activity requests to receive a copy of the Ordering Activity Data at the time of termination and pays for all outstanding fees owed to Eccentex.

d. Upon request and issuance of an order, Eccentex will work with Ordering Activity to design custom reports designed to give access to all Ordering Activity Data. The design and estimated cost of the custom reports will be covered in a time and materials professional services statement of work.

**Intellectual Property Ownership.** Eccentex alone (and its licensors, where applicable) shall own all right, title and interest, including all related patent rights, copyright rights, trademark rights, trade secret rights, moral rights, and any other intellectual property or proprietary rights of any kind or nature (collectively, "**Intellectual Property Rights**"), in and to all Licensed IP and any other software, applications templates, websites, systems, and related technology used to provide the Software Services (the "**Eccentex Technology**"), the Content, and any suggestions, ideas, enhancement requests, feedback,

recommendations or other information provided by Ordering Activity or any other party to Eccentex relating to the Licensed IP or the Software Services (collectively, "**Suggestions**"), and Ordering Activity hereby assigns all right, title, and interest in and to all Suggestions, and all Intellectual Property Rights therein, to Eccentex. This Agreement is not a sale and does not convey to Ordering Activity any rights of ownership in or related to the Eccentex Technology or the Intellectual Property Rights therein owned by Eccentex. There are no implied licenses granted under this Agreement. The Eccentex name, the Eccentex logo, and the product names associated with the Licensed IP and Software Services are trademarks of Eccentex or third parties, and no right or license is granted to use them. For the avoidance of doubt, and subject to the ownership rights of Eccentex in its Licensed IP, including proprietary platform applications templates, software, and any other Eccentex Technology, any Ordering Activity Application shall be owned by Ordering Activity.

**Reserved.**

**Reserved.**

**Excess Data Storage Fees.** The maximum disk storage space provided to Ordering Activity at no additional charge is 1 (One) GB per User and disk storage space between Users may be shared to the extent that total storage space required for Ordering Activity does not exceed maximum space for all Users combined. Eccentex will use reasonable efforts to notify Ordering Activity when the average storage used per license reaches approximately 90% of the maximum.

**Reserved.**

**Reserved.**

**Reserved.**

**Reserved.**

**Representations & Warranties.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Eccentex represents and warrants that: (a) it has the right to grant to Customer the rights to the Licensed IP granted herein; (b) it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof; and (c) the Software Services will perform substantially in accordance with the online Eccentex help documentation under normal use and circumstances. As Customer's exclusive remedy, and Eccentex's sole and exclusive liability for any breach of the foregoing representations and warranties by Eccentex, Eccentex will promptly repair or replace the non-conforming Licensed IP or Services at no additional charge.

**Reserved.**

**Disclaimer of Warranties.** EXCEPT AS PROVIDED IN SECTION 14, ECCENTEX AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE LICENSED IP, THE SERVICES INCLUDING THE SOFTWARE SERVICES, OR ANY CONTENT PROVIDED HEREUNDER. EXCEPT AS PROVIDED IN SECTION 14, ECCENTEX AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE LICENSED IP OR THE SERVICES INCLUDING THE SOFTWARE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE LICENSED IP OR THE SERVICES, INCLUDING THE SOFTWARE SERVICES WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) ALL ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE LICENSED IP, THE SOFTWARE SERVICES OR THE SERVER(S) THAT MAKE THE SOFTWARE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS PROVIDED IN SECTION 14, THE LICENSED IP, THE SERVICES (INCLUDING THE SOFTWARE SERVICES) AND ALL CONTENT ARE PROVIDED TO ORDERING ACTIVITY STRICTLY ON AN "AS IS" BASIS. EXCEPT AS PROVIDED IN SECTION 14, ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND IMPLIED INDEMNIFICATION ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY ECCENTEX AND ITS LICENSORS.

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

**Reserved.**

**Reserved.**

**Reserved.**

**Reserved.**

**Government Use.** The Licensed IP is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sep 1995) and is provided to the U.S. Government only as a commercial end item. Any technical data provided with such Licensed IP is commercial technical data as defined in 48 C.F.R. 12.211 (Sep 1995). Consistent with 48 C.F.R. 12.211 through 12.212, 48 C.F.R. 227.7202-1 through 227.7202-4 (Jun 1995), and 48 C.F.R. 252.227-7015 (Nov 1995), all U.S. Government End Users acquire the Licensed IP with only those rights set forth herein.

**Reserved.**



**Schedule A**  
**Eccentex Subscription Schedule**  
Contract # \_\_\_\_\_

**Ordering Activity desires to receive a subscription to certain proprietary platform known as AppBase or application developed by or for Eccentex using such platform. All capitalized terms used herein that are not defined herein have the meanings given to them in the Agreement.**

Software Service – access to the Licensed IP hosted by or for Eccentex will be made available to Ordering Activity via a restricted website.

Usage Rights: Ordering Activity may use the Licensed IP only on the following terms:

a. License to Platform and/or Applications Templates:

**PaaS Service.** If Ordering Activity desires to access the Platform and/or Applications Templates through the Software Services, subject to the terms and conditions of the Agreement, Eccentex hereby grants Ordering Activity during the Term (defined below), a non-transferable (except as permitted under the Agreement), limited, non-exclusive, license for the number of Users stated above to (i) access and use the Platform and/or Applications Templates solely for purposes of configuring and customizing a Ordering Activity Application (described below) based on the Platform and/or Applications Templates according to the user guide provided by Eccentex, and (ii) access and use the Ordering Activity Application for internal business purposes only. Ordering Activity authorizes Eccentex (directly or through a contractor) to host, copy, transmit, display and otherwise use the Ordering Activity Application solely as necessary for Eccentex to provide the Software Services in accordance with the Agreement.

Ordering Activity Application:

License to Application: If Ordering Activity desires to access an Application through the Software Services, subject to the terms and conditions of the Agreement, Eccentex hereby grants Ordering Activity during the Term a non-transferable (except as permitted under the Agreement), limited, non-exclusive, license for the number of Users stated above to access the Application and use the Application for internal business purposes only.

Service Level Agreement. Eccentex will host the Licensed IP and use commercially reasonable efforts to provide the Software Services in accordance with the Service Level Agreement provided on Attachment 1.

**Schedule 1**  
**Service Level Agreement**

1. **Definitions.** As used in this Service Level Agreement, the following capitalized terms shall have the meanings ascribed thereto:

**“Eligible Credit Period”** is a single calendar month, and refers to the monthly billing cycle in which the most recent Unavailable event for a particular Subscription included in the SLA claim occurred.

**“Monthly Uptime Percentage”** is calculated by dividing each hour into five minute periods, and then determining during which, if any, of those five minute periods, the Subscription was Unavailable, subtracting that number from the total number of such minute periods in the Subscription Month during which the Subscription was scheduled to be available (the **“Scheduled Availability Number”**) and dividing that number by the Scheduled Availability Number. If Ordering Activity has been using the Subscription for less than a full calendar month, the Subscription Month is still the preceding calendar month but any days in such month that are prior to the commencement of use of the Subscription will be deemed to have had 100% availability. Monthly Uptime Percentage measurements exclude downtime resulting from a Subscription Suspension.

**“SLA”** means a Monthly Uptime Percentage of at least 99% during each Subscription Month.

**“Subscription”** means the provision of the Instance to Ordering Activity on the terms described in the applicable order.

**“Subscription Month”** means each applicable calendar month in which the Subscription is contracted to be provided.

**“Subscription Suspension”** means the unavailability of a Subscription: (a) during weekends or on weekdays between 11:00 p.m. and 5:00 a.m. EST with at least 3 days' notice (provided via email or on Eccentex' web site) for scheduled downtime to permit Eccentex to conduct maintenance or make modifications to the Subscription; (c) at any time in the event of a denial of service attack or other event that Eccentex reasonably determines may create a risk to the applicable Subscription; or (d) at any time in the event that Eccentex reasonably determines that suspension is necessary for legal or regulatory reasons.

**“Unavailable”** or **“Unavailability”** means that all of the running Instances are unresponsive during a five minute period and Ordering Activity is unable to launch replacement Instances.

2. **Software Service Levels.** Eccentex will use commercially reasonable efforts to make each Subscription available within the SLA. If the Monthly Uptime Percentage is less than 90% in more than three (3) months during any twelve (12) months period, Ordering Activity may terminate this Agreement for material breach.

3. **Suspension of Subscription**

Ordering Activity acknowledges that Ordering Activity's access to and use of a Subscription may be suspended for the duration of any unanticipated or unscheduled downtime for any reason, including as a result of power outages, system failures or other interruptions outside of Eccentex's reasonable control.

Eccentex will have no liability for any damage, liabilities, or other losses that Ordering Activity may incur as a result of any Subscription Suspension. Eccentex will use reasonable efforts to provide Ordering Activity email notice of any Subscription Suspension and updates regarding resumption of the Subscription following any such suspension.

4. **Security**

Eccentex agrees that it will use commercially reasonable efforts adhere to the security protocols described on Attachment 2.

Other than the Eccentex security protocols described on Attachment 2, Ordering Activity acknowledges that it is responsible for security, protection and backup of its content, data and Ordering Activity Applications. Eccentex strongly encourages Ordering Activity, where available and appropriate, to (a) use encryption technology to protect Ordering Activity's content and data from unauthorized access, and (b) routinely archive Ordering Activity's content and data. Ordering Activity is fully responsible for all Ordering Activity Applications running on, and traffic originating from, each Instance. Ordering Activity should protect its authentication keys and security credentials. Actions taken using Ordering Activity's credentials will be deemed to be actions taken by Ordering Activity and will be the responsibility of Ordering Activity.

**Attachment 2**

### **Security Protocols**

**Access Control:** Implement access control measures restricting access to applications, data, and software to only those entities that have a documented, current business need. These measures shall meet the requirements of the security policies required by the Ordering Activity (HIPAA, SOX, and/or others as required). Access to the controlled systems shall be locked down by subnet, port, protocol, server, role, and user to allow only the access required for the business function.

**Audit Controls:** Implement audit control mechanisms to record, monitor, and examine system activity, including data access activities. Maintain full logs of monitored activities for at least three years trailing.

**Authorization Control:** Implement a mechanism for controlling the authorization of individuals, organizations, and roles to access applications, data, and software. Integrate with Ordering Activity's existing identity management solution where one exists to enable single sign-on and centralized identity management. Assure supervision of personnel performing technical systems maintenance activities by authorized, knowledgeable persons. Ensure that system users, including technical maintenance personnel are trained in system security.

**Data Authentication:** Create audit trail providing corroboration that data has not been altered or destroyed in an unauthorized manner.

**Entity Authentication:** Implement entity authentication technologies, including automatic logout and unique user identification through a password or equivalent system. Passwords or other user tokens shall be required to follow robust, documented policy requirements including:

Periodic reset/renewal every six months or less (Password ageing)

Complexity and length requirements in the case of passwords

No dictionary words

No dates

Mixed character types (at least three of lowercase, uppercase, numerals, and punctuation)

Lockouts after five unsuccessful authentication attempts

**Encryption at Rest:** Sensitive data shall be encrypted whenever stored in the database or in persisted memory using the highest possible encryption in compliance by the specific country.

**Encryption in Flight:** Communications over a network containing sensitive data shall be encrypted through SSL

**Business Continuity:** Implement and document business continuity and disaster recovery procedures, including but not limited to incremental data backups taken daily and stored for three weeks trailing, and full data backups taken weekly and stored for three years trailing.

**Audits and Policy Compliance:** Documentation and implementation of security policy shall be prepared and supplied to the Ordering Activity on demand for ALL of the following policy components:

A data backup plan

A disaster recovery plan

An emergency mode operation plan

Testing and revision procedures

Access authorization policies and procedures

Security testing

Virus checking

Security incident response procedures

Personnel clearance procedures

**Assigned Security Responsibility:** Assign and document the assignment of security responsibility to a specific individual or role within the Software Service provider organization. This responsibility would include the management and supervision of the use of security measures and the conduct of personnel.

**Physical Security:** Implement and document physical access controls (limited access) governing the Software Service provider's location(s) that are used to access Ordering Activity's applications, data, and software.

### **Schedule B**

#### **Maintenance and Support Terms**

1. **General.** Eccentex includes support and maintenance services with the Software Services. Support and maintenance services are as described below.

2. **Maintenance and Support Services.** Maintenance and Support Services include:

(i) **Maintenance Releases and Upgrades:** During the term, Eccentex agrees to deliver to Ordering Activity without charge any upgrades containing error corrections or enhancements to the Licensed IP ("**Upgrades**").

(ii) **Standard Telephone Support:** Subject to Section 3 below, Eccentex will use commercially reasonable efforts to provide Ordering Activity live telephone and email support during normal business hours of Eccentex (Monday – Friday, 8:00 a.m. to 6:00 p.m. Pacific Standard Time, excluding Eccentex holidays), or at such other hours as the parties may mutually agree to, for (a) configuration issues, (b) questions regarding the usability and specific functions of the Licensed IP, (c) problem diagnosis, and (d) provision of work-arounds where feasible.

(iii) **Critical Telephone Support:** Subject to Section 3 below, Eccentex will use commercially reasonable efforts to provide Ordering Activity live telephone support 24 hours per day, 7 days a week for problems where there is a complete loss of Licensed IP or a mission-critical system is down or sufficiently impaired and usability is severely affected.

(iv) **Support Liaisons:** Eccentex will coordinate with up to four Ordering Activity employees designated as support liaisons to manage support calls to Eccentex.

3. **Technical Support.** Eccentex offers the Ordering Activity a single point of contact for all product support questions. Ordering Activity will call the technical support number and the call coordinator will work to address Ordering Activity issues, with response and escalation based on the severity of the problem.

Eccentex shall use commercially reasonable efforts to respond to problems in accordance with the "Priority Codes" set forth below. The Priority Codes below depict the priority level to be assigned by Eccentex to each issue or problem phoned in by Ordering Activity.

**"A Priority" - Licensed IP is completely inoperable. Resources assigned within two (2) hours after notice.**

**"B Priority" - Licensed IP error is detected for a system module, which seriously impairs system operations, but does not render it inoperable.**

**Resources assigned within four (4) hours after notice during standard support hours.**

**"C Priority" –Ordering Activity has a problem with Licensed IP but there is a known workaround which does not seriously impair the operation of Licensed IP. Resources assigned within eight (8) hours after notice during standard support hours.**

**"D Priority" - Minor problems which Eccentex plans, or will plan to incorporate into a future release of the Licensed IP, to be resolved in connection with the general commercial availability of such future release.**

4. **Data Backup.** Eccentex provides ongoing data backup of configuration data as well as overall user generated data. Eccentex will keep a rolling backup of a full data snapshot per day for a timeframe minimum of 2 days.

5. **Conditions.** Maintenance and support apply to the standard Licensed IP made generally available by Eccentex to Ordering Activities, and not to modifications delivered as part of any professional services. Eccentex reserves the right to address defects in the next release of the Licensed. Eccentex will not be responsible to provide service or support when the problem is the result of faulty hardware or software that (i) Eccentex did not provide or (ii) Eccentex has not contracted with Ordering Activity to support under this Agreement. Maintenance services are not on-site services.

**ELASTICSEARCH FEDERAL, INC.**  
**800 WEST EL CAMINO REAL, SUITE 350**  
**MOUNTAIN VIEW, CA 94040**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

**Scope.** This Rider and the attached **Elasticsearch Federal, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**ELASTICSEARCH FEDERAL, INC.**

**ELASTICSEARCH FEDERAL, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**SHIELD SOFTWARE LICENSE AGREEMENT**

This **SHIELD SOFTWARE LICENSE AGREEMENT** (this "Agreement") is entered into by and between Elasticsearch Federal, Inc. ("Elasticsearch") and the Federal Ordering Activity ("You") that has downloaded Elasticsearch's Shield software to which a Federal Ordering Activity has issued an applicable ordering document to acquire the Shield Software subject to this Agreement. This Agreement is effective as of the earlier of the date You downloaded the Shield Software or the date an applicable ordering document ("Order Form") is entered into by Elasticsearch and You (the "Effective Date").

## 1. SOFTWARE LICENSE AND RESTRICTIONS

### 1.1 LICENSE GRANTS.

30 Day Free Trial License. Subject to the terms and conditions of this Agreement, Elasticsearch agrees to grant, and does hereby grant to You for a period of thirty (30) days from the Effective Date (the "Trial Term"), solely for Your internal business operations, a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) to: (i) install and use the object code version of the Shield Software; (ii) use, and distribute internally a reasonable number of copies of the documentation, if any, provided with the Shield Software ("Documentation"), provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; (iii) permit third party contractors performing services on Your behalf to use the Shield Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in connection with their use of the Shield Software. For the avoidance of doubt, You understand and agree that upon the expiration of the Trial Term, Your license to use the Shield Software will terminate, unless you purchase Elasticsearch support services that entitle you to use the Shield Software.

Fee-Bearing Production License. Subject to the terms and conditions of this Agreement and complete payment of any and all applicable fees, Elasticsearch agrees to grant, and does hereby grant to You during the term and for the restricted scope of this Agreement, solely for Your internal business operations, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) to: (i) install and use the object code version of the Shield Software in connection with the number of nodes for which You have purchased support services from Elasticsearch; (ii) use, and distribute internally a reasonable number of copies of the Documentation, if any, provided with the Shield Software, provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; (iii) permit third party contractors performing services on Your behalf to use the Shield Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in connection with their use of the Shield Software.

Reservation of Rights; Restrictions. The Shield Software is a Commercial Item as that term is defined in the Federal Acquisition Regulation ("FAR"), Subpart 2.101 (48 C.F.R. 2.101), and specifically is commercial computer software and commercial computer software documentation. As between Elasticsearch and You, Elasticsearch owns all right title and interest in and to the Shield Software and any derivative works thereof, and except as expressly set forth in Section 1.1 above, no other license to the Shield Software is granted to You by implication, estoppel or otherwise. You agree not to: (i) prepare derivative works from, modify, copy or use the Shield Software in any manner except as expressly permitted in this Agreement or applicable law; (ii) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Shield Software in whole or in part to any third party; (iii) use the Shield Software for providing time-sharing services, any software-as-a-service offering ("SaaS"), service bureau services or as part of an application services provider or other service offering; (iv) alter or remove any proprietary notices in the Shield Software; or (v) make available to any third party any analysis of the results of operation of the Shield Software, including benchmarking results, without the prior written consent of Elasticsearch.

Open Source. The Shield Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, "Open Source"), which Open Source may have applicable license terms as identified on a website designated by Elasticsearch or otherwise provided with the applicable Software or Documentation. A hard copy of the Open Source licenses is provided to U.S.

Federal Government Licensees and End-Users. Reserved.

### **RESERVED.**

#### **DISCLAIMER OF WARRANTIES**

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE SHIELD SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND ELASTICSEARCH AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SHIELD SOFTWARE OR DOCUMENTATION. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTICSEARCH AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SHIELD SOFTWARE AND DOCUMENTATION, AND WITH RESPECT TO THE USE OF THE FOREGOING. FURTHER, ELASTICSEARCH DOES NOT WARRANT RESULTS OF USE OR THAT THE SHIELD SOFTWARE WILL BE ERROR FREE OR THAT THE USE OF THE SHIELD SOFTWARE WILL BE UNINTERRUPTED.

### **RESERVED.**

#### **GOVERNMENT RIGHTS.**

The Shield Software product is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in the Shield Software, associated commercial computer software documentation and commercial technical data, in any contract or Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed.

#### **EXPORT CONTROL.**

You acknowledge that the goods, software and technology acquired from Elasticsearch are subject to U.S. export control laws and regulations, including but not limited to the International Traffic In Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130 (2010)); the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774 (2010)); the U.S. antiboycott regulations in the EAR and U.S. Department of the Treasury regulations; the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended. You are now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elasticsearch goods, software or technology or disclose any Elasticsearch software or technology to any person contrary to such laws or regulations. You acknowledge that remote access to the Shield Software may in certain circumstances be considered a re-export of Shield Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.



**RESERVED.  
RESERVED.**

**MARVEL SOFTWARE LICENSE AGREEMENT**

This **MARVEL SOFTWARE LICENSE AGREEMENT** (this "Agreement") is entered into by and between Elasticsearch Federal, Inc. ("Elasticsearch") and the Federal Ordering Activity ("You") that has downloaded Elasticsearch's Marvel software to which this Agreement is attached ("Marvel Software"), or in the case of a Federal Ordering Activity, has issued a Purchase Order or similar contractual document to acquire the Marvel Software subject to this Agreement. This Agreement is effective as of the date an applicable ordering document ("Order Form") is entered into by Elasticsearch and You, or, if no Order Form applies, the date you download the Marvel Software (the "Effective Date").

**SOFTWARE LICENSE AND RESTRICTIONS**

1.1 License Grants. Subject to the terms and conditions of this Agreement and complete payment of any and all applicable fees (provided that no fee shall be required for use of the Marvel Software for other than production purposes), Elasticsearch agrees to grant, and does hereby grant to You during the term and for the restricted scope of this Agreement, solely for Your internal business operations, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) to: (i) install and use the object code version of the Marvel Software in connection with the number of nodes for which You have purchased a license or support services, as applicable, from Elasticsearch; (ii) use, and distribute internally a reasonable number of copies of the documentation, if any, provided with the Marvel Software ("Documentation"), provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; (iii) permit third party contractors performing services on Your behalf to use the Marvel Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in connection with their use of the Marvel Software.

1.2 Reservation of Rights; Restrictions. Marvel Software is a Commercial Item as that term is defined in the Federal Acquisition Regulation ("FAR"), Subpart 2.101 (48 C.F.R. 2.101), and specifically is commercial computer software and commercial computer software documentation. As between Elasticsearch and You, Elasticsearch owns all right title and interest in and to the Marvel Software and any derivative works thereof, and except as expressly set forth in Section 1.1 above, no other license to the Marvel Software is granted to You by implication, estoppel or otherwise. You agree not to: (i) prepare derivative works from, modify, copy or use the Marvel Software in any manner except as expressly permitted in this Agreement or applicable law; (ii) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Marvel Software in whole or in part to any third party; (iii) use the Marvel Software for providing time-sharing services, any software-as-a-service offering ("SaaS"), service bureau services or as part of an application services provider or other service offering; (iv) alter or remove any proprietary notices in the Marvel Software; or (v) make available to any third party any analysis of the results of operation of the Marvel Software, including benchmarking results, without the prior written consent of Elasticsearch. The Marvel Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, "Open Source Software"), which Open Source Software may have applicable license terms. The full license terms and conditions of Open Source Software contained in or provided with the Marvel Software are set forth on a website designated by Elasticsearch or otherwise provided with the Marvel Software or Documentation. A hard copy of the Open Source Software licenses is provided to U.S. Federal Government Licensees and End-Users.

1.3 Cluster Metadata. You understand and agree that once deployed, and on a daily basis, the Marvel Software provides metadata to Elasticsearch about Your cluster statistics and associates that metadata with Your IP address. However, no other information is provided to Elasticsearch by the Marvel Software, including any information about the data You process or store in connection with your use of the Marvel Software. At no time does this feature provide access to the data You process or store, or to your network. Instructions for disabling this feature are contained in the Marvel Software, however leaving this feature active enables Elasticsearch to gather cluster statistics and provide an improved level of support to You.

**RESERVED.**

**DISCLAIMER OF WARRANTIES**

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE MARVEL SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND ELASTICSEARCH AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE MARVEL SOFTWARE OR DOCUMENTATION. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTICSEARCH AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE MARVEL SOFTWARE AND DOCUMENTATION, AND WITH RESPECT TO THE USE OF

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THE FOREGOING. FURTHER, ELASTICSEARCH DOES NOT WARRANT RESULTS OF USE OR THAT THE MARVEL SOFTWARE WILL BE ERROR FREE OR THAT THE USE OF THE MARVEL SOFTWARE WILL BE UNINTERRUPTED.

**RESERVED.**

**GOVERNMENT RIGHTS.**

The Marvel Software product is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of the Elasticsearch Software License Agreement as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in the Marvel Software, associated commercial computer software documentation and commercial technical data, subject to this Agreement and in any Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed.

**EXPORT CONTROL.**

You acknowledge that the goods, software and technology acquired from Elasticsearch are subject to U.S. export control laws and regulations, including but not limited to the International Traffic In Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130 (2010)); the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774 (2010)); the U.S. antiboycott regulations in the EAR and U.S. Department of the Treasury regulations; the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended. You are now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elasticsearch goods, software or technology or disclose any Elasticsearch software or technology to any

person contrary to such laws or regulations. You acknowledge that remote access to the Marvel Software may in certain circumstances be considered a re-export of Marvel Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

**RESERVED.**  
**RESERVED.**

**ELEMENTAL TECHNOLOGIES  
225 SW BROADWAY SUITE 600  
PORTLAND, OR 97205**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Elemental Technologies** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**ELEMENTAL TECHNOLOGIES**

**ELEMENTAL TECHNOLOGIES LICENSE, WARRANTY AND SUPPORT TERMS**

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## End User License Agreement

### 1. DEFINITIONS:

1.1 "Product" means the Elemental software program, in object code only, provided to Ordering Activity under this Agreement; all related images, animations, video, audio, and other content incorporated in such software program; all accompanying manuals and other documentation (the "Documentation"); and all enhancements, upgrades, and extensions thereto that may be provided by Elemental to Ordering Activity from time to time.

1.2 "Licensed Configuration" means, to the extent applicable, the choice of features or any other hardware or software specifications, as selected or ordered by Ordering Activity in an Order Form, and upon which the licensing fee was based.

1.3 "License Key" means either (a) the software key code or (b) the physical USB key provided to you by Elemental (or its reseller) (a "USB License Key"), which enables the Product to operate on the Licensed Hardware for the specified Licensed Configuration, if applicable to the Product(s).

1.4 "Licensed Hardware" means the single unit of hardware (workstation, encoder, or otherwise) designated by Ordering Activity for use of the Product.

1.5 "Order Form" means a purchase order or other written or electronic document in which you specify the Licensed Hardware, specific modules and/or choice of features, and any other applicable hardware or software requirements and restrictions.

### 2. LICENSE AND RESTRICTIONS:

2.1 License. Subject to the terms and conditions of this Agreement, Elemental grants Ordering Activity a non-exclusive, non-transferable, limited license to use the Product, solely in machine-readable form, only on the Licensed Hardware, only for the Licensed Configuration, and only if all related license fees have been paid. Your use is further subject to any limitations set forth in the Order Form. You may use the Product for your own internal benefit and for providing goods or services to your customers; provided that such customers have no access to the Product.

2.2 General Restrictions. You may not copy the Product, in whole or in part, except that you may make and retain a reasonable number of copies solely for back-up purposes in order to re-install the Product. You also shall not use or allow the use of the Product for any of the following purposes:

a) by persons not employed by or under an independent contractor relationship with you that will bind such persons to the terms of this Agreement; or  
b) as essential equipment in the operation of any nuclear facility, aircraft navigation, medical or communications systems or air traffic control machines, or any other use in which the failure of the Product could lead to death, personal injury or severe physical or environmental damage.

2.3 Intellectual Property. Ordering Activity acknowledge that the Product, and the underlying source code, algorithms, data structures, methods, processes, screen formats, report formats, ideas and concepts are valuable intellectual property owned by Elemental and its licensors, including all associated patent, copyright, trade secret, trademark, and other intellectual property rights. You agree not to, except as expressly authorized and only to the extent established by applicable statutory law, attempt to (or permit others to) decompile, disassemble or otherwise reverse engineer or attempt to reconstruct or discover any source code, underlying ideas, algorithms or file formats of the Product by any means. You will not develop methods to enable unauthorized parties to use the Product or any copy thereof, or to develop any other product containing any of the concepts and ideas contained in the Product. You will not modify the Product or incorporate any portion of the Product into any other software or create a derivative work of any portion of the Product. You will not remove any copyright or other proprietary notices from the Product or any copies thereof. Elemental reserves all rights not expressly granted hereunder. The license granted herein does not constitute a sale of the Product or any portion or copy of it.

2.4 Upgrades. This Agreement entitles you to receive any future maintenance releases, which includes any bug fixes but does not include any updates or upgrades, releases offered as a separate product or releases subject to a separate license agreement. Your rights to the previously-installed release terminate once you install the new release, except that you may remove the new release and reinstate your rights to the previously-installed release at any time during the term of this Agreement for the remaining term. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) YOU HAVE NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS YOU, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLD A VALID LICENSE TO THE ORIGINAL PRODUCT AND HAVE PAID THE APPLICABLE FEE FOR THE UPGRADE, IF ANY; (2) IF INSTALLED IN ELEMENTAL EQUIPMENT, USE OF UPGRADES IS LIMITED TO ELEMENTAL EQUIPMENT FOR WHICH YOU ARE THE ORIGINAL END USER PURCHASER OR LESSEE OR YOU OTHERWISE HOLD A VALID LICENSE TO USE THE PRODUCT WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

3. MAINTENANCE AND SUPPORT. Elemental shall have no obligation to provide maintenance and support for the Product under this Agreement. Any such maintenance and support shall be provided in accordance with a separate maintenance agreement between the parties.

6. NOTICE TO U.S. GOVERNMENT END USERS: The Product is a "Commercial Item," as that term is defined at 48 C.F.R. §2.101., consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. § 252.227-7014, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to this Agreement. Should the foregoing clauses be amended after December, 2007, then their comparable replacements or revisions shall be incorporated herein and automatically apply.

### 7. LIMITED WARRANTY, WARRANTY DISCLAIMERS AND LIMITATION OF LIABILITY:

7.1 Limited Warranty. Elemental warrants that the media on which the Product is furnished will be free from defects in material and workmanship, and that the Product shall substantially conform to its Documentation, as it exists at the date of delivery, for a period of sixty (60) days from the date you receive the original License Key. Elemental's entire liability and your exclusive remedy shall be, at Elemental's option, either: (i) return of the license fee paid to

Elemental for the Product, resulting in the termination of this Agreement, or (ii) repair or replacement of the Product or media that does not meet this limited warranty. This offer is void if the media defect results from negligence, accident, abuse, or misapplication.

7.2 Disclaimer. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 7.1, THE PRODUCT AND ANY SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, BOTH EXPRESSED AND IMPLIED. ELEMENTAL, ITS SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. ELEMENTAL, ITS SUPPLIERS AND LICENSORS DISCLAIM AND EXCLUDE ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

8. GOVERNMENT REGULATION: Ordering Activity agree that the Product and any related technical data will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export law. Ordering Activity will comply with all laws, regulations, permits, orders and other restrictions to the extent that they are applicable to the import or export of the Product and related technical data.

9. HIGH RISK APPLICATIONS: THE PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS REQUIRING FAULT TOLERANCE OR FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPON SYSTEMS, IN WHICH THE FAILURE OF THE PRODUCT COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK APPLICATIONS"). Elemental and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Applications.



**EXPERT CHOICE, INC.**  
**2111 WILSON BLVD. SUITE 700**  
**ARLINGTON, VA 22201**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

**Scope.** This Rider and the attached Expert Choice, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER OGP 4800.2I (July 2016), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY

2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**EXPERT CHOICE, INC.**

**EXPERT CHOICE, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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**1. Definitions.**

1.1 "Active Decision Project" means a Decision Project (a) that is published or otherwise made available to users for the purpose of entering measurable data and/or judgments into such Decision Project; and (b) into which measurable data and/or judgments have been entered. A Decision Project becomes an "Active Decision Project" immediately upon the first time a user enters measurable data and/or a judgment into such Decision Project; provided, however, that a Decision Project will not be considered an "Active Decision Project" during any time period where such Decision Project is inactivated through the archiving feature of the Product.

1.2 "Confidential Information" means all non-public information, whether in oral, written or other tangible or intangible form, that a Party designates as being confidential or which, under the circumstances surrounding disclosure, the receiving Party knows or has reason to know should be treated as confidential, including, without limitation, the Software, and any Ordering Activity data. Notwithstanding the foregoing, Confidential Information does not include information that the receiving Party can establish: (i) is or becomes generally available to the public other than (a) as a result of a disclosure by the receiving Party or its employees or any other person who directly or indirectly receives such information from the receiving Party or its employees or (b) in violation of a confidentiality obligation to the disclosing Party known to the receiving Party; (ii) is or becomes available to the receiving Party on a non-confidential basis from a Third Party which is entitled to disclose it to the receiving Party; or (iii) was developed by employees or agents of the receiving Party independently of, and without reference to, any information communicated to the receiving Party by the disclosing Party.

1.3 "Decision Project" means the Web-based decision-making analytic tool generated by Ordering Activity using the Software and/or the Hosted Services that is designed to elicit data and judgments from users with respect to the business objectives and/or alternatives for which the Decision Project is created.

1.4 "Delivery" means the sooner of the date that Expert Choice: (i) delivers the Software on a CD to Ordering Activity; (ii) delivers the Software on a CD to a common carrier for shipment to Ordering Activity; or (iii) makes the Hosted Services available to Ordering Activity for its access and use, as the case may be.

1.5 "Documentation" means the then-current, generally available, written instructions, user guides, and user manuals for the Products, if applicable, whether in electronic, paper or other equivalent form, provided by Expert Choice and in connection with any updates, modifications and improvements to the Software, regardless of form or media.

1.6 "Hosted Services" means the provision of access over the Internet to the functionality of the Software.

1.7 "Intellectual Property Rights" means, collectively, all rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide, including moral rights and similar rights.

1.8 "Named User" means the employees, agents or authorized representatives of Ordering Activity that may be specifically named in the Order Form who are authorized to use the Products. Named Users may include Ordering Activity contractors performing work on Ordering Activity's behalf.

1.9 "Order Form" means the ordering documents, including a Government Purchase Order, representing the initial purchase of the Products as well as any subsequent purchases agreed to between the Parties submitted by Ordering Activity and agreed to by Expert Choice that specify, among other things, the Products purchased, the license type and license grant, the number of Named Users and the number of Active Decision Projects, as applicable, and the Term (as hereinafter defined) and the fees.

1.10 "Products" means one or more of the following products purchased by Ordering Activity as set forth in an Order Form: the Hosted Services, the enterprise version of the Software and/or the desktop version of the Software.

1.11 "Software" means the means the machine-readable, object-code version of Expert Choice's proprietary software, including all related Documentation.

1.12 "Third Party" means any department or division of Ordering Activity not specifically identified herein, or any person, entity or Party other than the Parties, regardless of relation or affiliation with either Party.

**Reserved.**

**Reserved.**

**Audit Rights. The terms of this Section 4 only apply if Ordering Activity has purchased the desktop and/or enterprise version of the Software.**

4.1 Audit. During the Term and subject to Government security requirements, Expert Choice may periodically conduct onsite audits of Ordering Activity's usage of the desktop and/or enterprise version of the Software licensed by Ordering Activity under each applicable Order Form. These audits will be conducted during regular business hours, and Ordering Activity agrees to permit Expert Choice and its representatives, subject to Government security requirements, reasonable access to the premises, facilities, data, and networks necessary to conduct such audits. Expert Choice will use reasonable efforts not to interfere unduly with Ordering Activity's regular business activities. At Expert Choice's option, Ordering Activity shall complete a self-audit questionnaire in a form Expert Choice may provide.

4.2 Additional Licenses. Expert Choice will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit.

**5. Ownership and Proprietary Rights Notices.**

5.1 Title. Ordering Activity acknowledges and agrees that title to and ownership of the Products, including all corrections, enhancements, or other modifications to the Software, whether made by Expert Choice or any Third Party, and all Intellectual Property Rights therein, are and shall at all times be deemed the sole and exclusive property of Expert Choice.

5.2 Proprietary Rights Notices. Ordering Activity shall not delete, alter, cover, or distort any copyright, trademark, or other proprietary rights notice placed by Expert Choice on or in the Products, and shall ensure that all such notices are reproduced on all copies thereof.

**6. Limited Warranty.**

6.1 Assumption of Responsibility. Ordering Activity assumes all responsibility for the selection of, use of, and results obtained from the Products. All warranties, express or implied, extend solely to Ordering Activity and not to any Third Parties.

6.2 DISCLAIMER. Expert Choice warrants that the software will, for a period of sixty (60) days from the date of your receipt ("Warranty Period"), perform substantially in accordance with the software documentation accompanying it. If the software fails to perform substantially in accordance with the documentation during the Warranty Period, Expert Choice shall use commercially reasonable

efforts to repair or replace the nonconforming software to make it perform in accordance with the documentation. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE PRODUCTS ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT OR RESULTS, OR SYSTEM INTEGRATION, OR ANY WARRANTIES ARISING UNDER ANY OTHER LEGAL REQUIREMENT. EXPERT CHOICE makes no warranty THAT THE SOFTWARE WILL RUN PROPERLY ON ALL HARDWARE, that the SOFTWARE OR THE HOSTED SERVICES WILL MEET the REQUIREMENTS OF THE ORDERING ACTIVITY OR USERS, WILL OPERATE IN THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY THE ORDERING ACTIVITY OR USERS, OR THAT THE HOSTED SERVICES OR OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

**Reserved.**

**Reserved.**

**Term and Termination.**

Term. This Agreement shall commence upon the Effective Date and shall continue for the period set forth in the applicable Order Form ("Term"), unless earlier terminated.

Obligations Upon Termination. Upon the termination or expiration of this Agreement: (i) Ordering Activity shall promptly pay in full all outstanding payments to Expert Choice; (ii) all licenses granted hereunder (if any) will immediately terminate and Ordering Activity shall immediately cease all use of the Products; (iii) Ordering Activity shall remove all copies of the Software from its computer systems and shall return or destroy (at Expert Choice's option) all such copies to Expert Choice; and (iv) the receiving Party shall promptly return all Confidential Information of the disclosing Party in its the possession or control. With respect to (iii) and (iv) of the preceding sentence, Ordering Activity shall certify to Expert Choice in writing within ten (10) days of the date on which termination or expiration is effective that it has made no other copies, or has completely destroyed all copies, including backup or archive copies, of the Software or any portion thereof, and that no copies of any portion of the Software are in existence on any network, system, or equipment ever owned or used by Ordering Activity. The expiration or termination of this Agreement does not relieve either Party of any obligations that have accrued on or before the effective date of the termination or expiration.

**General.**

Export Restrictions. Ordering Activity acknowledges and agrees that the Software is subject to the export control laws and regulations of the United States, including but not limited to the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of the Treasury, Office of Foreign Asset Controls. Ordering Activity will comply with these laws and regulations. Ordering Activity shall not without prior U.S. Government authorization, export, re-export, or transfer any goods, software, or technology subject to this Agreement, either directly or indirectly, to any country subject to a U.S. trade embargo (currently Cuba, Iran, North Korea, Sudan, and Syria) or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of the Treasury.

**SERVICE LEVEL AGREEMENT**

Expert Choice bases its service level agreement on 'issues.' An 'issue' is defined as an unplanned interruption to Expert Choice Comparion® or Expert Choice Riskion® that causes an interruption or disruption in the Ordering Activity's ability to use either product for its intended purpose. Problems with customer internet service, connections, firewalls, networks, hardware, operating system software, browser software, or other foundational software are not covered under this SLA.

**Issue Triage**

Priority	Criteria	Initial Response Time *	Target Resolution Time *
Urgent	Users are continually unable to use the software and a workaround is not available.	1 hour	4 hours
High	Some functions of the software are impaired and no workaround is available.	2 hours	8 hours
Medium	The normal priority where some functions of the software are impaired, with a workaround available.	4 hours	Release Schedule – typically quarterly
Low	An information request or clarification that has no immediate operational impact.	4 hours	Release Schedule – typically quarterly

\* Working hours are Monday – Friday 8:30 am to 5:00 pm Eastern U.S. time. Holidays are excluded from working hours. The clock for Response and Resolution Time does not run during non-working hours.

**Hours of Operation and Contact Methods**

Expert Choice’s support is available as follows:

	Email	Phone
Contact Methods	support@expertchoice.com	(703) 243-5595 ext. 2 Or (321) 229-2959
Hours of Support Operation	Actively Monitored Monday – Friday 8:30 am to 5:00 pm Eastern U.S. time	
After Hours	Triaged Next Business Day	Triaged by an On-Call Person

1. Expert Choice considers all email-submitted issues as *Medium*.
2. Expert Choice requires five business day notice to support any issues that may result from client-initiated business practice changes, e.g. using the software in a different way.

**EXTREME NETWORKS, INC.**  
**145 RIO ROBLES**  
**SAN JOSE, CA 95134**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Extreme Networks, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is



triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**EXTREME NETWORKS, INC.**

**EXTREME NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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1. **DEFINITIONS.** "Affiliates" means any person, partnership, corporation, limited liability company, or other form of enterprise that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the party specified. "Server Application" shall refer to the

License Key for software installed on one or more of Your servers. "Client Application" shall refer to the application to access the Server Application. "Licensed Materials" shall collectively refer to the licensed software (including the Server Application and Client Application), Firmware, media embodying the software, and the documentation. "Concurrent User" shall refer to any of Your individual employees who You provide access to the Server Application at any one time. "Firmware" refers to any software program or code imbedded in chips or other media. "Licensed Software" refers to the Software and Firmware collectively.

2. RESERVED.

3. GRANT OF SOFTWARE LICENSE. Extreme will grant You a non-transferable, non-exclusive license to use the machine-readable form of the Licensed Software and the accompanying documentation if You agree to the terms and conditions of this Agreement. You may install and use the Licensed Software as permitted by the license type purchased as described below in License Types. YOU MAY NOT USE, COPY, OR MODIFY THE LICENSED MATERIALS, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

4. LICENSE TYPES.

Single User, Single Computer. Under the terms of the Single User, Single Computer license, the license granted to You by Extreme when You install the License Key authorizes You to use the Licensed Software on any one, single computer only, or any replacement for that computer, for internal use only. A separate license, under a separate Software License Agreement, is required for any other computer on which You or another individual or employee intend to use the Licensed Software. A separate license under a separate Software License Agreement is also required if You wish to use a Client license (as described below).

Client. Under the terms of the Client license, the license granted to You by Extreme will authorize You to install the License Key for the Licensed Software on your server and allow the specific number of Concurrent Users shown on the relevant invoice issued to You for each Concurrent User that You order from Extreme or Your dealer, if any, to access the Server Application. A separate license is required for each additional Concurrent User.

5. RESERVED. RESTRICTION AGAINST COPYING OR MODIFYING LICENSED MATERIALS. Except as expressly permitted in this Agreement, You may not copy or otherwise reproduce the Licensed Materials. In no event does the limited copying or reproduction permitted under this Agreement include the right to decompile, disassemble, electronically transfer, or reverse engineer the Licensed Software, or to translate the Licensed Software into another computer language. The media embodying the Licensed Software may be copied by You, in whole or in part, into printed or machine readable form, in sufficient numbers only for backup or archival purposes, or to replace a worn or defective copy. However, You agree not to have more than two (2) copies of the Licensed Software in whole or in part, including the original media, in your possession for said purposes without Extreme' prior written consent, and in no event shall You operate more copies of the Licensed Software than the specific licenses granted to You. You may not copy or reproduce the documentation. You agree to maintain appropriate records of the location of the original media and all copies of the Licensed Software, in whole or in part, made by You. You may modify the machine-readable form of the Licensed Software for (1) your own internal use or (2) to merge the Licensed Software into other program material to form a modular work for your own use, provided that such work remains modular, but on termination of this Agreement, You are required to completely remove the Licensed Software from any such modular work. Any portion of the Licensed Software included in any such modular work shall be used only on a single computer for internal purposes and shall remain subject to all the terms and conditions of this Agreement. You agree to include any copyright or other proprietary notice set forth on the label of the media embodying the Licensed Software on any copy of the Licensed Software in any form, in whole or in part, or on any modification of the Licensed Software or any such modular work containing the Licensed Software or any part thereof.

6. TITLE AND PROPRIETARY RIGHTS

(a) The Licensed Materials are copyrighted works and are the sole and exclusive property of Extreme, any company or a division thereof which Extreme controls or is controlled by, or which may result from the merger or consolidation with Extreme (its "Affiliates"), and/or their suppliers. This Agreement conveys a limited right to operate the Licensed Materials and shall not be construed to convey title to the Licensed Materials to You. There are no implied rights. You shall not sell, lease, transfer, sublicense, dispose of, or otherwise make available the Licensed Materials or any portion thereof, to any other party.

7. PROTECTION AND SECURITY.

You agree not to deliver or otherwise make available the Licensed Materials or any part thereof, including without limitation the object or source code (if provided) of the Licensed Software, to any party other than Extreme or its employees, except for purposes specifically related to your use of the Licensed Software on a single computer as expressly provided in this Agreement, without the prior written consent of Extreme. You agree to use your best efforts and take all reasonable steps to safeguard the Licensed Materials to ensure that no unauthorized personnel shall have access thereto and that no unauthorized copy, publication, disclosure, or distribution, in whole or in part, in any form shall be made, and You agree to notify Extreme of any unauthorized use thereof. You acknowledge that the Licensed Materials contain valuable confidential information and trade secrets, and that unauthorized use, copying and/or disclosure thereof are harmful to Extreme or its Affiliates and/or its/their software suppliers.

8. MAINTENANCE AND UPDATES. Updates and certain maintenance and support services, if any, shall be provided to You pursuant to the terms of an Extreme Service and Maintenance Agreement (Exhibit A). Except as specifically set forth in such agreement, Extreme shall not be under any obligation to provide Software Updates, modifications, or enhancements, or Software maintenance and support services to You.

9. RESERVED.

10. EXPORT REQUIREMENTS. You are advised that the Software is of United States origin and subject to United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. You agree not to directly or indirectly export, import or transmit the Software to any country, end user or for any Use that is prohibited by applicable United States regulation or statute (including but not limited to those countries embargoed from time to time by the United States government); or contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or Use.

11. UNITED STATES GOVERNMENT RESTRICTED RIGHTS. The Licensed Materials (i) were developed solely at private expense; (ii) contain "restricted computer software" submitted with restricted rights in accordance with section 52.227- 14 RESTRICTED RIGHTS and its successors, and (iii) in all respects is proprietary data belonging to Extreme and/or its suppliers. For Department of Defense units, the Licensed Materials are considered commercial

computer software in accordance with DFARS section 227.7202-3 and its successors, and use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth herein.

12. LIMITED WARRANTY AND LIMITATION OF LIABILITY. The only warranty Extreme makes to You in connection with this license of the Licensed Materials is that if the media on which the Licensed Software is recorded is defective, it will be replaced without charge, if Extreme in good faith determines that the media and proof of payment of the license fee are returned to Extreme or the dealer from whom it was obtained within ninety (90) days of the date of payment of the license fee.

NEITHER EXTREME NOR ITS AFFILIATES MAKE ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS, WHICH ARE LICENSED "AS IS". THE LIMITED WARRANTY AND REMEDY PROVIDED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED, AND STATEMENTS OR REPRESENTATIONS MADE BY ANY OTHER PERSON OR FIRM ARE VOID. ONLY TO THE EXTENT SUCH EXCLUSION OF ANY IMPLIED WARRANTY IS NOT PERMITTED BY LAW, THE DURATION OF SUCH IMPLIED WARRANTY IS LIMITED TO THE DURATION OF THE LIMITED WARRANTY SET FORTH ABOVE. YOU ASSUME ALL RISK AS TO THE QUALITY, FUNCTION AND PERFORMANCE OF THE LICENSED MATERIALS. IN NO EVENT WILL EXTREME OR ANY OTHER PARTY WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE LICENSED MATERIALS BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF DATA OR PROFITS OR FOR INABILITY TO USE THE LICENSED MATERIALS, TO ANY PARTY EVEN IF EXTREME OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EXTREME OR SUCH OTHER PARTY'S LIABILITY FOR ANY DAMAGES OR LOSS TO YOU OR ANY OTHER PARTY EXCEED THE LICENSE FEE YOU PAID FOR THE LICENSED MATERIALS.

Some states do not allow limitations on how long an implied warranty lasts and some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation and exclusion may not apply to You. This limited warranty gives You specific legal rights, and You may also have other rights which vary from state to state. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Extreme's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

13. RESERVED.

14. Reserved.

## EXHIBIT A

### ExtremeWorks Support Program

Extreme Networks, Inc. ("Extreme") agrees to provide the ExtremeWorks Support Program and related Support Plans to you pursuant to the following terms and conditions.

1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

1.1 "Authorized Users" means those individuals authorized by Ordering Activity to use the Services on behalf of Ordering Activity.

1.2 "Authorized Resellers" means those companies (a) authorized by Extreme to resell, promote or deliver the ExtremeWorks Support Program to the marketplace, and (b) through which Ordering Activity has purchased the ExtremeWorks Support Program.

1.3 "Defect" means a failure of any Product to operate in accordance with Extreme's technical specifications as set forth in the End User Documentation.

1.4 "End User" means a purchaser of the Services who acquires such Services for ordinary business usage and not for purposes of further distribution or resale.

1.5 "End User Documentation" means Product documentation, Product specifications and other related materials.

1.6 "Intellectual Property Rights" means any and all current and future (i) rights associated with works of authorship; including but not limited to copyrights, moral rights, and mask-work rights; (ii) patent rights, rights of priority, and design rights; (iii) trade secret rights, (iv) trademark rights (including service mark rights) and trade dress rights; (v) all other intellectual and industrial property rights of every kind and nature which may exist anywhere in the world, whether registered or unregistered; and (vi) any and all applications and registrations, renewals, extensions, provisionals, continuations, continuations-in-part, divisions, reissues or reexaminations of any of the foregoing.

1.7 Reserved.

1.8 "Products" mean Extreme commercial networking products as identified in the Price List, including (i) hardware products with embedded Software, (ii) Software Products in object code form, (iii) End User Documentation, and (iv) other materials related to the foregoing, if any, supplied to you in a commercial package.

1.9 "Releases" mean Updates and Upgrades, collectively. No Alpha or Beta or non-production versions shall be considered Releases.

1.10 "Services" mean the services provided by Extreme under the ExtremeWorks Support Program, Premier Services Program (PSP) Foundation Services or any other end user services provided by Extreme under this Agreement in accordance with the applicable program guide.

1.11 "Software" or "Software Products" mean Extreme software products in object code form which are either sold separately or embedded into Extreme hardware products. .

1.12 "Trademarks" mean "Extreme Networks" and the applicable Product trademarks as listed in Extreme's usage guidelines, subject to revision from time to time in Extreme's sole discretion.

1.13 "Update" means a new version of a Software Product that includes defect corrections, bug fixes and/or minor enhancements that operate within the framework of the specifications for the current Upgrade of the Software Product, but does not include substantive features or functions not performed by the prior Release of the Software Product.

1.14 "Upgrade" means a new version of a Software Product that includes substantive features or functions not performed by the prior Release of the Software Product.

2. Services. The scope of the Services provided to Ordering Activity hereunder is based on the support plan purchased by Ordering Activity for each unit of the Product purchased. Certain on-site Services may not be available in some geographic regions or may require a "phase-in" period before they can be made available to Ordering Activity. Extreme shall have the right to use subcontractors to perform all or part of the Service(s), as it deems appropriate. To be eligible for the PSP Foundation Service, Ordering Activity must have Extreme equipment with current maintenance support entitlements. Future Services are deemed added to this Agreement at such time as they are added to the Schedule Contract. Extreme has the right to discontinue the distribution or availability of any Service at any time upon sixty (60) days' prior notice. In accordance with the Support Plan purchased for the applicable Product, the Services may include the following:

2.1 Releases. Extreme or its authorized representatives will make available to Ordering Activity all Releases made generally available by Extreme only for Products for which Ordering Activity has an active contract for Services. The content of all Releases shall be decided upon by Extreme in its sole discretion. Updates for Products for which Ordering Activity has an active contract for Services shall be provided to Ordering Activity at no additional charge during the term of this Agreement. Extreme shall impose additional charges for Upgrades. Ordering Activity shall install only one (1) copy of a Release for each Product under an active contract for Services, and Ordering Activity is prohibited from installing Releases on any Product which is not covered under an active contract for Services.

2.2 Corrections. Extreme shall use commercially reasonable efforts to provide a correction or workaround for any reported and reproducible Defect in any Product for which Services have been purchased with a level of effort commensurate with the severity level; provided that Extreme shall have no obligation to correct all Defects in the Products. Ordering Activity shall notify Extreme TAC of the nature and severity of such Defect and the specific serial number of the applicable Product, and provide Extreme with enough information to locate and reproduce the Defect. Extreme shall not be responsible for correcting any Defect not attributable to Products or any Defect listed under Section 3 ("Exclusions").

3. Exclusions. The Services provided by Extreme hereunder will not include support and maintenance of any third party software or hardware not provided by Extreme. Extreme is not required to provide any services for problems arising out of: (i) Ordering Activity's failure to implement all Updates issued under the Services; (ii) alterations of or additions to the Products performed by parties other than Extreme; (iii) accident, natural disasters, terrorism, negligence, or misuse of the Products (such as, without limitation, operation outside of environmental specifications or in a manner for which the Products were not designed); (iv) interconnection of the Products with other products not supplied by Extreme, or (v) certain components, including but not limited to the following: spare fan trays, blank panels, cables, cable kits, rack mount kits, brackets, antennas, GBICs and miniGBICs. Extreme shall only be obligated to support the then-current revision of the Products and the immediately prior revision. 4. Ordering Activity Obligations.

4.1 Ordering Activity Assistance. Ordering Activity agrees to provide Extreme with reasonable access to the Products for which problems are reported and all back-ups and Ordering Activity information services, technical personnel, facilities, and premises as required in connection with the performance of the Services as long as Extreme complies with all of Ordering Activity's security requirements. To efficiently resolve problems and perform local hardware diagnostics, Ordering Activity shall provide modem level access for all Ordering Activity sites. Ordering Activity may provide passwords and/or activate the modem when needed. Ordering Activity shall be responsible for any and all cables, hardware or software not provided by Extreme. Ordering Activity's failure to provide such access or information may delay the Services and/or result in Extreme's inability to perform the Services; in such cases, Extreme shall not be liable for any consequences relating to or resulting from such delay or failure to perform.

4.2 Contact People. Ordering Activity shall appoint at least two (2) individuals who have been trained and are knowledgeable on Extreme products within Ordering Activity's organization to serve as the primary contacts between Ordering Activity and Extreme and to receive support as provided herein. Ordering Activity shall provide and shall update as appropriate contact information for the primary contacts, including address, phone number and email address. All of Ordering Activity's support inquiries shall be initiated through these primary contacts.

4.3 Restrictions on Copying and Reverse Engineering. As a material consideration for this Agreement, Ordering Activity expressly agrees not to translate, disassemble, reverse compile or reverse engineer the Products, including the Software Products, in whole or in part, except to the extent such prohibition is restricted by applicable law. Ordering Activity will not copy, modify, create derivative works, rent, lease, loan or use for timesharing or service bureau purposes any Products, including Software Products, in whole or in part without the prior written approval of Extreme, which approval may be withheld in Extreme's sole discretion.

4.4 No Removal of Markings. Ordering Activity agrees to comply with all legends that appear on or in the Products and not to remove or destroy any patent, copyright, logo, trademark, trade name, proprietary marking, or confidentiality legend placed upon or contained within Products, containers or End User Documentation supplied by Extreme.

5. Reserved.

6. Support for End of Life.

6.1 Product End of Life. In the event Extreme discontinues or otherwise ceases to make available to its customers a particular Product model number, Extreme will continue to offer Services for such Product in accordance with its then-current End of Life Policy available at [www.extremenetworks.com/libraries/services/EndofLifePolicy.pdf](http://www.extremenetworks.com/libraries/services/EndofLifePolicy.pdf). The Services shall remain in effect with respect to other Products, if any, then covered.

6.2 Support Plan End Of Life. Extreme reserves the right to discontinue any Support Plan in its sole discretion upon sixty (60) days' notice, by email, notification on Extreme's website, or any other method permitted under this Agreement, to Ordering Activity; however, Extreme will continue to provide services under such discontinued Support Plan through the end of any prepaid support period.

7. RESERVED. 8. Return Process. If Ordering Activity is returning a Product to Extreme, Ordering Activity must first obtain a Return Material Authorization ("RMA") number from Extreme. Ordering Activity must return the entire contents of the defective Product and dated End User proof of purchase for the defective Product, if requested by Extreme, marked with the RMA number, to a receiving point designated by Extreme. Shipping cartons that are not marked with RMA numbers will be rejected by Extreme and returned to Ordering Activity. Extreme will pay the transportation charges (excluding taxes, duties and customs) in accordance with the Support Plan purchased for such Product. Notwithstanding the foregoing, Ordering Activity retains sole responsibility for risk of loss or damage to Products during shipment to and from Extreme. Products returned to Extreme may be repaired or replaced by Extreme at Extreme's sole discretion. Replacement Products may be new or refurbished Products.

9. Ownership of Intellectual Property Rights; License; Non-Disclosure.

9.1 Intellectual Property Rights. Ordering Activity acknowledges that the Products are proprietary to Extreme and its suppliers, and that Extreme and its suppliers retain exclusive ownership of all Intellectual Property Rights in and to the Products, including in and to any Software Products and Trademarks. Ordering Activity will take all reasonable measures to protect Extreme's Intellectual Property Rights in any Product. Except as expressly provided herein, Ordering Activity is not granted any right to any Intellectual Property Rights with respect to any Product.

9.2 License. All Releases provided under the Services are licensed subject to the terms and conditions of the then-current Software license agreement for such Software Product in effect at the time the Release is provided.

10. Warranty. All Updates provided hereunder are warranted for the remaining warranty period of the original Software Product, if any, as specified in the warranty card which shipped with the original Software Product. All Upgrades are warranted as set forth in the warranty card for such Upgrade. Replacement Products provided under the Services are warranted for the remaining warranty period of the original Product, if any, as specified in the warranty card which shipped with the original Product. Nothing in the Services shall be construed as expanding or adding to the warranty set forth on the warranty card. Extreme will use all reasonable commercial efforts to provide the support requested by Ordering Activity under this Agreement in a professional and workmanlike manner. In the event that Extreme fails to meet this warranty, Extreme may reperform the Services, but Extreme cannot guarantee that every question or problem raised by Ordering Activity will be resolved. EXTREME WARRANTS THE SERVICES ONLY TO ORDERING ACTIVITY AS THE END USER PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. EXCEPT AS SET FORTH ABOVE, EXTREME MAKES, AND ORDERING ACTIVITY RECEIVE, NO OTHER WARRANTIES OF ANY KIND. EXTREME EXPRESSLY DISCLAIMS ALL WARRANTIES, TERMS AND CONDITIONS, WHETHER EXPRESS, IMPLIED (in fact or by operation of law), STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, TERM OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, CORRESPONDENCE WITH DESCRIPTION, ABSENCE OF HIDDEN DEFECTS, ANY WARRANTY OF NON-INFRINGEMENT, AND ANY WARRANTY, TERM OR CONDITION THAT MAY ARISE BY REASON OF USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR COURSE OF PERFORMANCE.

FEND INC.  
4600 FAIRFAX DR, SUITE 410  
ARLINGTON, VA 22203

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Fend Incorporated ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.



- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**FEND INCORPORATED - TERMS AND CONDITIONS OF SALE (HARDWARE)**

**4600 FAIRFAX DRIVE, SUITE 410 • ARLINGTON, VA 22203**

TEL 571-970-1382

. Typographical and/or clerical errors are subject to correction at any time. The following terms and conditions apply unless otherwise stipulated in the quotation. This quote is not an invoice.

**Payment:** Unless payment terms are otherwise stipulated on the front of an invoice, payment is due upon delivery within thirty (30) days of the invoice receipt date. If any payment is not made when due, interest at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. Any change in liability for debts incurred due to a change in the Buyer's form of business shall not be effective until Fend Incorporated receives notice of the change by certified mail.

**Title** to products sold by Fend Incorporated passes to the buyer upon acceptance in accordance with FAR 552.212-4(n).

**Claims** of a shortage, misshipment, or damaged goods must be received in writing by Fend Incorporated within 5 business days of Buyer's receipt of the goods or the goods will be deemed delivered and accepted as of the invoice date, subject to the Inspection/Acceptance provisions of FAR 552.212-4(a).

**Delivery:** Shipments of all products are subject to availability. Fend Incorporated will make every reasonable effort to meet quoted or acknowledged delivery date(s). Excusable delays shall be governed by FAR 552.212-4(f). Buyer agrees to accept delivery within ten (10) days of notice that its products are available.

**Warranties:** Fend Incorporated provides a limited 1-year warranty for all its products from the date of shipment FOB Arlington, Virginia. Fend Incorporated warrants, that at the time of delivery, the goods shipped under this agreement are in accordance with Fend Incorporated's published specifications or are in accordance with "agreed to" written customers' specifications. The warranty delivered to Fend Incorporated by the manufacturer of components used in Fend Incorporated's manufacturing, or other vendor thereof, shall be assigned to the Buyer, to the extent such assignment is permitted by the terms thereof. Notwithstanding the foregoing, no such warranty shall apply to any goods which have been altered or repaired, except by Fend Incorporated or the manufacturer, or which have been subjected to misuse, negligence or accident. Such warranties are expressly in lieu of any other, and Fend Incorporated makes no other warranty, expressed or implied, with respect to the goods, and in particular. Fend incorporated disclaims any warranty with respect to the merchantability of such goods or the fitness of such goods for a particular purpose or use. In no event will Fend Incorporated be liable for indirect, special, or consequential damages, including lost profits, even when Fend Incorporated has been advised of the possibility of such damages. The Buyer agrees that Fend Incorporated's liability for any allegedly defective product and/or service shall not exceed the Buyer's purchase price or the fair market value of the product at the time the defect is reported, whichever is less.

**Returns** must be authorized in advance. Shipping changes are the responsibility of the Buyer. Fend Incorporated may replace the item, provide credit towards the Buyer's next purchase, or a refund of the purchase price, at its option (see **Payment** above). NO returns will be allowed after 30 days.

**Reserved**

**Order of Precedence:** Buyer's signature represents acceptance of these Terms and Conditions of Sale and any attachments, which together constitute the entire understanding between the parties and supersede and previous communications, representations, or agreements by either party, whether verbal or written. No change or modification of any of the terms or conditions herein shall be valid or binding on either party unless in writing and signed by an authorized representative of each party. Other than the GSA Scheule Contract, These Terms and Conditions of Sale and any attachments take precedence over Buyer's additional or different terms and conditions, to which notice of objection is hereby given.

Neither Fend Incorporated commencement of performance nor delivery shall be deemed or construed, as acceptance of Buyer's additional or different terms.

**Export:** Fend products are intended for installation and use in the United States and countries approved for export. Buyer acknowledges that Fend products are subject to U.S. export control and sanctions laws and regulations, including, without limitation, the Export Administration Regulations (15 C.F.R. §§ 730-774), and the regulations, rules, and executive orders administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") (collectively, the "Export Controls and Sanctions Laws"). Buyer agrees to comply with all Export Controls and Sanctions Laws applicable to Fend products and shall not take any action that will cause Fend to violate or be subject to penalty under any Export Controls and Sanctions Laws.

In particular, Buyer warrants and covenants that it:

- (a) will not, directly or indirectly, export, reexport, or transfer Fend products to, or transship Fend products through, a country against which the United States maintains economic sanctions or embargoes (hereinafter, "Sanctioned Country");
- (b) will not, directly or indirectly, export, reexport, sell, lease, transfer, or otherwise assign the rights to Fend products to a Prohibited Person;
- (c) will not use Fend products to produce products that will be shipped, sold, or supplied, directly or indirectly, to a Sanctioned Country or a Prohibited Person.
- (d) will not, directly or indirectly, export, reexport, or transfer Fend products to any party or destination without obtaining or relying upon any necessary authorization under applicable Export Controls and Sanctions Laws, including, but not limited to, a general license, specific license, or license exception; and
- (e) will not, directly or indirectly, export, reexport, transfer, sell, or use Fend products in support of activities, end-uses, or end-users prohibited by applicable Export Controls and Sanctions Laws

"Prohibited Person" means (i) any individual or entity that has been determined by competent authority to be the subject of a prohibition in any law, regulation, rule, or executive order administered by OFAC or the U.S. Department of State; (ii) the government, including any political subdivision, agency, or instrumentality thereof, of any Sanctioned Country; (iii) any individual or entity that acts on behalf of or is owned or controlled by the government of a Sanctioned Country; (iv) any individual or entity that has been identified on the OFAC Specially Designated Nationals and Blocked Persons List (Appendix A to 31 C.F.R. Ch. V) or the OFAC Consolidated Sanctions List, as amended from time to time, or any entity that is directly or indirectly owned 50% more (individually or in the aggregate) or otherwise controlled by individuals or entities identified on either list; or (v) any individual or entity that has been designated on any similar list or order published by the United States government, including, without limitation, the Denied Persons List, Entity List, or Unverified List of the U.S. Department of Commerce, or the Debarred List or Nonproliferation Sanctions List of the U.S. Department of State.

**Limitations on Reverse Engineering, Decompilation, Disassembly, or Modification.** Buyer may not reverse engineer, decompile, or disassemble or otherwise attempt to discover the hardware, source code, or underlying ideas or algorithms of the hardware, firmware, or software or modify, adapt, translate, recast, alter, or create derivative works from the hardware, firmware, or software or any portion of it, or provide or disclose any such hardware, firmware, or software or any portion of it to any third party, except and only to the extent that such activity is expressly permitted by applicable law, or by prior written approval of Fend (which approval may be conditioned, restricted, or denied in the sole discretion of Fend), notwithstanding this limitation.

**End Use Certification.** Buyer represents that they are the end-user of the product. Product may not be resold, transferred, or otherwise disposed of to any other organization or person other than authorized end-user(s), either in its original form or after being incorporated into other items, unless intent to distribute/resell is made known in writing to Fend at the time of purchase. Such intention to distribute/resell may be conditioned, restricted, or denied at the sole discretion of Fend.

**Cloud Services:** These terms do not govern the provision by Fend Incorporated, or purchase by Buyer, of any cloud software or associated services. The Parties acknowledge and agree that any provision or purchase of cloud software or associated services from Fend shall be governed by a separate agreement between the Parties.

**Miscellaneous:** This Agreement is made in, and is governed by the Federal laws of the United States. The Buyer's remedies herein are exclusive. Any provision hereof which is invalid under an applicable statute or rule of law should be curtailed and limited only to the extent necessary to bring it within the requirements of the law. All other provisions of this Agreement shall remain in full force and effect.

**FEND INCORPORATED CUSTOMER TERMS AND CONDITIONS (SOFTWARE AND CLOUD PRODUCTS)**

Last Modified: 7/23/2021

These Customer Terms and Conditions (this "**Agreement**"), effective [DATE] (the "**Effective Date**"), is by and between Fend Incorporated, a Virginia corporation ("**Fend**") and the Ordering Activity under GSA

Schedule contracts identified in the Purchase Order ("**Customer**"). The individual accepting this Agreement hereby represents and warrants that it is duly authorized by the entity on whose behalf it accepts this Agreement to so accept this Agreement. Fend and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

These terms do not govern the provision by Fend, or purchase by Customer, of any hardware. The Parties acknowledge and agree that any provision or purchase of hardware from Fend shall be governed by a separate agreement between the Parties.

The Parties agree as follows:

1.

Definitions.

- 1.1 "**Authorized User**" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Platform under the rights granted to Customer pursuant to this Agreement; and (ii) for whom access to the Platform has been purchased hereunder.
- 1.2 "**Customer Data**" means information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Platform; provided that, for purposes of clarity, Customer Data does not include Derivative Data.
- 1.3 "**Derivative Data**" means data and information related to or derived from Customer Data or Customer's use of the Platform that has been aggregated and/or anonymized by Fend.
- 1.4 "**Documentation**" means Fend's end user documentation relating to the Platform available at <https://app.fend.tech/support>.
- 1.5 "**Fend IP**" means the Platform, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Fend IP includes Derivative Data and any information, data, or other content derived from Fend's provision of the Platform but does not include Customer Data.
- 1.6 "**Harmful Code**" means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data processed thereby.
- 1.7 "**Order**" means: (i) the purchase order, order form, or other ordering document entered into by the Parties that incorporates this Agreement by reference; or (ii) if Customer registered for the Platform through Fend's online ordering process, the results of such online ordering process.
- 1.8 "**Personal Information**" means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located, including without limitation all data considered "personal data", "personally identifiable information", or something similar under applicable laws, rules, or regulations relating to data privacy.
- 1.9 "**Platform**" means Fend's proprietary hosted software platform, as made available to Authorized Users from time to time.
- 1.10 "**Subscription Period**" means the time period identified on the Order during which Customer's Authorized Users may access and use the Platform.
- 1.11 "**Third-Party Products**" means any third-party products provided with, integrated with, or incorporated into the Platform.
- 1.12 "**Usage Limitations**" means the usage limitations set forth in this Agreement and the Order, including without limitation any limitations on the number of Authorized Users (if any), and the applicable product, pricing, and support tiers agreed-upon by the Parties.

2.

Access and Use.

- 2.1 Provision of Access. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, including without limitation the Usage Limitations, Fend will make available to Customer during the Subscription Period, on a non-exclusive, non-transferable (except in compliance with [Section 13.8](#)), and non-sublicensable basis, access to and use of the Platform, solely for use by Authorized Users. Such use is limited to Customer's internal business purposes and the features and functionalities specified in the Order. Each Authorized User must have its own unique account on the Platform and Authorized Users may not share their account credentials with one another or any third party. Customer will be responsible for all of the acts and omissions of its Authorized Users in connection with this Agreement and for all use of Authorized Users' accounts.
- 2.2 Documentation License. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, Fend hereby grants to Customer a non-exclusive, non-transferable (except in compliance with [Section 13.8](#)), and non-sublicensable license to

use the Documentation during the Subscription Period solely for Customer's internal business purposes in connection with its use of the Platform.

- 2.3 **Use Restrictions.** Customer shall not use the Platform for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of any Fend IP, whether in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Platform or Documentation to any third party; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Platform, in whole or in part; (iv) remove any proprietary notices from any Fend IP; (v) use any Fend IP in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; (vi) access or use any Fend IP for purposes of competitive analysis of Fend or the Platform, the development, provision, or use of a competing software service or product, or any other purpose that is to Fend's detriment or commercial disadvantage; (vii) bypass or breach any security device or protection used by the Platform or access or use the Platform other than by an Authorized User through the use of valid access credentials; or (viii) input, upload, transmit, or otherwise provide to or through the Platform any information or materials that are unlawful or injurious, or that contain, transmit, or activate any Harmful Code.
- 2.4 **Reservation of Rights.** Fend reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Fend IP.
- 2.5 **Suspension.** Notwithstanding anything to the contrary in this Agreement, Fend may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Platform if: (i) Fend reasonably determines that (A) there is a threat or attack on any of the Fend IP; (B) Customer's or any Authorized User's use of the Fend IP disrupts or poses a security risk to the Fend IP or to any other customer or vendor of Fend; (C) Customer, or any Authorized User, is using the Fend IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; (E) Reserved; or (F) Fend's provision of the Platform to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Fend has suspended or terminated Fend's access to or use of any Third-Party Products required to enable Customer to access the Platform; or (iii) in accordance with [Section 5.1](#) (any such suspension described in subclause (i), (ii), or (iii)), a "**Service Suspension**"). Fend shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Platform following any Service Suspension. Fend shall use commercially reasonable efforts to resume providing access to the Platform as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Fend will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.
- 2.6 **Derivative Data.** Notwithstanding anything to the contrary in this Agreement, Fend may monitor Customer's use of the Platform and collect and compile Derivative Data. As between Fend and Customer, all right, title, and interest in Derivative Data, and all intellectual property rights therein, belong to and are retained solely by Fend. Customer acknowledges that Fend may compile Derivative Data based on Customer Data input into the Platform. Notwithstanding anything to the contrary in this Agreement, Customer acknowledges that Fend may use and disclose Derivative Data for any lawful purpose.

### 3. Customer Responsibilities.

- 3.1 **General.** Customer is responsible and liable for all uses of the Platform and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Platform and shall cause Authorized Users to comply with such provisions.
- 3.2 **Third-Party Products.** Fend may from time to time make Third-Party Products available to Customer or Fend may allow for certain Third-Party Products to be integrated with the Platform to allow for the transmission of Customer Data from such Third-Party Products into the Platform. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products.
- 3.3 **Customer Control and Responsibility.** Customer has and will retain sole responsibility for: (i) all Customer Data, including its content and use; (ii) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Platform; (iii) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party Platform ("**Customer Systems**"); (iv) the security and use of Customer's and its Authorized Users' access credentials; and (v) all access to and use of the Platform directly or indirectly by or through the Customer Systems or its or its Authorized Users' access credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

4. **Support.** During the Subscription Period, Fend will use commercially reasonable efforts to provide Customer with basic customer support via Fend's standard support channels during Fend's normal business hours.

### 5. Fees and Taxes.

- 5.1 **Fees.** The Platform may be provided for a fee or other charge. Customer shall pay Fend the fees ("**Fees**") identified in the Order in accordance with the GSA Schedule Pricelist without offset or deduction at the cadence identified in the Order (e.g., monthly or annually). Customer shall make all payments hereunder in US dollars by ACH or line credit or debit card payment via the link provided in the applicable invoice to such account as Fend may specify in writing from time to time, or by another mutually agreed-upon payment method. If Customer pays online via credit or debit card, Customer agrees that there are different applicable terms of Fend's third-party payment processors. If Customer fails to make any payment when due, and Customer has not notified Fend in writing within ten (10) days of the payment becoming due and payable that the payment is subject to a good faith dispute, without limiting Fend's other rights and remedies: (i) Fend may charge interest on the undisputed past due amount at the interest rate established by the Secretary of the

Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

- 5.2 Taxes. Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k).

6. Confidential Information.

- 6.1 Definition. From time to time during the Subscription Period, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media that: (i) is marked, designated or otherwise identified as "confidential" or something similar at the time of disclosure or within a reasonable period of time thereafter; or (ii) would be considered confidential by a reasonable person given the nature of the information or the circumstances of its disclosure (collectively, "**Confidential Information**"). Except for Personal Information, Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party without use of, reference to, or reliance upon the disclosing Party's Confidential Information. 6.2 Duty. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees, contractors, and agents who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder ("**Representatives**"). The receiving Party will be responsible for all the acts and omissions of its Representatives as they relate to Confidential Information hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. Further, notwithstanding the foregoing, each Party may disclose the terms and existence of this Agreement to its actual or potential investors, debtholders, acquirers, or merger partners under customary confidentiality terms. Fend recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

6.3 Return of Materials; Effects of Termination/Expiration. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-use and non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire three (3) years from the date of termination or expiration of this Agreement; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7. Personal Information. Customer agrees that it shall not, without the prior written consent of Fend, disclose or make available any Personal Information in connection with the Services.

8. Intellectual Property Ownership; Feedback.

- 8.1 Fend IP. Customer acknowledges that, as between Customer and Fend, Fend owns all right, title, and interest, including all intellectual property rights, in and to the Fend IP and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.
- 8.2 Customer Data. Fend acknowledges that, as between Fend and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Fend a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Fend to provide the Platform, and a non-exclusive, perpetual, irrevocable, royaltyfree, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Derivative Data. Customer may export the Customer Data at any time through the features and functionalities made available via the Platform.
- 8.3 Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Fend by mail, email, telephone, or otherwise, suggesting or recommending changes to the Fend IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Fend is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback.

9. Warranty Disclaimer. FEND WARRANTS THAT THE THE FEND IP WILL, FOR A PERIOD OF SIXTY(60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE FEND IP WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE FEND IP IS PROVIDED "AS IS" AND FEND HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. FEND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FEND MAKES NO WARRANTY OF ANY KIND THAT THE FEND IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER PLATFORM, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

10. Indemnification.

10.1 Fend Indemnification.

- (a) Fend shall indemnify, have the right to intervene to defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Platform, or any use of the Platform in accordance with



this Agreement, infringes or misappropriates such third party's US copyrights or trade secrets; provided that Customer promptly notifies Fend in writing of the claim, cooperates with Fend, and allows Fend sole authority to control the defense and settlement of such claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

(b) If such a claim is made or appears possible, Customer agrees to permit Fend, at Fend's sole discretion: to (i) modify or replace the Platform, or component or part thereof, to make it noninfringing; or (ii) obtain the right for Customer to continue use. If Fend determines that neither alternative is reasonably commercially available, Fend may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(c) This Section 10.1 will not apply to the extent that the alleged infringement arises from: (i) use of the Platform in combination with data, software, hardware, equipment, or technology not provided by Fend or authorized by Fend in writing; (ii) modifications to the Platform not made by Fend; (iii) Customer Data; or (iv) Third-Party Products.

10.2 Reserved.

10.3 Sole Remedy. THIS SECTION 10.3 SETS FORTH CUSTOMER'S SOLE REMEDIES AND FEND'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE PLATFORM INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL FEND'S AGGREGATE LIABILITY UNDER THIS SECTION 10 EXCEED THE TOTAL AMOUNTS PAID TO FEND.

11. Limitations of Liability. IN NO EVENT WILL FEND BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER FEND WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL FEND'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO FEND UNDER THIS AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

12. Subscription Period and Termination.

12.1 Subscription Period. The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect for the period identified in the Order (the "**Initial Subscription Period**"). This Agreement may be renewed for additional successive terms equal to the length of the Initial Subscription Period by executing a written order for the additional successive term (each a "**Renewal Subscription Period**" and together with the Initial Subscription Period, the "**Subscription Period**").

12.2 Termination. In addition to any other express termination right set forth in this Agreement:

(a) When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Fend shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer; (b) reserved; or (c) reserved.

12.3 Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Fend IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Fend IP and certify in writing to the Fend that the Fend IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

12.4 Survival. This Section 12.4 and Sections 1, 5, 6, 8, 9, 10, 11, 12.3, and 13 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

13. Miscellaneous.

13.1 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement; and (ii) second, any other documents incorporated herein by reference.

13.2 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

13.3 Force Majeure. Excusable delays shall be governed by FAR 552.212-4(f).

- 13.4 Amendment and Modification. Fend may change this Agreement (except for any Orders) from time to time at its discretion. The date on which the Agreement was last modified will be updated at the top of this Agreement. Fend will provide Customer with reasonable notice prior to any amendments or modifications taking effect, either by emailing the email address associated with Customer's account on the Platform or by another method reasonably designed to provide notice to Customer. If Customer accesses or uses the Platform after the effective date of the revised Agreement, such access and use will constitute Customer's acceptance of the revised Agreement beginning at the next Renewal Subscription Period or, if Customer enters into a new Order with Fend, as of the date of execution of such Order.
- 13.5 Waiver. No failure or delay by either Party in exercising any right or remedy available to it in connection with this Agreement will constitute a waiver of such right or remedy. No waiver under this Agreement will be effective unless made in writing and signed by an authorized representative of the Party granting the waiver.
- 13.6 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 13.7 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the Federal laws of the United States.
- 13.8 Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Fend. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.
- 13.9 Export Regulation. The Platforms utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export, or release the Platform or the underlying software or technology to, or make the Platform or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Platform or the underlying software or technology available outside the US.
- 13.10 US Government Rights. Each of the Documentation and the software components that constitute the Platform is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Platform and Documentation as are granted to all other end users, in accordance with 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.
- 13.11 Reserved.
- 13.12 Publicity. Fend may identify Customer as a user of the Platform and may use Customer's name, in Fend's customer list, press releases, blog posts, advertisements, and website (and all use thereof and goodwill arising therefrom shall inure to the sole and exclusive benefit of Customer) to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Otherwise, neither Party may use the name, logo, or other trademarks of the other Party for any purpose without the other Party's prior written approval.

**FORCEPOINT LLC.  
10900-A STONELAKE BLVD, 3RD FLOOR  
AUSTIN, TX 78759**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Forcepoint LLC.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the

clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**FORCEPOINT, LLC.**

**FORCEPOINT, LLC. LICENSE, WARRANTY AND SUPPORT TERMS**

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## FORCEPOINT LICENSE AGREEMENT

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN ("AGREEMENT") BETWEEN LICENSEE AND FORCEPOINT. BY ACCEPTING THIS AGREEMENT BY EXECUTING A WRITTEN ORDER UNDER A GSA SCHEDULE CONTRACT, LICENSEE ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND HAS THE AUTHORITY TO ENTER INTO AND AGREES TO BE BOUND BY THIS AGREEMENT. TO THE EXTENT CUSTOMER IS A PUBLIC SECTOR ENTITY (AS DEFINED BELOW) PURCHASING SUBSCRIPTIONS OR LICENSES TO PRODUCTS THROUGH A U.S. GOVERNMENT PROCUREMENT CONTRACT (AS DEFINED BELOW) OF AN AUTHORIZED FORCEPOINT DISTRIBUTOR OR RESELLER THAT IDENTIFIES SUCH PURCHASE IS OCCURRING UNDER SUCH CONTRACT, THE AGREEMENT IS SUPPLEMENTED BY THE PUBLIC SECTOR ADDENDUM ATTACHED HERETO ("ADDENDUM").

### 1. Definitions.

**"Application" or "App"** means a third-party cloud-based computing application identified at the time of Product implementation.

**"Bulk Mail"** means a large number of email messages with similar content sent or received in a single operation or a series of related operations.

**"Cloud Services"** means one or more of Forcepoint's cloud-based service offerings that have been included in an Order, including their associated components, content, updates, and upgrades thereto (but excludes products for which Forcepoint generally charges a separate fee), if any, and any reports generated as a result of use that are made available to Licensee. **"Databases"** means proprietary database(s) of URL addresses, email addresses, Malware, applications, analytical models, and other valuable information.

**"Database Updates"** means changes to the content of the Databases.

**"Device" or "Seat"** means each computer (whether physical or virtual), electronic appliance or device that is authorized to access or use the Products, directly or indirectly.

**"Documentation"** means the Product installation instructions, user manuals, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.

**"Error"** means a material failure of the Product to conform to the Documentation, which is reported by Licensee and replicable by Forcepoint.

**"Fees"** means collectively the License Fees and the Maintenance Fees.

**"Forcepoint"** means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3<sup>rd</sup> Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.

**"License"** means the limited, personal, non-sublicensable, non-exclusive, nontransferable right to use the Software (including the Database, if any) for the term set forth in the Order, and use the output of the Services Offerings, in accordance with this Agreement and the Order.

**"License Fees"** means the agreed upon license fees for the Software included in an Order.

**"Licensee"** means the Ordering Activity under GSA Schedule Contracts that has placed an Order, is the ultimate end user of the Products, and if enrolling in Cloud Services, has registered its details on the Forcepoint portal

**"Maintenance"** means a limited-term, non-exclusive, non-sublicensable, nontransferable right to: (a) receive Technical Support, and (b) access Cloud Services (when set forth in the Order), in accordance with this Agreement and the Order.

**"Maintenance Fees"** means the agreed upon fees for the Maintenance in an Order.

**"Maintenance Term"** means the agreed upon time period for the provision of Maintenance in an Order.

**"Malware"** means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.

**"Node"** means any kind of computer, electronic appliance, or device capable of processing data, including without limitation diskless workstations, personal computer workstations, networked computer workstations, homemaker/teleworker home-based systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANs), terminal servers or portable workstations connected or connecting to the server(s) or network that is authorized to access or use the Products, directly or indirectly. In the case of a virtual system, each virtual machine or instance running the Product is a Node.

**"Open Relay"** means an email server configured to receive email from an unauthorized third-party and that forwards the email to other recipients who are not part of the server's email network.

**"Order"** means a purchase commitment mutually agreed upon between (i) Forcepoint and Licensee, or (ii) a Forcepoint authorized reseller and Licensee.

**"Permitted Capacity"** means the number of Devices, Nodes, Seats, Users, or other license metrics as set forth in the Order. **"Products"** means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, Technical Support, Cloud Services, and Services Offerings.

**"Services Fees"** means the agreed upon fees in an Order for the Services Offerings.

**"Services Offerings"** means Forcepoint's professional services offerings described in a Forcepoint published services datasheet or services proposal.

**"Software"** means Forcepoint's proprietary software applications, in object code only.

**"Software Upgrades"** means certain modifications or revisions to the Software and/or the Database, provided solely pursuant to Maintenance, but excludes products for which Forcepoint generally charges a separate fee.

**"Spam"** means a large number of unsolicited email messages (typically over 500 per month) with similar content sent or received in a single operation or a series of related operations.

**"Technical Support"** means the support level purchased pursuant to an Order as further described in Section 5, including if and when available: (i) Error corrections or workarounds so that the Products operate in substantial conformance with the Documentation, and (ii) the provision of Database Updates and Software Upgrades.

**"User"** means (i) any person utilizing Licensee's network with access to the Products directly or indirectly, who is an employee, temporary employee, customer, contractor, or guest of Licensee; or (ii) for Cloud Services a separate email address or account that receives electronic

messages or data within Licensee's email system or network. For the Cloud Services email solutions, up to five aliases may be considered one User. The total number of concurrent browser sessions open for targeted mode Users may not exceed 10% of the Permitted Capacity.

“Web Content” means any data and requests for data processed by Cloud Services including but not restricted to that accessed using the Internet protocols HTTP and FTP.

**2. Software License.** Subject to the provisions contained in this Agreement, and timely payment of the applicable Fees,

Forcepoint hereby grants Licensee a License to use the Software, and Software Upgrades provided pursuant to Maintenance (including any output of the Services Offerings), identified in the Order solely for Licensee's internal business purposes up to the Permitted Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees, Forcepoint will provide Licensee with Maintenance. Subject to compliance with the terms of this Agreement, Licensee may relocate or transfer the on-premise Product for use on a different server within its location. Licensee will not and may not permit any third party to copy the on-premise Products, other than copies made solely for data backup and internal testing purposes. Any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Forcepoint may make changes to the Products at any time without notice. In the event that Forcepoint makes a material change to the Product that diminishes functionality of the Product Ordering Licensee has contracted for, Licensee shall be entitled to a pro rata refund for any fees paid not used. Licensee understands that its right to use the Products is limited by the Permitted Capacity purchased, and Licensee use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum amounts that Licensee has committed to for the Maintenance Term. If Licensee's use exceeds the Permitted Capacity, Licensee must purchase additional Permitted Capacity sufficient for the excess use.

**3. Provision of Cloud Services.**

- 3.1 Forcepoint will use reasonable efforts to provide Cloud Services for the Maintenance Term. The then-current Cloud Services service levels are incorporated by reference into this Agreement and are attached hereto in the [Cloud Services Service](#)

[Level Agreement](#). Forcepoint makes no service level commitments when Cloud Services are used in connection with Bulk Mail.

Forcepoint makes no service level commitments for the Cloud Services' functionality to the extent it is used to monitor access to third-party services where the continued availability of the functionality is adversely impacted by the third-party's access policies.

- 3.2 If Forcepoint determines that the Products are being used to distribute Spam or Malware, or that the security or proper function of Cloud Services would be compromised due to hacking, denial of service attacks or other activities originating from or directed at Licensee's network, then Forcepoint may immediately suspend Cloud Services until the problem is resolved. Forcepoint will promptly notify and work with Licensee to resolve the issues.
- 3.3 If Cloud Services are suspended or terminated, Forcepoint will reverse all configuration changes made during Cloud

Services enrollment. It is Licensee's responsibility to make the server configuration changes necessary to reroute any email, Web Content, and traffic flowing through the Cloud Services.

- 3.4 Forcepoint may modify, enhance, replace, or make additions to the Products. Forcepoint may use Malware, Spam, and other information passing through the Products for the purposes of developing, analyzing, maintaining, reporting on, and enhancing the Products and services.
- 3.5 Prior to enrollment in Cloud Services and at any time during the Maintenance Term, Forcepoint may test whether

Licensee's email system is acting as an Open Relay. If Forcepoint finds the system is an Open Relay, Forcepoint will inform Licensee and may suspend the applicable Cloud Services until the problem is resolved.

- 3.6 If in any one calendar month the total number of emails processed in performance of Cloud Services for inbound and outbound scanning of email traffic divided by the Permitted Capacity is greater than either: (i) 10,000 emails per User, then Licensee will make reasonable efforts to implement and maintain an accurate list of all valid email addresses belonging to Licensee for which Cloud Services scan inbound or outbound email; or (ii) 30,000 emails per User, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days' written notice unless Licensee purchases Licenses to increase the Permitted Capacity.
- 3.7 If in any one calendar month the total bandwidth used in the performance of Cloud Services for web access filtering divided by the Permitted Capacity is greater than 0.02Mbps, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days' written notice unless Licensee purchases Licenses to increase the Permitted Capacity.
- 3.8 If in any one calendar month the total bandwidth used in the performance of Cloud Services for security access policy enforcement solution divided by the number of Devices or Users is greater than 0.02Mbps, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days' written notice unless Licensee purchases Licenses to increase the Permitted Capacity.
- 3.9 If in any one calendar month the total throughput including data sent and received through Cloud Services for internet and internal application access policy enforcement divided by the number of Users is greater than 10 Gigabytes per User, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days prior written notice unless Licensee purchases additional Permitted Capacity.

**4. Licensee Obligations.**



- 4.1 Licensee will (i) comply with all applicable laws, statutes, regulations and ordinances, (ii) only use the Products for legitimate business purposes that may include sending and receiving business and personal email or Web Content by its employees, and (iii) not use the Products to construct or transmit Spam, Malware, or excessive email.
  - 4.2 Licensee acknowledges that certain Products may be configured by Licensee to capture files for submission to other Products for Malware analysis. The Product analyzing files may archive Malware code extracted from such files. If Licensee downloads such extracted Malware code, Licensee recognizes the risk associated with Malware code, and any use by Licensee of Malware code is at Licensee's sole risk and liability.
  - 4.3 Licensee acknowledges that the scoring and content by some Products is based on available information at the time it is gathered and may be incomplete, misinterpreted, and is subject to change at any time. As such it is provided for informational purposes only, and Licensee is solely responsible for decisions Licensee makes regarding its use of Applications or services based on such information.
  - 4.4 Licensee is responsible for (i) having the authority, rights, or permissions to use all domains registered to the Products, (ii) obtaining any necessary consents from its employees, (iii) maintaining all necessary rights to access Application(s), and (iv) maintaining all permissions, authorizations, licenses, and approvals to access and use the data and information inputted, displayed, or processed (including all output and data developed or derived) as a result of Licensee's use of the Products to access and use data sources and systems.
  - 4.5 Reserved.
  - 4.6 Licensee will cooperate with Forcepoint personnel providing any Services Offerings, and to provide reasonable assistance, including: (i) gathering relevant supporting documentation; (ii) ensuring appropriate Licensee personnel are assigned to the project and are able to devote sufficient time to facilitate the project; (iii) granting resource access to information, systems, and licenses related to the scope of the project; (iv) providing building and network access before, during, and after normal business hours, work space, and workstations for each of the Forcepoint personnel, logon IDs and security access to all required Products, and adequate test environment, and any reasonable and appropriate data to perform the Services Offerings.
- 5. Technical Support.**
- 5.1 Technical Support is provided under the then-current Forcepoint technical support policies, as described at: [Technical Support Description](#). Technical Support, Database Updates and Software Upgrades will be provided to Licensee only if Licensee has paid the applicable Maintenance Fees. Forcepoint may require Licensee to install Software Upgrades up to and including the latest release.
  - 5.2 Forcepoint's obligation to provide Technical Support is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which technical support is provided; (iii) Licensee's use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via Technical Support but will not have any obligation to correct such Error in prior versions.
  - 5.3 Technical Support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product. Forcepoint reserves the right to terminate the Maintenance or increase the associated fees upon 60 days' notice should Licensee not stay current with a supported release in accordance with this Section.
- 6. Intellectual Property Rights.** All right, title, and interest in and to the Products, any modifications, translations, or derivatives thereof including any related scripts, tools, and know-how and all applicable intellectual property and proprietary rights thereto remain exclusively with Forcepoint or its licensors. The Products may include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement but are third-party beneficiaries of this Agreement. Forcepoint owns any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee relating to the Products. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights, and all rights not expressly granted to Licensee in this Agreement are reserved to Forcepoint and its licensors. Licensee may not remove any proprietary notice of Forcepoint or any third-party from the Products or any copy of the Products, without Forcepoint's prior written consent.
- 7. Protection and Restrictions.**
- 7.1 Each party (the "Disclosing Party") may disclose to the other (the "Receiving Party") certain confidential technical and business information that the Disclosing Party desires the Receiving Party to treat as confidential. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation prototypes, technical data, trade secrets and know-how, product plans, Products, customer lists and customer information, prices and costs, databases, inventions, processes, hardware configuration information, finances, budgets and other business information), which is designated as "Confidential," "Proprietary" or some similar designation at or prior to the time of disclosure, or that should

otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties. Confidential Information will not, however, include any information that the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. The Receiving Party will treat all Confidential Information of the Disclosing Party as non-public confidential information and will not disclose it to any person other than Disclosing Party and employees and contractors of Receiving Party on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Licensee's use of the Products to process data is not a disclosure of Confidential Information to Forcepoint for purposes of this Section. Furthermore, neither party will use the Confidential Information of the other party for any purpose other than carrying out its rights and obligations under this Agreement. Forcepoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

- 7.2 Licensee will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure, or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized use or copying is harmful to Forcepoint. Licensee may use the Products only for the internal business purposes of Licensee. Licensee may not assign more than 20 administrators to administer certain Forcepoint products. Licensee will not itself, or through any affiliate, employee, consultant, contractor, agent or other third-party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Licensee's employees and contractors who have a need to such access and who will be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third-parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Forcepoint's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the same except as expressly permitted herein; (ix) use any third-party software included in the Products independently from the Forcepoint proprietary Products. Subject to the terms of this Agreement, Licensee may allow its agents and independent contractors to use the Products solely for the benefit of Licensee; provided, however, Licensee remains responsible for any breach of this Agreement. Any other use of the Products by any other entity is forbidden and a violation of this Agreement. Licensee must not use the Products to filter, screen, manage or censor Internet content for consumers without permission from the affected consumers and Forcepoint's express prior written approval, which may be withheld in Forcepoint's sole discretion. If any additional third-party end-user license agreement or open source software license agreement is (a) attached to this Agreement or the Order, or (b) included in the Product "about" file, "readme" file or Documentation, then Licensee's use of the third-party software is further restricted by and subject to such license.

8. **Financial Terms.** Fees and payment terms are specified in the applicable Order in accordance with the GSA Schedule Pricelist. Except as otherwise expressly specified in the Order: (i) all recurring payment obligations start from the receipt of the Order; (ii) when the Order is placed directly with Forcepoint fees must be paid within 30 days after the invoice receipt date; (iii) upon the expiration of each Maintenance Term, the Maintenance Fees will be Forcepoint's then-current GSA Schedule Pricelist for such Products; and (iv) interest accrues on past due balances at the highest rate allowed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Forcepoint's reasonable travel and lodging expenses incurred in the performance of services on Licensee's site will be billed separately at actual cost in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. Vendor shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

9. **Limited Warranty; Remedies; Disclaimer.**

- 9.1 For 90 days beginning on the date of the Order for the License, Forcepoint warrants that the Products (other than Services

Offerings), as updated from time to time by Forcepoint and used in accordance with the Documentation and the Agreement by Licensee, will operate in substantial conformance with the Documentation under normal use ("Warranty Period"). Forcepoint warrants that Services Offerings will be performed in a professional and workmanlike manner and Forcepoint will comply with all applicable laws in providing the Services Offerings. Forcepoint does not warrant that: (A) the Products will (i) be free of defects, (ii) satisfy Licensee's requirements, (iii) operate without

interruption or error, (iv) always locate or block access to or transmission of all desired addresses, emails, Malware, applications and/or files, or (v) identify every transmission or file that should potentially be located or blocked; (B) data contained in the Databases will be (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate; or (C) data contained in and risk scoring from the Cloud Services will be complete or interpreted correctly.

9.2 Licensee must promptly notify Forcepoint during the Warranty Period in writing of a claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint's responsibility, Forcepoint will, within 30 days of its receipt of Licensee's written notice, (i) correct the Error or provide a workaround; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable efforts from Forcepoint at Forcepoint's discretion, then Forcepoint may terminate the affected Product License and Licensee will be entitled to a refund of the Fees paid for the affected Product. This paragraph sets forth Licensee's sole and exclusive remedy and Forcepoint's entire liability for any breach of warranty or other duty related to the Products.

9.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) use of the Products inconsistent with the accompanying Documentation, (iii) Licensee's failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) breach of this Agreement by Licensee or its users.

9.4 THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, AND FORCEPOINT, ITS LICENSORS

AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

**10. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; (IV) LICENSEE'S DECISIONS BASED ON ITS INTERPRETATION OF THE OUTPUT FROM THE PRODUCTS; NOR (V) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD-PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE LICENSEE'S APPLICABLE LICENSE TO THE PRODUCTS FOR THE PRODUCTS THAT DIRECTLY CAUSED THE LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**11. Intellectual Property Indemnification.** In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product as permitted in this Agreement infringes a third-party's patent, copyright, or trademark right recognized in any jurisdiction where the Product is licensed, Forcepoint at its expense will have the right to intervene to defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys' fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim. Forcepoint's obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim; and (c) reasonable cooperation. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. Licensee may participate in the defense at its own expense. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Licensee to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint's opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Licensee's continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then-current Maintenance Term. THIS SECTION SETS FORTH FORCEPOINT'S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT.

## **12. Term and Termination.**

- 12.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided hereunder. Upon termination or expiration of the Maintenance Term, Licensee's right to receive Maintenance to the Products terminates.
- 12.2 Product evaluation subscriptions are available for a period of up to 30 days, and limited availability Software licenses may be available for the time period determined by Forcepoint. Software evaluation subscriptions and limited availability Software licenses are each subject to the terms and conditions of this Agreement, except however that: (i) evaluation subscriptions and limited availability Software licenses may only be used to evaluate and facilitate Licensee's decision to purchase a license to the products; and (ii) evaluation subscriptions and limited availability Software licenses are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period or the limited availability Software license period, Licensee must place an Order and pay the applicable Fees, or this Agreement terminates as related

to the evaluation subscription or limited availability Software license. Licensee's continued use of the products after an evaluation or limited availability Software license period is subject to this Agreement.

- 12.3 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon notification of termination by either party, Licensee must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, 6- 12, and 14-17 will survive the termination of this Agreement.
- 12.4 Reserved.

**13. Compliance with Laws.** Each party will comply with all applicable laws and regulations, that may apply to issues including the protection of personal data, and anti-bribery. Licensee must obtain any required consents (including employee consent) addressing the interception, reading, copying, analyzing, or filtering of emails and their attachments as well as any local government permits, licenses, or approvals required to use the Products. Neither party will use any data obtained via the Products for any unlawful purpose. Each party's obligations with respect to the treatment of personal data submitted to Forcepoint pursuant to this Agreement are set forth in the terms of the [Forcepoint Data Processing Agreement](#). The then-current agreement attached to the Agreement.

**14. Rights of Government Licensees.** The Products meet the definition of "commercial item" in Federal Acquisition Regulation ("FAR") 2.101, were developed entirely at private expense, and are provided to Government Licensees exclusively under the terms of this Agreement. Software, including Software Upgrades, is "commercial computer software" and applicable Documentation and media are "commercial computer software documentation," as those terms are used in FAR 12.212. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint's proprietary rights therein, and of the exclusive applicability of this Agreement.

**15. Export.** Commodities, technology, and software, including the Products (collectively referred to as "items") are subject to the export control laws of the United States and other countries that may lawfully control the export of such items. Moreover, the furnishing of support services with respect to items that are controlled as defense or military items may also be subject to such laws. Licensee will not transfer such items or furnish such services except in compliance with the export laws of the United States and any other country that may lawfully control the export of such items or the provision of such services.

**16. Verification.** Upon Forcepoint's request, Licensee will provide a written certification confirming its compliance with this Agreement. Further, during the License term and one year thereafter, Forcepoint or Forcepoint's independent auditor may review Licensee's records related to Licensee's use of the Products to verify Licensee's compliance with this Agreement. Licensee will provide reasonable assistance, access to personnel, facilities, and systems, as well as information necessary to facilitate Forcepoint's compliance verification. The verification will be performed during regular business hours and will not interfere unreasonably with Licensee's business activities. The cost of the verification will be borne by Forcepoint unless a discrepancy indicating that additional Fees are due to Forcepoint, in which case the reasonable cost of the verification will be borne by Licensee. Licensee will promptly cure any noncompliance and will pay any Fees due as a result of such noncompliance. The rights and remedies under this Section are in addition to any other rights Forcepoint may have under this Agreement. Additionally, Forcepoint may at any time, without notice, during the term of this Agreement access Licensee's system, subject to applicable local law, to determine whether Licensee and its users are complying with the terms of this Agreement. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and Licensee will not impede, disable, or otherwise undermine such license manager's operation.

**17. General.**

- 17.1 For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email and provide account information to related third parties (e.g. Licensee's reseller). Information will be processed by Forcepoint in accordance with applicable data privacy laws. Licensee may at any time update its communications preferences on Forcepoint.com or by sending an email to [privacy@forcepoint.com](mailto:privacy@forcepoint.com). Licensee acknowledges and agrees that if it chooses not to receive informational or advertising messages, then it will not receive Forcepoint emails concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Forcepoint may use non-identifying and aggregate usage and statistical information collected in relation to Licensees' and its users' use of the Products for purposes outside of the Agreement. Licensee acknowledges that Forcepoint may use Licensee's company name only in a general list of Forcepoint customers.
- 17.2 Licensee may not transfer any of Licensee's rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint.
- 17.3 Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted and fully prepaid. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3<sup>rd</sup> Floor, Austin, TX 78759 USA. Notices sent to Licensee will be sent to Licensee's address in Forcepoint's system of record. Notices are considered to have been received at the time of actual delivery in person, two business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this paragraph.
- 17.4 Any dispute arising out of or relating to this Agreement or the breach thereof will be governed by the Federal laws of the United States.
- 17.5 Excusable delays shall be governed by FAR 52.212-4(f).
- 17.6 This Agreement is the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not in this Agreement. Licensee agrees that this Agreement is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or

features. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties or posted by Forcepoint at: [Legal Information](#). Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of Forcepoint. All pre-printed or standard terms of any Licensee's purchase order or other business processing document have no effect, and the terms and conditions of this Agreement will prevail over such forms, and any additional, inconsistent, conflicting, or different terms in such forms will be void and of no force and effect. In the event of a conflict between the terms of this Agreement and the terms of an Order, the terms of this Agreement prevail.

- 17.7 If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will be interpreted so as reasonably to affect the intention of the parties.

**FORCEPOINT END USER AGREEMENT PUBLIC SECTOR ADDENDUM**

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT SUBSCRIBER OR LICENSEE ("CUSTOMER") AGREES TO THE TERMS AND CONDITIONS IN THE APPLICABLE FORCEPOINT END USER AGREEMENT, AND THE MATERIALS REFERENCED THEREIN ("AGREEMENT"), BETWEEN CUSTOMER AND FORCEPOINT FEDERAL LLC ("FORCEPOINT"). TO THE EXTENT CUSTOMER IS A PUBLIC SECTOR ENTITY (AS DEFINED BELOW) PURCHASING SUBSCRIPTIONS OR LICENSES TO PRODUCTS THROUGH A U.S. GOVERNMENT PROCUREMENT CONTRACT (AS DEFINED BELOW) OF AN AUTHORIZED FORCEPOINT DISTRIBUTOR OR RESELLER THAT IDENTIFIES SUCH PURCHASE IS OCCURRING UNDER SUCH CONTRACT, THE AGREEMENT IS SUPPLEMENTED BY THIS PUBLIC SECTOR ADDENDUM ("ADDENDUM"). ANY CAPITALIZED TERMS USED BUT UNDEFINED IN THIS ADDENDUM WILL HAVE THE MEANINGS PROVIDED IN THE AGREEMENT. TO THE EXTENT APPLICABLE, THE TERMS OF THIS ADDENDUM WILL TAKE PRECEDENCE AND CONTROL OVER ANY CONFLICTING TERMS IN THE AGREEMENT. EXCEPT AS EXPRESSLY MODIFIED IN THIS ADDENDUM, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT REMAIN IN EFFECT AND UNCHANGED.

IF A SUBSCRIPTION OR LICENSE TO USE THE PRODUCTS IS OBTAINED THROUGH A U.S. GOVERNMENT PROCUREMENT CONTRACT, THEN THE AGREEMENT AND THIS ADDENDUM MUST BE INCORPORATED INTO THE CONTRACT EXECUTED BY CUSTOMER'S CONTRACTING OFFICER OR OTHER REPRESENTATIVE AND MUST AUTHORIZE CUSTOMER ACCEPTANCE OF THE AGREEMENT AND THIS ADDENDUM.

NOTICE TO RESELLERS, DISTRIBUTORS, AND NON-CUSTOMERS.  
THE PRODUCTS, SUBSCRIPTIONS, AND/OR LICENSES ARE NOT TRANSFERABLE. IF YOU ARE NOT THE CUSTOMER, PLEASE CONTACT FORCEPOINT FOR A TRANSFERABLE SUBSCRIPTION AND/OR LICENSE.

BY ACCEPTING THE AGREEMENT AND THIS ADDENDUM IN WRITING, CUSTOMER ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND HAS THE AUTHORITY TO ENTER INTO AND AGREES TO BE BOUND BY THE AGREEMENT AND THIS ADDENDUM. IF YOU DO NOT ACCEPT THE AGREEMENT AND THIS ADDENDUM, DO NOT PROCEED WITH THE INSTALLATION/USE OF THE PRODUCT AND PROMPTLY RETURN THE PRODUCT AND ALL ACCOMPANYING ITEMS (INCLUDING DOCUMENTATION, SOFTWARE MEDIA, ETC.) TO FORCEPOINT.

Customer and Forcepoint hereby agree as follows:

1. The following definitions apply:  
**"Public Sector Entity"** means a Customer that is (i) a member of the U.S. government's legislative, judicial, or executive branches; (ii) a U.S. state or local government entity; or (iii) an accredited academic institution organized and operated for educational purposes that receives partial or full funding from a federal, state, or local agency, or administrative offices or boards for such academic institutions.  
**"U.S. Government Procurement Contract"** means, to the extent it includes Forcepoint Products use of which are subject to the terms of the Agreement, the following public sector contract.
2. **Governing Law, Venue, And Dispute Resolution.** To the extent required by law: any dispute arising out of or relating to the Agreement or the breach thereof will be subject to the Contracts Disputes Act of 1978 (41 U.S.C 7101-7109) and Federal Tort Claims Act (28 U.S.C. 1346(b)), and will be resolved in accordance with the FAR, the Contract Disputes Act, or applicable dispute resolutions process.
3. **Indemnities.** To the extent required by law: indemnities provided by Public Sector Entity in the Agreement are deemed to be deleted, provided that, Public Sector Entity will, to the extent permitted by law, remain responsible for compliance with any such obligations and requirements in lieu of any such deleted indemnity. For clarity, the judicial department may elect to exercise its right (i.e. 28 U.S.C. 516) to represent a Public Sector Entity in any case and a Public Sector Entity may elect not to give sole control over litigation and/or settlement to Forcepoint by not requesting an indemnity from Forcepoint; provided however, that Forcepoint reserves the right to control litigation and/or settlements related to its intellectual property, including its Products.

4. **Renewals.** Those Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
5. **Future Fees or Penalties.** Those Agreement clauses that violate the Anti-Deficiency Act, which prohibits a Public Sector Entity from paying any fees or penalties beyond the Fees agreed in the Order, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act (31 U.S.C. 3901, 5 U.S.C. 504), are hereby deemed to be deleted.
6. **Travel and Expenses.** Out-of-pocket expenses identified in a quote, statement of work, professional services agreement (or similar agreement) for Services Offerings agreed between Forcepoint and Public Sector Entity to be reimbursed by Public Sector Entity at cost must be submitted for payment no more than sixty (60) days after completion of Services Offerings or such payment may be denied. Forcepoint will ensure that such travel expenses are incurred in accordance with the limitations set forth in FAR 31.205-46. Upon request, Forcepoint will provide budgetary estimates for all travel and expense fees on its quotes (or Statement of Works/Professional Service Agreements) to Public Sector Entity.
7. **Limitation of Liability:** To the extent the following damages are prohibited by law against a Public Sector Entity: Public Sector Entity is not liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use, and Public Sector Entity is not liable for punitive damages. No clause in the Agreement will limit the Public Sector Entity's right to seek recovery for fraud or crimes under applicable fraud statute, such as the False Claims Act (31 U.S.C. 3729-3733).
8. **Public Access to Information.** Forcepoint agrees that the terms and conditions of the Agreement contain no confidential or proprietary information and acknowledges the Agreement may be made available to the public.
9. **Confidentiality.** Those Agreement clauses that require Public Sector Entity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. 552) and any order by a United States Federal Court. Forcepoint's Products and offerings are and contain valuable, confidential information and trade secrets, and as such, to the extent they may be considered government data, they are trade secret information, "confidential data," and/or not public data. To the extent permitted by law: Public Sector Entity's initial response to any such FOIA request to provide Forcepoint's Products or offerings will be to assert the trade secret information and/or not public data exceptions to the disclosure and provide Forcepoint with advance reasonable written notice and an opportunity to seek protection, at its own cost, prior to releasing such information.
10. **Payment Terms.** If Customer is purchasing licenses of the Software under a U.S. Government Procurement Contract, the payment terms are as set forth in the U.S. Government Procurement Contract. Customer agrees to pay the applicable fees as set forth in the Order subject to all applicable Federal laws and regulations.
11. **Termination.**

This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided in the FAR, the underlying U.S. Government Procurement Contract and/or any applicable Order. Upon termination or expiration of the Term, Customer's right to use the Products ends.

When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon expiration or notification of termination, Customer must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed.

12. **Excusable Delays.** Excusable delays shall be governed by FAR 52.212-4(f).
13. **Intellectual Property Indemnification:** When the purchase is made under a U.S. Government Procurement Contract, the following will replace section 11 of the License Agreement:

In the event of a third-party claim, suit or proceeding against Customer asserting that use of the Product as permitted in this Agreement infringes a third-party's patent, copyright, or trademark right recognized in any jurisdiction where the Product is used, Forcepoint at its expense will defend Customer and indemnify Customer against costs, expenses (including reasonable attorneys' fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim to the extent permitted under 28 U.S.C. 516. Forcepoint's obligation under this Section is contingent upon Customer providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim as set forth in 28 U.S.C. 516; and (c) reasonable cooperation with Forcepoint. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Customer to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint's opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Customer's continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Customer the unused pre-paid Maintenance or Subscription Fees paid for the affected Product applicable to the balance of the then current Term. SUBJECT TO FAR 52.212-

4 (h), THIS SECTION SETS FORTH FORCEPOINT'S ENTIRE LIABILITY AND OBLIGATION AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THIRD PARTIES REGARDING THE PRODUCTS AND SERVICES.





**FORCEPOINT END-USER LICENSE AGREEMENT**

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS END-USER LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN (“**AGREEMENT**”) BETWEEN LICENSEE (DEFINED BELOW) AND FORCEPOINT. IF A LICENSE TO USE THE PRODUCTS IS OBTAINED THROUGH A U.S. GOVERNMENT GSA SCHEDULE, THEN THIS AGREEMENT MUST BE INCORPORATED INTO THE CONTRACT EXECUTED BY LICENSEE’S CONTRACTING OFFICER OR OTHER REPRESENTATIVE AND MUST AUTHORIZE LICENSEE’S ACCEPTANCE OF THIS AGREEMENT. TO THE EXTENT CUSTOMER IS A PUBLIC SECTOR ENTITY (AS DEFINED BELOW) PURCHASING SUBSCRIPTIONS OR LICENSES TO PRODUCTS THROUGH A U.S. GOVERNMENT PROCUREMENT CONTRACT (AS DEFINED BELOW) OF AN AUTHORIZED FORCEPOINT DISTRIBUTOR OR RESELLER THAT IDENTIFIES SUCH PURCHASE IS OCCURRING UNDER SUCH CONTRACT, THE AGREEMENT IS SUPPLEMENTED BY THE PUBLIC SECTOR ADDENDUM ATTACHED HERETO (“**ADDENDUM**”).

BY ACCEPTING THIS AGREEMENT BY EXECUTING A WRITTEN ORDER UNDER A GSA SCHEDULE, FOR THE PRODUCTS, LICENSEE ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND HAS THE AUTHORITY TO ENTER INTO AND AGREES TO BE BOUND BY THIS AGREEMENT.

**1. Definitions.**

“**Affiliate**” means an entity controlling, controlled by, or under common control with Licensee, where control is established by a majority ownership (greater than fifty percent (50%)) in or over an entity; provided, however, that the term “Affiliate” will not include an entity that is a direct competitor of Forcepoint.

“**Concurrent User**” means the total number of Users simultaneously using the Software at any given time.

“**Device**” or “**Server**” means each computer (whether physical or virtual), electronic appliance, or device on which the Software may be installed or otherwise used, directly or indirectly. In the case of virtual systems, each virtual machine or instance running the Software is considered to be a Device or Server. In the case of Forcepoint Data Diode, each Server license includes the right to use of the Software on up to two Servers solely to facilitate the communication between no more than two Networks through a fiber connection.

“**Documentation**” means the Product installation instructions, user manuals, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.

“**Error**” means a material failure of the Software to conform to the Documentation, which is reported by Licensee and replicable by Forcepoint.

“**Fees**” means collectively the License Fees, the Maintenance Fees, the Subscription Fees, and the Services Fees.

“**Forcepoint**” means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3<sup>rd</sup> Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170, USA; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.

“**License**” means the limited, personal, non-sublicensable, non-exclusive, nontransferable right to use the Software for the License Term set forth in the Order, use the output of the Services Offerings, in accordance with this Agreement and the Order. “**License Fees**” means the agreed upon license fees for the Software included in an Order.

“**Licensee**” means the Ordering Activity under GSA Schedule Contracts that has placed an Order that is the ultimate end user of the Products.

“**License Term**” means the period set forth in an Order beginning (i) on the date of the Order if a new purchase, (ii) the date of delivery if the Order is placed through Forcepoint’s GSA Schedule, or (iii) on the renewal date of the expiration of a previous License Term.

“**Maintenance**” means a limited-term, non-exclusive, non-sublicensable, nontransferable right to receive the support level purchased pursuant to an Order as further described in Section 3, including if and when available: (i) Error corrections or workarounds, and (ii) the provision of Software Updates, in accordance with this Agreement and the Order.

“**Maintenance Fees**” means the agreed upon fees for the Maintenance in an Order.

“**Maintenance Term**” means the agreed upon time period for the provision of Maintenance in an Order beginning (i) on the date of the Order if a new purchase, (ii) the date of delivery if the Order is placed through Forcepoint’s GSA Schedule, or (iii) on the renewal date of the expiration of a previous Maintenance Term.

“**Network**” means a communication path through a network interface controller, using a physical or virtual infrastructure that interconnects a set of endpoints or devices for the purpose of exchanging data.

“**Order**” means a purchase commitment mutually agreed upon between (1) Forcepoint and Licensee or (2) a Forcepoint authorized reseller(s) and Licensee.

“**Permitted Capacity**” means the number of Devices, Servers, Concurrent Users, Network, Proxy, Users, or other license metrics as set forth in the Order.

“**Products**” means Software, together with applicable Documentation and media, and if purchased pursuant to an Order, Maintenance and Services Offerings.

“**Proxy**” means a software module acting as an intermediary between communicating endpoints or devices that controls access between a set of Network endpoints or devices by inspecting, filtering, and forwarding traffic between the senders and receivers.

“**Services Fees**” means the agreed upon fees for the Services Offering set forth in an Order, services proposal, or statement of work.

“**Services Offerings**” means Forcepoint’s professional services offerings described in a Forcepoint published services datasheet, services proposal, or statement of work.

“**Software**” means Forcepoint’s proprietary software applications, in object code only together with any Software Updates provided pursuant to Maintenance.

“**Software Updates**” means certain Updates, modifications, or revisions to the Software, provided solely pursuant to Maintenance, but excludes Software Upgrades and other products for which Forcepoint generally charges a separate fee. “**Software Upgrades**” means a major version change to the software signified by a change in the number to the left of the decimal point and is a product for which Forcepoint charges a separate fee.

“**Subscription**” means a limited, non-exclusive, personal, non-sublicensable, nontransferable right during the Subscription Term to use the Software and to use the output of the Services Offerings, in accordance with this Agreement and the Order. “**Subscription Fees**” means the agreed upon fees for the Subscription in an Order.

“**Subscription Term**” means the agreed upon time period in an Order beginning (i) on the date of the Order if a new purchase, (ii) the date of delivery if the Order is placed through Forcepoint’s GSA Schedule, or (iii) on the renewal date of the expiration of a previous Subscription Term.

“**Update(s)**” means any corrections or workarounds for substantial defects, fixes of any minor bugs, and corrections for security flaws, issued to Licensee by Forcepoint as part of Maintenance (provided that Licensee has paid the applicable Maintenance Fees).

“**User**” means any person utilizing Licensee’s or an Affiliate’s network with access to the Software directly or indirectly, who is an employee, temporary employee, contractor, or guest of Licensee or an Affiliate.

2. **License/Subscription Grant.** Subject to the provisions contained in this Agreement and timely payment of the applicable Fees, Forcepoint hereby grants Licensee a License or if applicable a Subscription to use the Software, Documentation, and Software Updates provided pursuant to Maintenance (including any output of the Services Offerings) identified in the Order solely for Licensee’s internal business purposes up to the Permitted Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees and Services Fees, Forcepoint will provide Licensee with Maintenance and the Services Offerings, respectively. Subject to compliance with the terms of this Agreement, Licensee may relocate or transfer the Software for use on a different server within its location. Licensee will not and may not permit any third party to copy the Products, other than copies made solely for data backup and testing purposes. Any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Forcepoint may make changes to the Products at any time without notice. In the event that Forcepoint makes a material change to the Product that diminishes functionality of the Product Ordering Licensee has contracted for, Licensee shall be entitled to a pro rata refund for any fees paid not used. Licensee understands that its right to use the Products is limited by the Permitted Capacity purchased, and Licensee’s use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum amounts that Licensee has committed to for the Maintenance Term. If Licensee’s use exceeds the Permitted Capacity, Licensee must purchase additional Permitted Capacity sufficient for the excess use.

3. **Maintenance and Services Offerings.**

3.1 Maintenance activities are provided under Forcepoint’s current Forcepoint Global Governments Software Maintenance and Hardware Support Description attached hereto. Maintenance will be provided to Licensee only if Licensee has paid the applicable Maintenance Fees. Forcepoint may require Licensee to install Software Updates up to and including the latest release. In the event Software support expires prior to renewing support, Licensee must also purchase Maintenance to cover the lapsed support period between the date Maintenance expires and the date it is renewed.

3.2 Forcepoint’s obligation to provide Maintenance is limited to: (i) Software that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which Maintenance is provided; (iii) Licensee’s use of the Software in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Software, Forcepoint will provide the more current version via Maintenance but will not have any obligation to correct such Error in prior versions.

3.3 Maintenance may be limited to the most current release and the most recent previous sequential major release of the Software. Forcepoint reserves the right to terminate the Maintenance or increase the associated fees upon sixty (60) days’ notice should Licensee not stay current with a supported release in accordance with this Section.

3.4 Licensee will cooperate with Forcepoint personnel providing any Services Offerings, and to provide reasonable assistance, including: (i) gathering relevant supporting documentation; (ii) ensuring appropriate Licensee personnel are assigned to the project and are able to devote sufficient time to facilitate the project; (iii) granting resource access to information, systems, and licenses related to the scope of the project; (iv) providing building and network access before, during, and after normal business hours, work space, and workstations for each of the Forcepoint personnel, logon IDs and security access to all required Products, and adequate test environment, and any reasonable and appropriate data to perform the Services Offerings.

4. **Intellectual Property Rights.** All right, title and interest in and to the Products, any modifications, translations, or derivatives thereof including any related scripts, tools, and know-how and all applicable intellectual property and proprietary rights thereto remain exclusively with Forcepoint or its licensors. The Products may include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement but are third-party beneficiaries of this Agreement. Forcepoint owns any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee relating to the Products. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights, and all rights not expressly granted to Licensee in this Agreement are reserved to Forcepoint and its licensors. Licensee may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint’s prior written consent.

5. **Protections and Restrictions.**

5.1 Each party (the “Disclosing Party”) may disclose to the other (the “Receiving Party”) certain confidential technical and business information that the Disclosing Party desires the Receiving Party to treat as confidential. “Confidential Information” means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without

limitation prototypes, technical data, trade secrets and know-how, product plans, Products, customer lists and customer information, prices and costs, databases, inventions, processes, hardware configuration information, finances, budgets and other business information), which is designated as "Confidential," "Proprietary" or some similar designation at or prior to the time of disclosure, or that should otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties. Confidential Information will not, however, include any information that the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. The Receiving Party will treat all Confidential Information of the Disclosing Party as non-public confidential information and will not disclose it to any person other than Disclosing Party and employees and contractors of Receiving Party on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Licensee's use of the Products to process data is not a disclosure of Confidential Information to Forcepoint for purposes of this Section. Furthermore, neither party will use the Confidential Information of the other party for any purpose other than carrying out its rights and obligations under this Agreement. Forcepoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

- 5.2 Licensee will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized use or copying is harmful to Forcepoint. The Products are proprietary to Forcepoint and are exempt from any public disclosure statute or regulation, including without limitation the Freedom of Information Act requirements. Licensee may use the Products only for the internal business purposes of Licensee.

Licensee will not itself, or through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Licensee's employees and contractors who have a need to such access and who will be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Forcepoint's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the same except as expressly permitted herein; (ix) use any third-party software included in the Products independently from the Products. Subject to the terms of this Agreement, Licensee may allow its agents and independent contractors to use the Products solely for the benefit of Licensee; provided, however, Licensee remains responsible for any breach of this Agreement. Any other use of the Products by any other entity is forbidden and a violation of this Agreement. If any additional third-party end-user license agreement or open source software license agreement is (a) attached to this Agreement or the Order, or (b) included in the Product "about" file, "readme" file or Documentation, then Licensee's use of the third-party software is further restricted by and subject to such license.

6. **Financial Terms.** Fees and payment terms are specified in the applicable Order in accordance with the GSA Schedule Pricelist. Except as otherwise expressly specified in the Order: (i) all recurring payment obligations start from the receipt of the Order; (ii) when the Order is placed directly with Forcepoint fees must be paid within 30 days after the invoice receipt date; (iii) upon the expiration of each Maintenance Term, the Maintenance Fees will be Forcepoint's then-current GSA Schedule list price for such Products; and (iv) interest accrues on past due balances at the highest rate allowed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Forcepoint's reasonable travel and lodging expenses incurred in the performance of services on Licensee's site will be billed separately at actual cost in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. Vendor shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

7. **Limited Warranty; Remedies; Disclaimer.**

- 7.1 For ninety (90) days beginning on the date of the Order for the License, Forcepoint warrants that the original media (if any) containing the Software is free from defects in material and workmanship, assuming normal use. As the sole and exclusive remedy for defective media, Forcepoint will replace it free of charge if claimed during the 90-day warranty period. The limited warranty specified in this Section 7 sets forth Forcepoint's entire liability and Licensee's exclusive remedy for breach of warranty. Forcepoint warrants that Services Offerings will be performed in a professional and workmanlike manner and Forcepoint will comply with all applicable laws in providing the Services Offerings.
- 7.2 EXCEPT FOR THE ABOVE LIMITED MEDIA WARRANTY, THE PRODUCTS ARE PROVIDED "AS IS" AND FORCEPOINT AND ITS LICENSORS DISCLAIM ALL PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO THE PERFORMANCE, OPERATION, RESULTS, USE OF, OR INABILITY TO USE THE PRODUCTS, AND ANY DATA OR OTHER MATERIALS FURNISHED HEREUNDER. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE IN LIEU OF, AND FORCEPOINT, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER PROMISES, REPRESENTATIONS, AND WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE, OPERATION, RESULTS, USE OF, OR INABILITY TO USE THE PRODUCTS AND ANY DATA OR OTHER MATERIAL FURNISHED HEREUNDER INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS PROVIDED UNDER THIS AGREEMENT.

8. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; (IV) LICENSEE'S DECISIONS BASED ON ITS INTERPRETATION OF THE OUTPUT FROM THE PRODUCTS; NOR (V) ANY INDIRECT,

CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD-PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE LICENSEE'S APPLICABLE LICENSE OR SUBSCRIPTION TO THE PRODUCTS FOR THE PRODUCTS THAT DIRECTLY CAUSED THE LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

9. **Intellectual Property Indemnification.** In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product as permitted in this Agreement infringes a third-party's patent, copyright, or trademark right recognized in any jurisdiction where the Product is licensed, Forcepoint at its expense will have the right to intervene to defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys' fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim. Forcepoint's obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to solely control and direct the defense of the claim; and (c) reasonable cooperation. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. Licensee may participate in the defense at its own expense. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Licensee to implement Software Updates. In the event the Products, in Forcepoint's opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Licensee's continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then-current Maintenance Term. THIS SECTION SETS FORTH FORCEPOINT'S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT.

10. **Term and Termination.**

- 10.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided hereunder. Upon termination or expiration of the Maintenance Term, Licensee's right to receive Maintenance to the Products terminates. Upon termination or expiration of the License Term and/or Subscription Term, Licensee's right to use the Products terminates.
- 10.2 Product evaluation subscriptions are available for a period of up to thirty (30) days, and limited availability Software licenses may be available for the time period determined by Forcepoint. Software evaluation subscriptions and limited availability Software licenses are each subject to the terms and conditions of this Agreement, except however that: (i) evaluation subscriptions and limited availability Software licenses may only be used to evaluate and facilitate Licensee's decision to purchase a license to the products; and (ii) evaluation subscriptions and limited availability Software licenses are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period or the limited availability Software license period, Licensee must place an Order and pay the applicable Fees, or this Agreement terminates as related to the evaluation subscription or limited availability Software license. Licensee's continued use of the products after an evaluation or limited availability Software license period is subject to this Agreement.
- 10.3 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon notification of termination by either party, Licensee must cease using and uninstall any Software, destroy or return all copies of the Products to Forcepoint, and must certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, 4 – 10, and 12 – 16 will survive the termination of this Agreement.
- 10.4 Reserved.

11. **Compliance with Laws.**

- 11.1 Each party will comply with all applicable laws and regulations that may apply to issues including the protection of personal data, and anti-bribery. Licensee must obtain any required consents (including employee consent) addressing the interception, reading, copying, analyzing, or filtering of emails and their attachments as well as any local government permits, licenses, or approvals required to use the Products. Neither party will use any data obtained via the Products for any unlawful purpose. Each party's obligations with respect to the treatment of personal data submitted to Forcepoint pursuant to this Agreement are set forth in the terms of the [Forcepoint Data Processing Agreement](#).

12. **Rights of Government Licensees.** The Products meet the definition of "commercial item" in Federal Acquisition Regulation ("FAR") 2.101, were developed entirely at private expense, and are provided to Government Licensees exclusively under the terms of this Agreement. Software, including Software Updates, is "commercial computer software" and applicable Documentation and media are "commercial computer software documentation," as those terms are used in FAR 12.212. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint's proprietary rights therein, and of the exclusive applicability of this Agreement.

13. **Export.** Commodities, technology and software, including the Products (collectively referred to as “items”) are subject to the export control laws of the United States and other countries that may lawfully control the export of such items. Moreover, the furnishing of support services with respect to items that are controlled as defense or military items may also be subject to such laws. Licensee will not transfer such items or furnish such services except in compliance with the export laws of the United States and any other country that may lawfully control the export of such items or the provision of such services.
14. **Verification.** Upon Forcepoint’s request, Licensee will provide a written certification confirming its compliance with this Agreement. Further, during the License term and one year thereafter, Forcepoint or Forcepoint’s independent auditor may review Licensee’s records related to Licensee’s use of the Products to verify Licensee’s compliance with this Agreement. Licensee will provide reasonable assistance, access to personnel, facilities, and systems, as well as information necessary to facilitate Forcepoint’s compliance verification. The verification will be performed during regular business hours and will not interfere unreasonably with Licensee’s business activities. The cost of the verification will be borne by Forcepoint unless a discrepancy indicating that additional Fees are due to Forcepoint, in which case the reasonable cost of the verification will be borne by Licensee. Licensee will promptly cure any noncompliance and will pay any Fees due as a result of such noncompliance. The rights and remedies under this Section are in addition to any other rights Forcepoint may have under this Agreement. Additionally, Forcepoint may at any time, without notice, during the term of this Agreement access Licensee’s system, subject to applicable local law, to determine whether Licensee and its users are complying with the terms of this Agreement. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and Licensee will not impede, disable or otherwise undermine such license manager’s operation.
15. **General.**
- 15.1 For the purposes of customer service, technical support, and as a means of facilitating interactions with its end- users, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email and provide account information to related third parties (e.g. Licensee’s reseller). Information will be processed by Forcepoint in accordance with applicable data privacy laws. Licensee may at any time update its communications preferences on Forcepoint.com or by sending an email to [privacy@forcepoint.com](mailto:privacy@forcepoint.com). Licensee acknowledges and agrees that if it chooses not to receive informational or advertising messages, then it will not receive Forcepoint emails concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Forcepoint may use nonidentifying and aggregate usage and statistical information related to Licensee’s and its users’ use of the Products for its own purposes outside of the Agreement. Licensee acknowledges that Forcepoint may use Licensee’s company name only in a general list of Forcepoint customers.
- 15.2 Licensee may not transfer any of Licensee’s rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint.
- 15.3 Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted and fully prepaid. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3<sup>rd</sup> Floor, Austin, TX 78759 USA. Notices sent to Licensee will be sent to Licensee’s address in Forcepoint’s system of record. Notices are considered to have been received at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this paragraph.
- 15.4 Any dispute arising out of or relating to this Agreement or the breach thereof will be governed by the Federal laws of the United States.



- 15.5 Excusable delays shall be governed by FAR 52.212-4(f).
- 15.6 This Agreement is the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not in this Agreement. Licensee agrees that this Agreement is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties or posted by Forcepoint at: [Legal Information](#). Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of Forcepoint. All pre-printed or standard terms of any Licensee's purchase order or other business processing document have no effect, and the terms and conditions of this Agreement will prevail over such forms, and any additional, inconsistent, conflicting, or different terms in such forms will be void and of no force and effect. In the event of a conflict between the terms of this Agreement and the terms of an Order, the terms of this Agreement prevail.
- 15.7 If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will be interpreted so as reasonably to affect the intention of the parties.

## 16. **Third-Party End-User License Terms and Conditions.**

- 16.1 The Software may integrate the McAfee Anti-Virus SDK Virus Scanning software library ("McAfee Software") provided by McAfee Inc. ("McAfee"), and the McAfee Software is provided pursuant to and governed by the terms and conditions of the Agreement except as follows:
- Licensee may not use or copy McAfee Software except as expressly provided herein, and except with McAfee's prior written permission, may not publish any performance or benchmark tests or analysis relating to McAfee Software.
  - McAfee Software may include programs or code that are licensed under an Open Source Software ("OSS") license model. OSS programs and code are subject to the terms, conditions and obligations of the applicable OSS license, and are SPECIFICALLY EXCLUDED FROM ANY WARRANTY AND SUPPORT OBLIGATIONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.
  - Upon termination of Licensee's license to McAfee Software Licensee shall promptly de-install and return or destroy all copies of McAfee Software and related documentation.
  - Licensee acknowledges and agrees that the virus scanning capability of the Software may contain functionality to detect and report threats and vulnerabilities on Licensee's computer network. Such functionality may collect information from Licensee and automatically collect information about Licensee's system and the systems and networks they interact with (including without limitation information regarding network, licenses used, operating system types, versions, total scanners deployed, database size etc.) and submit such information to McAfee. Licensor shall not release any information collected regarding Licensee's systems and the systems and networks they interact with to any person or entity.
  - McAfee Software and any accompanying documentation, which have been developed at private expense and are made generally available to certain private (non-government) end user customers, are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to FAR Section 12.212, as applicable.
- 16.2 The Software may include Red Hat Enterprise Linux software ("Operating System") provided by Red Hat, Inc. ("Red Hat"), and the Operating System is provided pursuant to and governed by the terms and conditions of the Agreement except as follows:
- Subject to the following terms, Licensee is granted a perpetual, worldwide license to the Operating System (which may include multiple software components) pursuant to the GNU General Public License v.2. The license agreement for each software component is located in the software component's source code and permits Licensee to run, copy, modify, and redistribute the software component (subject to certain obligations in some cases), both in source code and binary code forms, with the exception of (a) certain binary only firmware components and (b) the images identified in Subsection 16.2.b., below. The license rights for the binary only firmware components are located with the components themselves. This Agreement pertains solely to the Operating System and does not limit Licensee's rights under, or grant Licensee rights that supersede, the license terms of any particular component.
  - Title to the Operating System and any component, or to any copy, modification, or merged portion shall remain with Red Hat and other licensors, subject to the applicable license. The "Red Hat" trademark and the "Shadowman" logo are registered trademarks of Red Hat in the U.S. and other countries. This Agreement does not permit Licensee to distribute the Operating System or its components using Red Hat's trademarks, regardless of whether the copy has been modified. Licensee may make a commercial redistribution of the Operating System only if (a) permitted under a separate written agreement with Red Hat authorizing such commercial redistribution, or (b) Licensee removes and replaces all occurrences of Red Hat trademarks. Modifications to the software may corrupt the Operating System. Licensee should read the information found at <http://www.redhat.com/about/corporate/trademark/> before distributing a copy of the Operating System.
  - The Operating System may be distributed with third party software programs that are not part of the Operating System. These third-party programs are not required to run the Operating System, are provided as a convenience to Licensee, and are subject to their own license terms. The license terms either accompany the third party software programs or can be viewed at <http://www.redhat.com/licenses/thirdparty/eula.html>. If Licensee does not agree to abide by the applicable license terms for the third-party software programs, then Licensee may not install them. If Licensee wishes to install the third-party software programs on more than one system or transfer the third-party software programs to another party, then Licensee must contact the licensor of the applicable third-party software programs.
- 16.3 The Software may include Java technology which is subject to the following additional requirements:
- Licensee may not create, modify, or change the behavior of, or authorize Licensee's licensees to create, modify, or change the behavior of, classes, interfaces, or subpackages that are in any way identified as "java", "javax", "sun" or similar convention as specified by Oracle in any naming convention designation.
  - Use of the Commercial Features for any commercial or production purpose requires a separate license from Oracle. "Commercial Features" means those features identified in Table 1-1 (Commercial Features in Java SE Product Editions) of the Java SE documentation accessible at <http://www.oracle.com/technetwork/java/javase/documentation/index.html>.
  - Export Laws:** The third-party software may be controlled under the export laws and regulations of the United States. It

is the obligation of the Licensee to abide by all applicable export restrictions and license requirements.

16.4 Notwithstanding anything to the contrary in this Agreement, the following additional terms and conditions will apply to the Oracle JDBC Driver ("Oracle Driver") included in the Software:

- a. "Open Source" software - software available without charge for use, modification and distribution - is often licensed under terms that require the user to make the user's modifications to the Open Source software or any software that the user 'combines' with the Open Source software freely available in source code form. If you use Open Source software in conjunction with the Oracle Driver, you must ensure that your use does not: (i) create, or purport to create, obligations of us with respect to the Oracle Driver; or (ii) grant, or purport to grant, to any third party any rights to or immunities under our intellectual property or proprietary rights in the Oracle Driver. For example, you may not develop a software program using an Oracle Driver and an Open Source program where such use results in a program file(s) that contains code from both the Oracle Driver and the Open Source program (including without limitation libraries) if the Open Source program is licensed under a license that requires any "modifications" be made freely available. You also may not combine the Oracle Driver with programs licensed under the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Oracle Driver or any modifications thereto to become subject to the terms of the GPL.

## FORCEPOINT NETWORK SECURITY PRODUCTS LICENSE AGREEMENT

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN ("AGREEMENT") BETWEEN LICENSEE AND FORCEPOINT. BY ACCEPTING THIS AGREEMENT FOR THE PRODUCTS BY EXECUTING A WRITTEN ORDER UNDER A GSA SCHEDULE, LICENSEE ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND AGREES TO BE BOUND BY THIS AGREEMENT. TO THE EXTENT CUSTOMER IS A PUBLIC SECTOR ENTITY (AS DEFINED BELOW) PURCHASING SUBSCRIPTIONS OR LICENSES TO PRODUCTS THROUGH A U.S. GOVERNMENT PROCUREMENT CONTRACT (AS DEFINED BELOW) OF AN AUTHORIZED FORCEPOINT DISTRIBUTOR OR RESELLER THAT IDENTIFIES SUCH PURCHASE IS OCCURRING UNDER SUCH CONTRACT, THE AGREEMENT IS SUPPLEMENTED BY THE PUBLIC SECTOR ADDENDUM ATTACHED HERETO ("ADDENDUM").

### 1. Definitions.

**"Application" or "App"** means a third-party cloud-based computing application identified at the time of Product implementation.

**"Cloud Services"** means one or more of Forcepoint's cloud-based service offerings that have been included in an Order, including their associated components, content, updates, and upgrades thereto (but excludes products for which Forcepoint generally charges a separate fee), if any, and any reports generated as a result of use that are made available to Licensee. **"Database"** means proprietary database(s) of IPS rules, URL addresses, email addresses, Malware, applications, analytical models, and other valuable information.

**"Database Updates"** means changes to the content of the Databases.

**"Device" or "Node"** means any kind of computer, electronic appliance, or device capable of processing data, including without limitation diskless workstations, personal computer workstations, networked computer workstations, homemaker/teleworker home-based systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANs), terminal servers or portable workstations connected or connecting to the server(s) or network that is authorized to access or use the Products, directly or indirectly. In the case of a virtual system, each virtual machine or instance running the Product is a Device or Node.

**"Documentation"** means the Product installation instructions, user manuals, setup posters, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.

**"Error"** means a material failure of the Product to conform to the Documentation, which is reported by Licensee and replicable by Forcepoint.

**"Fees"** means collectively the License Fees, Maintenance Fees, and Services Fees.

**"Forcepoint"** means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3<sup>rd</sup> Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.

**"Hardware" or "Unit"** means a single instance of computer hardware purchased from Forcepoint as described in the Order. **"License"** means the limited, personal, non-sublicensable, non-exclusive, nontransferable right to use the Software (including the Database), including the output of the Services Offerings, for the term set forth in the Order, in combination with the Hardware (if provided in the Order), in accordance with this Agreement and the Order.

**"License Fees"** means the agreed upon license fees for the Software (including the Database) included in an Order for the License.

**"Licensee"** means the Ordering Activity under GSA Schedule Contracts that has placed an Order, is the ultimate end user of the Products.

**"Maintenance"** means a limited, non-exclusive, personal, non-sublicensable, nontransferable right to receive Technical Support during the Maintenance Term.

**"Maintenance Fees"** means the agreed upon fees in the Order.

**"Maintenance Term"** means the agreed upon time period for the provision of Maintenance in an Order.

**"Malware"** means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.

**"Order"** means a purchase commitment mutually agreed upon between (i) Forcepoint and Licensee, or (ii) a Forcepoint authorized reseller and Licensee.

**"Permitted Capacity"** means the number of Devices, Units, Nodes, Users, or other license metrics as set forth in the Order. **"Products"** means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, Technical Support, Cloud Services, Hardware, and Services Offerings.

**"Services Fees"** means the agreed upon fees in an Order for the Services Offerings.

**"Services Offerings"** means Forcepoint's professional services offerings described in a Forcepoint published services datasheet or services proposal.

**"Software"** means Forcepoint's proprietary software applications, in object code only.

**"Software Upgrades"** means certain modifications or revisions to the Software and/or the Database, provided solely pursuant to Maintenance but excludes new products for which Forcepoint generally charges a separate fee.

**"Subscription"** means a limited, non-exclusive, personal, non-sublicensable, nontransferable right during the Subscription Term to: (a) receive and use the Database Updates, and (b) use the Products, in accordance with this Agreement and the Order.

**"Subscription Fees"** means the agreed upon fees in an Order for the Subscription.

**"Subscription Term"** means the agreed upon time period in an Order.

**"Technical Support"** means the support level purchased pursuant to an Order as further described in Section 5, including if and when available: (i) Error corrections or workarounds so that the Products operate in substantial conformance with the Documentation, and (ii) the provision of Software Upgrades.

**"User"** means any person utilizing Licensee's network with access to the Products directly or indirectly, who is an employee, temporary employee, customer, contractor, or guest of Licensee.

2. **Software License.** Subject to the provisions contained in this Agreement, and timely payment of the applicable Fees, Forcepoint hereby grants Licensee: (i) a License and if applicable a Subscription to use the Software and Software Upgrades provided pursuant to Maintenance (including any output of the Services Offerings), identified in the Order; and (ii) a Subscription to access the Cloud Services identified in the Order for the Subscription Term, in each case solely for Licensee's internal business purposes up to the Permitted Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees, Forcepoint will provide Licensee with Maintenance. Upon renewal, Maintenance must be purchased for each Product purchased and running in Licensee's environment. Licensee will not and may not permit any third party to copy the Products, other than copies made solely for data backup and internal testing purposes. Except as otherwise set forth in this Agreement, any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Forcepoint may make changes to the Products at any time without notice. In the event that Forcepoint makes a material change to the Product that diminishes functionality of the Product Ordering Licensee has contracted for, Licensee shall be entitled to a pro rata refund for any fees paid not used. Licensee understands that its right to use the Products is limited by the Permitted Capacity, and Licensee use may in no event exceed the authorized Permitted Capacity. If Licensee's use exceeds the Permitted Capacity, Licensee must purchase additional Licenses and Maintenance sufficient for the excess use.

3. **Provision of Cloud Services.**

3.1 Forcepoint will use reasonable efforts to provide Cloud Services for the Subscription Term. The then-current Cloud

Services service levels are incorporated by reference into this Agreement and attached hereto in the [Cloud Services Service Level Agreement](#). Forcepoint makes no service level commitments for the Cloud Services' functionality to the extent it is used to monitor access to third-party services where the continued availability of the functionality is adversely impacted by the third-party's access policies.

3.2 If Forcepoint determines that the Products are being used to distribute Spam or Malware, or that the security or proper function of Cloud Services would be compromised due to, hacking, denial of service attacks or other activities originating from or directed at Licensee's network, then Forcepoint may immediately suspend Cloud Services until the problem is resolved. Forcepoint will promptly notify and work with Licensee to resolve the issues.

3.3 If Cloud Services are suspended or terminated, Forcepoint will reverse all configuration changes made during Cloud Services enrollment. It is Licensee's responsibility to make the server configuration changes necessary to reroute traffic flowing through the Cloud Services.

3.4 Forcepoint may modify, enhance, replace, or make additions to the Products. Forcepoint may use Malware, and other information passing through the Products for the purposes of developing, analyzing, maintaining, reporting on, and enhancing the Products and services.

3.5 If in any one calendar month the total bandwidth used in the performance of Cloud Services for the security access policy enforcement solution divided by the number of Devices or Users is greater than 0.02Mbps, then Forcepoint may terminate the applicable Cloud Services Subscription upon 30 days' written notice unless Licensee purchases Subscriptions to increase the Permitted Capacity.

3.6 If in any one calendar month the total throughput including data sent and received through Cloud Services for the internet and intranet application access policy enforcement solution divided by the number of Users is greater than 10 Gigabytes per User, then Forcepoint may terminate the applicable Cloud Services Subscription upon 30 days' written notice unless Licensee purchases additional Permitted Capacity.

3.7 Licensee's use of the Cloud Services is subject to the processing capacity of the Hardware as defined in the Forcepoint datasheet for the unit purchased, and the number of API requests may not exceed 12 submissions per hour per Device with a maximum aggregate of 100 submissions per day per Device.

4. **Licensee Obligations.**

4.1 Licensee will (i) comply with all applicable laws, statutes, regulations and ordinances, (ii) only use the Products for legitimate business purposes, and (iii) not use the Products to construct or transmit Malware.

4.2 Licensee acknowledges that certain Products may be configured by Licensee to capture files for submission to other Products for Malware analysis. The Product analyzing files may archive Malware code extracted from such files. If Licensee downloads such extracted Malware code, Licensee recognizes the risk associated with Malware code, and any use by Licensee of Malware code is at Licensee's sole risk and liability.

4.3 Licensee acknowledges that the scoring and content by some Products is based on available information at the time it is gathered and may be incomplete, misinterpreted, and is subject to change at any time. As such it is provided for informational purposes only, and Licensee is solely responsible for decisions Licensee makes regarding its use of Applications or services based on such information.

4.4 Licensee is responsible for (i) having the authority, rights, or permissions to use all content flowing through the Products, (ii) obtaining any necessary consents from its employees, (iii) maintaining all necessary rights to access Application(s), and (iv) maintaining all permissions, authorizations, licenses, and approvals to access and use the data and information inputted, displayed, or processed (including all output and data developed or derived) as a result of Licensee's use of the Products to access and use data sources and systems.

4.5 Reserved.

- 4.6 Licensee will cooperate with Forcepoint personnel providing any Services Offerings, and to provide reasonable assistance, including: (i) gathering relevant supporting documentation; (ii) ensuring appropriate Licensee personnel are assigned to the project and are able to devote sufficient time to facilitate the project; (iii) granting resource access to information, systems, and licenses related to the scope of the project; (iv) providing building and network access before, during, and after normal business hours, work space, and workstations for each of the Forcepoint personnel, logon IDs and security access to all required Products, and adequate test environment, and any reasonable and appropriate data to perform the Services Offerings.

5. **Technical Support.**

- 5.1 The support period is defined in the Order and begins (i) on the date of the Order if a new purchase, or (ii) on the renewal date of the expiration of a previous support period. Technical Support is provided under the then-current Forcepoint technical support policies, as described at: [Technical Support Description](#). Maintenance will be provided to Licensee only if Licensee has paid the appropriate Maintenance Fees for the Support Term. Forcepoint may require Licensee to install Software Upgrades up to and including the latest release. In the event Product support expires prior to renewing support Licensee must also purchase technical support to cover the lapsed support period between the date technical support expires and the date it is renewed. In the event technical support has lapsed for one year or more, Forcepoint may charge a reinstatement fee upon renewal in addition to Licensee's purchase of technical support for the lapsed period.
- 5.2 Forcepoint's obligation to provide Maintenance is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which Technical Support is provided; (iii) Licensee's use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via technical support but will not have any obligation to correct such Error in prior versions.
- 5.3 Technical Support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product. Forcepoint reserves the right to terminate the Maintenance or increase the associated fees upon 60 days' notice should Licensee not stay current with a supported release in accordance with this Section.
- 5.4 For the support period set forth in an Order, the Hardware support covers defects in materials and workmanship in the

Hardware. The Hardware support does not cover: (a) software, including the operating system and software added to the Hardware, or the reloading of software; (b) non-Forcepoint branded products and accessories; (c) problems to the extent they result from (i) external causes such as accident, abuse, misuse, or problems with electrical power, (ii) servicing not authorized by Forcepoint, (iii) usage that is not in accordance with Hardware instructions, (iv) failure to follow the Hardware instructions or failure to perform preventive maintenance, (v) problems caused by using accessories, parts, or components not supplied or directed by Forcepoint; (d) normal wear and tear; and (e) Hardware with missing or altered service tags or serial numbers.

6. **Intellectual Property Rights.**

- 6.1 All right, title, and interest in and to the Products, any modifications, translations, or derivatives thereof including any related scripts, tools, and know-how and all applicable intellectual property and proprietary rights thereto remain exclusively with Forcepoint or its licensors. The Products may include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement but are third-party beneficiaries of this Agreement. Forcepoint owns any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee relating to the Products. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights, and all rights not expressly granted to Licensee in this Agreement are reserved to Forcepoint and its licensors. Licensee may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint's prior written consent.
- 6.2 The Hardware is sold by Forcepoint subject to the condition that the sale does not convey any license under any patent claim covering complete equipment, or any assembly, circuit combination, method or process in which any such Hardware are used as components. However, upon sale, title for the Hardware equipment will pass to Licensee. Forcepoint, its licensors or suppliers retain all proprietary rights in and to any Hardware sold. Forcepoint and its suppliers reserve all its rights under such patent claims. Any software supplied with the Hardware is proprietary to Forcepoint or its licensors and use of the software is subject to the terms of this Agreement.

7. **Protection and Restrictions.**

- 7.1 Each party (the "Disclosing Party") may disclose to the other (the "Receiving Party") certain confidential technical and business information that the Disclosing Party desires the Receiving Party to treat as confidential. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation prototypes, technical data, trade secrets and know-how, product plans, Products, customer lists and customer information, prices and costs, databases, inventions, processes, hardware configuration information, finances, budgets and other business information), which is designated as "Confidential," "Proprietary" or some similar designation at or prior to the time of disclosure, or that should

otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties. Confidential Information will not, however, include any information that the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. that the Receiving Party will treat all Confidential Information of the Disclosing Party as non-public confidential information and will not disclose it to any person other than Disclosing Party and employees and contractors of Receiving Party on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Licensee's use of the Products to process data is not a disclosure of Confidential Information to Forcepoint for purposes of this Section. Furthermore, neither party will use the Confidential Information of the other party for any purpose other than carrying out its rights and obligations under this Agreement. Forcepoint recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

## 7.2

Licensee will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure, or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized use or copying is harmful to Forcepoint. Licensee may use the Products only for the internal business purposes of Licensee. Licensee may not assign more than 20 administrators to administer certain Forcepoint products. Licensee will not itself, or through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Licensee's employees and contractors who have a need to such access and who must be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Forcepoint's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the same except as expressly permitted herein; (ix) use any third party software included in the Products independently from the Forcepoint proprietary Products. Subject to the terms of this Agreement, Licensee may allow its agents and independent contractors to use the Products solely for the benefit of Licensee; provided, however, Licensee remains responsible for any breach of this Agreement. Any other use of the Products by any other entity is forbidden and a violation of this Agreement. Licensee must not use the Products to filter, screen, manage or censor Internet content for consumers without permission from the affected consumers and Forcepoint's express prior written approval which may be withheld in Forcepoint's sole discretion. If any additional third party end-user license agreement or open source license agreement is (a) attached to this Agreement or the Order, or (b) included in the Product "about" file, "readme" file or Documentation, then Licensee's use of the third party software is further restricted by and subject to such license.

8. **Financial Terms.** Fees and payment terms are specified in the applicable Order. Except as otherwise expressly specified in the Order accordance with the GSA Schedule Pricelist: (i) all recurring payment obligations start from the receipt of the Order; (ii) when the Order is placed directly with Forcepoint fees must be paid within 30 days after the invoice receipt date; (iii) upon the expiration of each Maintenance Term and/or Subscription Term, the Maintenance Fees and/or Subscription Fees will be Forcepoint's then-current GSA Schedule list price for such Products; and (iv) interest accrues on past due balances at the highest rate allowed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Forcepoint's reasonable travel and lodging expenses incurred in the performance of services on Licensee's site will be billed separately at actual cost in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. Vendor shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

9. **Limited Warranty; Remedies; Disclaimer.**

## 9.1

For 90 days beginning on the date of the Order for the License, Forcepoint warrants that the Products (other than the Services Offerings), as updated from time to time by Forcepoint and used in accordance with the Documentation and this

Agreement by Licensee, will operate in substantial conformance with the Documentation under normal use ("Warranty Period"). Forcepoint warrants that Services Offerings will be performed in a professional and workmanlike manner and Forcepoint will comply with all applicable laws in providing the Services Offerings. Forcepoint does not warrant that: (A) the Products will (i) be free of defects, (ii) satisfy Licensee's



requirements, (iii) operate without interruption or error, (iv) always locate or block access to or transmission of all desired addresses, emails, Malware, applications and/or files, or (v) identify every transmission or file that should potentially be located or blocked; (B) data contained in the Databases will be (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate; or (C) data contained in and risk scoring from the Cloud Services will be complete or interpreted correctly.

9.2 Licensee must promptly notify Forcepoint during the Warranty Period in writing of a claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint's responsibility, Forcepoint will, within 30 days of its receipt of Licensee's written notice, (i) correct the Error or provide a workaround; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable efforts from Forcepoint at Forcepoint's discretion, then Forcepoint may terminate the affected Product License and Licensee will be entitled to a refund of the Fees paid for the affected Product. This paragraph sets forth Licensee's sole and exclusive remedy and Forcepoint's entire liability for any breach of warranty or other duty related to the Products.

9.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) use of the Products inconsistent with the accompanying Documentation, (iii) Licensee's failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) breach of this Agreement by Licensee or its users.

9.4 THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, AND FORCEPOINT, ITS LICENSORS

AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

10. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT,

FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; (IV) LICENSEE'S DECISIONS BASED ON ITS INTERPRETATION OF THE OUTPUT FROM THE PRODUCTS; NOR (V) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE LICENSEE'S APPLICABLE LICENSE TO THE PRODUCTS FOR THE PRODUCTS THAT DIRECTLY CAUSED THE LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

11. **Intellectual Property Indemnification.** In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product as permitted in this Agreement infringes a third-party's patent, copyright, or trademark right recognized in any jurisdiction where the Product is licensed, Forcepoint at its expense will have the right to intervene to defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys' fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim. Forcepoint's obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to solely control and direct the defense of the claim; and (c) reasonable cooperation. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28

U.S.C. §516. Licensee may participate in the defense at its own expense. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Licensee to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint's opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Licensee's continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then current Maintenance Term. THIS SECTION SETS FORTH FORCEPOINT'S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT.

12. **Term and Termination.**

12.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided hereunder. Upon termination or expiration of the Maintenance Term, Licensee's right to receive Maintenance to the Products terminates. Upon termination or expiration of the Subscription Term, Licensee's right to use the subscription-based Products terminates.

12.2 Product evaluation subscriptions are available for a period of up to 30 days and limited availability Software licenses may be available for time period determined by Forcepoint, Product evaluation subscriptions and limited availability Software licenses are each subject to the terms and conditions of this Agreement, except however that: (i) evaluation subscriptions and limited availability Software licenses may only be used to evaluate and facilitate Licensee's decision to purchase a license to the products; and (ii) evaluation subscriptions and limited availability Software licenses are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period or the limited

availability Software license period, Licensee must place an Order and pay the applicable Fees or this Agreement terminates as related to the evaluation subscription or limited availability Software license. Licensee's continued use of the products after an evaluation or limited availability Software license period is subject to this Agreement.

12.3 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon notification of termination by either party, Licensee must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, 6- 12, and 14-17 will survive the termination of this Agreement.

12.4 Reserved.

13. **Compliance with Laws.** Each party will comply with all applicable laws and regulations that may apply to issues including the protection of personal data, and anti-bribery. Licensee must obtain any required consents (including employee consent) addressing the interception, reading, copying, analyzing, or filtering of emails and their attachments as well as any local government permits, licenses, or approvals required to use the Products. Neither party will use any data obtained via the Products for any unlawful purpose. Each party's obligations with respect to the treatment of personal data submitted to Forcepoint pursuant to this Agreement are set forth in the terms of the [Forcepoint Data Processing Agreement](#).

14. **Rights of Government Licensees.** The Products meet the definition of "commercial item" in Federal Acquisition Regulation ("FAR") 2.101, were developed entirely at private expense, and are provided to Government Licensees exclusively under the terms of this Agreement. Software, including Software Upgrades, is "commercial computer software" and applicable Documentation and media are "commercial computer software documentation," as those terms are used in FAR 12.212. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint's proprietary rights therein, and of the exclusive applicability of this Agreement.

15. **Export.** Commodities, technology, and software, including the Products (collectively referred to as "items") are subject to the export control laws of the United States and other countries that may lawfully control the export of such items. Moreover, the furnishing of support services with respect to items that are controlled as defense or military items may also be subject to such laws. Licensee will not transfer such items or furnish such services except in compliance with the export laws of the United States and any other country that may lawfully control the export of such items or the provision of such services.

16. **Verification.** Upon Forcepoint's request Licensee will provide a written certification confirming its compliance with this Agreement. Further, during the term of this Agreement and for a period of one year thereafter Forcepoint or Forcepoint's independent auditor may review Licensee's records related to Licensee's use of the Products to verify Licensee's compliance with this Agreement. Licensee will provide reasonable assistance, access to personnel, facilities, and systems, as well as information necessary to facilitate Forcepoint's compliance verification. The verification will be performed during regular business hours and will not unreasonably interfere with Licensee's business activities. The cost of the verification will be borne by Forcepoint unless a discrepancy indicating that additional Fees are due to Forcepoint, in which case the reasonable cost of the verification will be borne by Licensee. Licensee will promptly cure any noncompliance and will pay any Fees due as a result of such noncompliance. The rights and remedies under this Section are in addition to any other rights Forcepoint may have under this Agreement. Additionally, Forcepoint may at any time, without notice, during the term of this Agreement access Licensee's system, subject to applicable local law, to determine whether Licensee and its users are complying with the terms of this Agreement. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and Licensee will not impede, disable or otherwise undermine such license manager's operation.

17. **General.**

- 17.1 For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email and provide account information to related third parties (e.g. Licensee's reseller). Information will be processed by Forcepoint in accordance with applicable data privacy laws. Licensee may at any time update its communications preferences on Forcepoint.com or by sending an email to [privacy@forcepoint.com](mailto:privacy@forcepoint.com). Licensee acknowledges and agrees that if it chooses not to receive informational or advertising messages, then it will not receive Forcepoint emails concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Forcepoint may use non-identifying and aggregate usage and statistical information collected in relation to Licensees' and its users' use of the Products for its own purposes outside of the Agreement. Licensee acknowledges that Forcepoint may use Licensee's company name only in a general list of Forcepoint customers.
- 17.2 Licensee may not transfer any of Licensee's rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint.
- 17.3 Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted and fully prepaid. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3<sup>rd</sup> Floor, Austin, TX 78759 USA. Notices sent to Licensee will be sent to Licensee's address in Forcepoint's system of record. Notices are considered to have been received at the time of actual delivery in person, two business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this paragraph.
- 17.4 Any dispute arising out of or relating to this Agreement or the breach thereof will be governed by the Federal laws of the United States.
- 17.5 In the absence of specific shipping instructions, Forcepoint will ship Hardware by the method it deems most advantageous using standard commercial packaging. Licensee is responsible for obtaining insurance against damage to the Hardware during shipment. At the time Hardware is picked up by the common carrier from a Forcepoint location it is delivered, and title and risk of loss passes to Licensee. Licensee agrees to pay all transportation charges and costs associated with shipment of the Hardware, including any special or export packaging requested or required under the circumstances, as determined by Forcepoint.
- 17.6 Excusable delays shall be governed by FAR 52.212-4(f).
- 17.7 This Agreement is the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not in this Agreement. Licensee agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties or posted by Forcepoint at [Legal Information](#). Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of Forcepoint. All pre-printed or standard terms of any Licensee's purchase order or other business processing document have no effect, and the terms and conditions of this Agreement will prevail over such forms, and any additional, inconsistent, conflicting, or different terms in such forms will be void and of no force and effect. In the event of a conflict between the terms of this Agreement and the terms of an Order, the terms of this Agreement prevail.
- 17.8 If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will be interpreted so as reasonably to affect the intention of the parties.

## MEASURES

## APPLICABLE TO FORCEPOINT PRODUCTS &amp; SERVICES

1. Background

These Data Processing and Protection Measures (the "Measures") are subject to and incorporated by reference into the applicable Forcepoint Customer Agreement. Use of the Products by a Customer shall be deemed to be acceptance of the Forcepoint Customer Agreement and, by incorporation, these Measures. In the event of any conflict between the terms of the Forcepoint Customer Agreement and the terms of these Measures, the relevant terms of these Measures shall prevail, unless otherwise specified below. Exhibit 2, which contains the Standard Contractual Clauses contained in European Commission's Implementing Decision 2021/914 of 4 June 2021, shall prevail in the event of any conflict between the terms of these Measures and Exhibit 2

These Measures incorporate as Exhibit 1, "Forcepoint Technical And Organisational Security Measures" regarding Forcepoint's data security management practices.

These Measures shall be effective for the Subscription Term or Maintenance Term of any Order placed under the Forcepoint Customer Agreement.

2. Definitions

Capitalized terms not specifically defined in these Measures shall have the same meaning as provided for in the Forcepoint Customer Agreement(s) or applicable data protection legislation, such as CCPA or Article 4 of GDPR, e.g. for "processing", "controller", "processor", "personal data" and "data subject". All other capitalized terms have the respective meanings assigned to such terms in the Forcepoint Customer Agreement.

"Affiliates" means an entity controlling, controlled by, or under common control with Forcepoint, that may assist in the provisioning of the Product(s) or Services.

"CCPA" means the California Consumer Privacy Act of 2018.

"Customer" means the Subscriber and/or Licensee as those terms are defined in the applicable Forcepoint Customer Agreements.

"Customer Data" means any data and/or information submitted by Customer to Forcepoint or accessed by Forcepoint through the provisioning and use of the Products or Services which may include, but is not limited to, (i) "End User Personal Data" as defined in the Forcepoint Privacy Policy available at <https://www.forcepoint.com/company/privacypolicy>; and (ii) Personal Data given or made accessible to Forcepoint by the Customer by virtue of Customer's subscription or license to or use of the Product(s).

"Data Processing and Protection Measures" means these commitments concerning Forcepoint's processing of Customer Data applicable to Forcepoint's Products and Services.

"EU Data Protection Law" means the General Data Protection Regulation ("GDPR") (EU 2016/679) on the protection of individuals with regard to the processing of Personal Data and on the free movement of such data, and any subsequent amending or replacing European legislation governing the Processing of Personal Data by Forcepoint during the Subscription Term or Maintenance Term.

"Forcepoint Customer Agreement(s)" means the terms and conditions governing the provision of the applicable Products or Services to Customers, which may consist of the following terms and conditions located at [www.forcepoint.com/product-subscription-agreement](http://www.forcepoint.com/product-subscription-agreement), and/or the terms and conditions governing Products and Services provided to Licensees located at: <https://www.forcepoint.com/network-security-products-license-agreement>.

"Standard Contractual Clauses" means the attached Exhibit 2 incorporated into these Measures pursuant to the European Commission's implementing decision 2021/914 of 4 June 2021 on Standard Contractual Clauses and the applicable Data Protection Modules.

"Sub-processor" means any Data Processor engaged by Forcepoint or an Affiliate.

3. Processing of Data

- 3.1. Access to and processing of Customer Data by Forcepoint Products and Services is done in accordance with the terms of the Forcepoint Customer Agreement and any reasonable and lawful directions received in writing from authorised personnel of Customers that obtained such Products and Services. For the avoidance of doubt, the placing of an Order by Customer shall be deemed to be a general authorization for Forcepoint to process Customer Data in accordance with these Measures.
- 3.2. To the extent Customer Data includes Personal Data, the Customer will at all times be deemed to be the Data Controller and Forcepoint will at all times be deemed to be the Data Processor within the meaning of the applicable data protection laws. Customer is responsible for compliance with its obligations as Data Controller under applicable data protection laws, in particular for justification of and liability for any transmission of Customer Data to Forcepoint (including providing any required notices and obtaining any required consents), and for its decisions concerning the Processing and use of such Customer Data.
- 3.3. Forcepoint will promptly notify the Customer about: (a) any legally binding request for disclosure of the Customer Data by a law enforcement authority (where Customer is identified by name by the law enforcement authority and/or the response provided by Forcepoint will result in identifying the Customer by name to the law enforcement authority) unless otherwise prohibited from doing so by law; (b) any request received for the Customer Data directly from an individual regarding that individual's Personal Data (without responding to that request unless it has been otherwise authorised to do so); and (c) a complaint, communication or request relating to Customer's obligations under applicable data protection laws (including requests from a data protection authority with competent jurisdiction). Forcepoint will only process Customer Data in compliance with all applicable laws including the EU or Member State law to which Forcepoint is subject, including the EU Data Protection Law.

- 3.4. Forcepoint will verify the legal basis of any government authority data requests and reject those Forcepoint has reason to believe are not valid.

#### 4. Security of Data

- 4.1. Forcepoint agrees that it shall implement appropriate technical and organisational security measures to seek to prevent unauthorised or unlawful processing of, or accidental loss, destruction or damage to Customer Data, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing. Technical and organisational security measures employed by Forcepoint include those described in Exhibit 1 (which may be amended by Forcepoint from time to time).
- 4.2. Forcepoint shall also: (i) ensure that only its employees, agents or sub-processors who may be required by Forcepoint to assist it in performing any obligations imposed by the Forcepoint Customer Agreement will have access to the Customer Data; (ii) ensure the reliability of any Forcepoint employees who have access to the Customer Data; (iii) ensure that all employees involved in the processing of the Customer Data have committed themselves to appropriate obligations of confidentiality and have undergone adequate training in the care, protection and handling of Personal Data; and (iv) notify Customer of any actual or reasonably suspected unauthorised or unlawful processing or any accidental loss, destruction, damage, alteration or disclosure of the Customer Data (to the extent reasonably believed by Forcepoint to have targeted Customer Data) without undue delay and, where feasible, not later than 72 hours once it becomes aware of such an event and keep Customer informed of any related developments.
- 4.3. Forcepoint shall take reasonable steps to ensure that Forcepoint contractors or Sub-processors employees who access Customer Data are obligated to maintain the confidentiality and integrity of Customer Data.

#### 5. Audit

- 5.1. Forcepoint shall audit the security of its data processing facilities used to Process the Customer Data. This audit will be performed annually in accordance with ISO 27001 standards (including for purposes in addition to complying with Section 4).
- 5.2. Upon Customer's request, Forcepoint will provide Customer with a copy of the relevant certification(s), such as the Forcepoint Cloud ISO 27001 Certification, (such certification(s) being Forcepoint's confidential information) so that Customer can reasonably verify Forcepoint's compliance with its obligation to seek to take appropriate security measures in accordance with Section 4 and Exhibit 1 of these Measures.
- 5.3. In addition, upon request in writing by Customer and at Customer's sole expense, Forcepoint and Customer will appoint a mutually agreed upon auditor who is internationally approved by the ISO 27001 certification auditing body so that Customer can reasonably verify Forcepoint's compliance with its obligation to seek to take appropriate security measures in accordance with Section 4 and Exhibit 1 of these Measures.
- 5.4. Any such audit will take place during regular business hours and no more frequently than once in any consecutive twelve-month period, and on a mutually agreed upon date, time, location and duration. Customer agrees that (i) such audits shall not adversely affect other Customers of Forcepoint or Forcepoint's provision of Products; (ii) any such third party auditor shall comply with Forcepoint's policies during such audit; and (iii) Customer shall ensure that any such third party auditor treat all of Forcepoint's Confidential Information disclosed to such third party auditor as a result of such audit in the same manner Customer is required to treat such Confidential Information.
- 5.5. Any audit provided for in this section shall only consist of an audit of the architecture, systems and procedures relevant to the protection of Customer Data at locations where Customer Data is stored and/or the review by such auditor of Forcepoint's regularly-prepared records regarding its obligation to implement appropriate security measures, which in the case of Personal Data take into account the guidelines promulgated in Article 32 of the GDPR.
- 5.6. The parties agree that the audits described in Clause 8.9 of the Standard Contractual Clauses shall be carried out in accordance with the specifications set out in this Section.

#### 6. Sub-Processing

- 6.1. By placing its Order(s), Customer provides Forcepoint a general authorisation to engage third party sub-processors as Forcepoint determines is necessary to assist with respect to the provisioning and use of Products and Services. Forcepoint will ensure such Sub-processors are required to comply with data protection obligations, which are no less onerous than the data protection obligations of Forcepoint contained within these Measures.
- 6.2. Customer may review a current list of sub-processors engaged by Forcepoint to process Customer Data at <https://www.forcepoint.com/sites/default/files/resources/files/datasheet-forcepoint-sub-processors-list-en.pdf>.
- 6.3. If Customer has a reasonable basis to object to Forcepoint's use of a Sub-processor, Customer may terminate the Forcepoint Customer Agreement by providing written notice to Forcepoint.
- 6.4. For the avoidance of doubt, no refund will be due from Forcepoint in the event of termination by Customer pursuant to Section 6.3.

#### 7. Consequences of termination of the Forcepoint Customer Agreement

On termination of the Forcepoint Customer Agreement, Forcepoint shall: (i) cease all Processing of Customer Data on behalf of Customer and upon request by Customer either (i) return to Customer (in a format accessible by Customer) all such Customer Data; or (ii) destroy or otherwise render inaccessible all Customer Data (as far as technically possible and except as may be required by law).

#### 8. Disputes and liability

For the avoidance of doubt, the relevant provisions of the Forcepoint Customer Agreement specify the applicable law, jurisdiction, and liability of the parties in relation to any disputes or claims arising in connection with the subject matter of these Measures.

9. International Transfers and the Application of Standard Contractual Clauses

- 9.1. With respect to Customer Personal Data that originates from Customers established in the European Union, and is Processed by Forcepoint outside of the European Union, Forcepoint shall take appropriate steps to ensure such Personal Data is Processed in accordance with applicable data protection laws. Customer shall execute such further documents and do any and all such further things as may be necessary to ensure that any international transfers and subsequent Processing of Personal Data by Forcepoint, Affiliates or their Sub-processors is in compliance with applicable data protection laws.
- 9.2. Forcepoint and its Sub-Processors will comply with the Standard Contractual Clauses when transferring Customer Personal Data to a third country that has not received an adequacy decision from the EU in accordance with GDPR.
- 9.3. For the purpose of the Standard Contractual Clauses and this Section 9, the Data Exporter shall be (i) Customer and (ii) all Customer's affiliates (as defined in the Forcepoint Customer Agreement) established within the European Economic Area and Switzerland using the Products or Services in accordance with the Forcepoint Customer Agreement, and the Data Importer shall be Forcepoint.
- 9.4. Subject to Section 6 of these Measures and pursuant to Clause 9 of the Standard Contractual Clauses, Customer acknowledges and expressly agrees that Forcepoint and its Affiliates may be retained as Sub-processors and may engage third-party Sub-processors in connection with the provision or use of the Products or Services.

10. Assistance

To the extent technically feasible and consistent with its responsibilities related to the sale of its Products and Services to Customer, Forcepoint will assist Customer through appropriate technical and organisational measures to comply with Customer's Data Controller responsibilities as set forth in Chapter III of GDPR Reg EU 2016/679.

EXHIBIT 1

FORCEPOINT TECHNICAL AND ORGANISATIONAL SECURITY MEASURES

Forcepoint implements various technical and organizational measures designed to ensure a level of security appropriate to the risks posed to Customer Data. Such measures seek to prevent unlawful destruction or accidental loss, alteration, unauthorized disclosure or access and against all other unlawful forms of access to Customer Data. Consistent with industry standard and guidelines set forth in applicable data protection laws, such measures include:

Access Control of Processing Areas

Forcepoint implements suitable measures in order to prevent unauthorized persons from gaining access to the data processing equipment (namely telephones, database and application servers and related hardware) where the Customer Data is accessed, processed or used. This is accomplished by:

- establishing security areas;
- protection and restriction of access paths;
- securing the decentralized telephones, data processing equipment and personal computers;
- establishing access authorizations for employees and third parties, including the respective documentation;
- regulations on access card-keys;
- restriction on access card-keys;
- all access to the data center where personal data are hosted is logged, monitored, and tracked; and  the data center where personal data are hosted is secured by a security alarm system, and other appropriate security measures.

Access Control to Data Processing Systems

Forcepoint implements suitable measures to prevent its data processing systems from being used by unauthorized persons. This is accomplished by:

- identification of the terminal and/or the terminal user to the Forcepoint systems;
- automatic time-out of user terminal if left idle, identification and password required to reopen;
- User IDs are monitored and access revoked when several erroneous passwords are entered, log file of events (monitoring of break-in-attempts);
- issuing and safeguarding of identification codes and secure tokens;
- strong password requirements (minimum length, use of special characters, re-use etc.);
- protection against external access by means of a state-of-the-art industrial standard firewall whose connection to the intranet [if applicable] shall in addition be safeguarded by a VPN connection;
- dedication of individual terminals and/or terminal users, identification characteristics exclusive to specific functions; and
- all access to data content on machines or computer systems is logged, monitored, and tracked.

Access Control to Use Specific Areas of Data Processing Systems



Forcepoint commits that the persons entitled to use its data processing systems are only able to access the data within the scope and to the extent covered by their respective access permission (authorization) and that Customer Data cannot be read, copied or modified or removed without authorization. This shall be accomplished by:

- employee policies and training in respect of each employee's access rights to the Personal Data;
- allocation of individual terminals and /or terminal user, and identification characteristics exclusive to specific functions;
- monitoring capability in respect of individuals who delete, add or modify the Personal Data;
- effective and measured disciplinary action against individuals who access Personal Data without authorization;
- release of data to only authorized persons;
- control of files, controlled and documented destruction of data; and
- policies controlling the retention of back-up copies.

#### Transmission Control

Forcepoint implements suitable measures to prevent Customer Data from being read, copied, altered or deleted by unauthorized parties during the transmission thereof or during the transport of the data media and to ensure that it is possible to check and establish to which bodies the transfer of Customer Data by means of data transmission facilities is envisaged. This is accomplished by:

- use of state-of-the-art firewall and encryption technologies to protect the gateways and pipelines through which the data travels;
- use of 128bit SSL-encryption for all http-connections;
- implementation of secure two-factor VPN connections to safeguard the connection to the internet, if applicable;
- encryption of Customer Data by state-of-the-art encryption technology;
- constant monitoring of infrastructure (i.e. ICMP-Ping at network level, disk space examination at system level, successful delivery of specified test pages at application level); and
- monitoring of the completeness and correctness of the transfer of data (end-to-end integrity check).

#### Input Control

Forcepoint implements suitable measures to ensure that it is possible to check and establish whether and by whom personal data have been input into data processing systems or removed. This is accomplished by:

- an authorization policy for the input of data into hosted service, as well as for the reading, alteration and deletion of stored data;
- authentication of the authorized personnel;
- protective measures for the data input into memory, as well as for the reading, alteration and deletion of stored data;
- utilization of user codes (passwords and tokens);
- providing that entries to data processing facilities (the rooms housing the computer hardware and related equipment) are capable of being locked;
- automatic log-off of user ID's that have not been used for a substantial period of time;  logging or otherwise evidencing input authorization; and  electronic recording of entries.

#### Instructional Control of Personal Data

Forcepoint ensures that Customer's Personal Data may only be Processed in accordance with the Forcepoint Customer Agreement together with any reasonable and relevant instructions received in writing from authorised personnel of the Customer from time to time which may be specific instructions or instructions of a general nature as set out in the Forcepoint Customer Agreement or as otherwise agreed between the Customer and Forcepoint during the term of the Forcepoint Customer Agreement. This is accomplished by binding policies and procedures for Forcepoint's employees.

#### Availability Control

Forcepoint implements suitable measures to ensure that Customer Data are protected from accidental destruction or loss. This is accomplished by:

- infrastructure redundancy: reporting data is stored on hardware with redundant disks subsystem backed up in real time with off-site replication backups.

#### Separation of Processing for different Purposes

Forcepoint implements suitable measures to ensure that data collected for different purposes can be processed separately. This is accomplished by:

- access to data is separated through multiple diverse applications for the appropriate users; and
- interfaces, batch processes and reports are designed for only specific purposes and functions, so data collected for specific purposes is Processed separately.

#### Subprocessors

Forcepoint engages various sub processors in connection with its cloud infrastructure. Forcepoint ensures that it has robust contractual provisions in place to ensure compliance by such sub processors with the organizational security measures outlined herein.

EXHIBIT 2  
STANDARD CONTRACTUAL CLAUSES OF  
COMMISSION IMPLEMENTING DECISION (EU) 2021/914 of 4 June 2021

SECTION I

Clause 1

Purpose and scope

- (a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) <sup>(1)</sup> for the transfer of personal data to a third country.
- (b) The Parties:
  - (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter 'entity/ies') transferring the personal data, as listed in Annex I.A (hereinafter each 'data exporter'), and
  - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each 'data importer')have agreed to these standard contractual clauses (hereinafter: 'Clauses').
- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

Clause 2

Effect and invariability of the Clauses

- (a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
- (b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

Clause 3

Third-party beneficiaries

- (a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
  - (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;

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(1) Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.

- (ii) Clause 8 – Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);
  - (iii) Clause 9 – Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
  - (iv) Clause 12 – Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);
  - (v) Clause 13;
  - (vi) Clause 15.1(c), (d) and (e);
  - (vii) Clause 16(e);
  - (viii) Clause 18 – Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.
- (b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

## Clause 4

### Interpretation

- (a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- (c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

## Clause 5

### Hierarchy

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

## Clause 6

### Description of the transfer(s)

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

## Clause 7 – Optional

### Docking clause

- (a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
- (b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
- (c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

## SECTION II – OBLIGATIONS OF THE PARTIES

## Clause 8

### Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

MODULE ONE: Transfer controller to controller **(Not applicable to Forcepoint Personal Data Processing)**

#### 8.1 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I. B. It may only process the personal data for another purpose:

- (i) where it has obtained the data subject's prior consent;
- (ii) where necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iii) where necessary in order to protect the vital interests of the data subject or of another natural person.

#### 8.2 Transparency

- (a) In order to enable data subjects to effectively exercise their rights pursuant to Clause 10, the data importer shall inform them, either directly or through the data exporter:
  - (i) of its identity and contact details;
  - (ii) of the categories of personal data processed;
  - (iii) of the right to obtain a copy of these Clauses;
  - (iv) where it intends to onward transfer the personal data to any third party/ies, of the recipient or categories of recipients (as appropriate with a view to providing meaningful information), the purpose of such onward transfer and the ground therefore pursuant to Clause 8.7.
- (b) Paragraph (a) shall not apply where the data subject already has the information, including when such information has already been provided by the data exporter, or providing the information proves impossible or would involve a disproportionate effort for the data importer. In the latter case, the data importer shall, to the extent possible, make the information publicly available.
- (c) On request, the Parties shall make a copy of these Clauses, including the Appendix as completed by them, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the Parties may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.
- (d) Paragraphs (a) to (c) are without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

#### 8.3 Accuracy and data minimisation

- (a) Each Party shall ensure that the personal data is accurate and, where necessary, kept up to date. The data importer shall take every reasonable step to ensure that personal data that is inaccurate, having regard to the purpose(s) of processing, is erased or rectified without delay.
- (b) If one of the Parties becomes aware that the personal data it has transferred or received is inaccurate, or has become outdated, it shall inform the other Party without undue delay.
- (c) The data importer shall ensure that the personal data is adequate, relevant and limited to what is necessary in relation to the purpose(s) of processing.

## 8.4 Storage limitation

The data importer shall retain the personal data for no longer than necessary for the purpose(s) for which it is processed. It shall put in place appropriate technical or organisational measures to ensure compliance with this obligation, including erasure or anonymisation <sup>(2)</sup> of the data and all back-ups at the end of the retention period.

## 8.5 Security of processing

(a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the personal data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.

(b) The Parties have agreed on the technical and organisational measures set out in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

(c) The data importer shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

(d) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the personal data breach, including measures to mitigate its possible adverse effects.

(e) In case of a personal data breach that is likely to result in a risk to the rights and freedoms of natural persons, the data importer shall without undue delay notify both the data exporter and the competent supervisory authority pursuant to Clause 13. Such notification shall contain i) a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), ii) its likely consequences, iii) the measures taken or proposed to address the breach, and iv) the details of a contact point from whom more information can be obtained. To the extent it is not possible for the data importer to provide all the information at the same time, it may do so in phases without undue further delay.

(f) In case of a personal data breach that is likely to result in a high risk to the rights and freedoms of natural persons, the data importer shall also notify without undue delay the data subjects concerned of the personal data breach and its nature, if necessary in cooperation with the data exporter, together with the information referred to in paragraph (e), points ii) to iv), unless the data importer has implemented measures to significantly reduce the risk to the rights or freedoms of natural persons, or notification would involve disproportionate efforts. In the latter case, the data importer shall instead issue a public communication or take a similar measure to inform the public of the personal data breach.

(g) The data importer shall document all relevant facts relating to the personal data breach, including its effects and any remedial action taken, and keep a record thereof.

## 8.6 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions or offences (hereinafter 'sensitive data'), the data importer shall apply specific restrictions and/or additional safeguards adapted to the specific nature of the data and the risks involved. This may include restricting the personnel permitted to access the personal data, additional security measures (such as pseudonymisation) and/or additional restrictions with respect to further disclosure.

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(2) This requires rendering the data anonymous in such a way that the individual is no longer identifiable by anyone, in line with recital 26 of Regulation (EU) 2016/679, and that this process is irreversible.

## 8.7 Onward transfers

The data importer shall not disclose the personal data to a third party located outside the European Union <sup>(3)</sup> (in the same country as the data importer or in another third country, hereinafter 'onward transfer') unless the third party is or agrees to be

bound by these Clauses, under the appropriate Module. Otherwise, an onward transfer by the data importer may only take place if:

- (i) it is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679 with respect to the processing in question;
- (iii) the third party enters into a binding instrument with the data importer ensuring the same level of data protection as under these Clauses, and the data importer provides a copy of these safeguards to the data exporter;
- (iv) it is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings;
- (v) it is necessary in order to protect the vital interests of the data subject or of another natural person; or
- (vi) where none of the other conditions apply, the data importer has obtained the explicit consent of the data subject for an onward transfer in a specific situation, after having informed him/her of its purpose(s), the identity of the recipient and the possible risks of such transfer to him/her due to the lack of appropriate data protection safeguards. In this case, the data importer shall inform the data exporter and, at the request of the latter, shall transmit to it a copy of the information provided to the data subject.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

#### 8.8 Processing under the authority of the data importer

The data importer shall ensure that any person acting under its authority, including a processor, processes the data only on its instructions.

#### 8.9 Documentation and compliance

- (a) Each Party shall be able to demonstrate compliance with its obligations under these Clauses. In particular, the data importer shall keep appropriate documentation of the processing activities carried out under its responsibility.
- (b) The data importer shall make such documentation available to the competent supervisory authority on request.

### MODULE TWO: Transfer controller to processor

#### 8.1 Instructions

- (a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.
- (b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

#### 8.2 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I. B, unless on further instructions from the data exporter.

- (3) The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

#### 8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential



information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

#### 8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to erase or rectify the data.

#### 8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

#### 8.6 Security of processing

- (a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
- (b) The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
- (d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

#### 8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data

concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter 'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex I.B.

#### 8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union <sup>(4)</sup> (in the same country as the data importer or in another third country, hereinafter 'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

- (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;
- (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

#### 8.9 Documentation and compliance

- (a) The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.
- (b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.
- (c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.
- (d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
- (e) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

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- (4) The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

MODULE THREE: Transfer processor to processor

#### 8.1 Instructions

- (a) The data exporter has informed the data importer that it acts as processor under the instructions of its controller(s), which the data exporter shall make available to the data importer prior to processing.
- (b) The data importer shall process the personal data only on documented instructions from the controller, as communicated to the data importer by the data exporter, and any additional documented instructions from the data exporter. Such additional instructions shall not conflict with the instructions from the controller. The controller or data

exporter may give further documented instructions regarding the data processing throughout the duration of the contract.

(c) The data importer shall immediately inform the data exporter if it is unable to follow those instructions. Where the data importer is unable to follow the instructions from the controller, the data exporter shall immediately notify the controller.

(d) The data exporter warrants that it has imposed the same data protection obligations on the data importer as set out in the

contract or other legal act under Union or Member State law between the controller and the data exporter <sup>(5)</sup>.

## 8.2 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I. B., unless on further instructions from the controller, as communicated to the data importer by the data exporter, or from the data exporter.

## 8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the data exporter may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.

## 8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to rectify or erase the data.

## 8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the controller and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

(5) See Article 28(4) of Regulation (EU) 2016/679 and, where the controller is an EU institution or body, Article 29(4) of Regulation (EU) 2018/1725.

## 8.6 Security of processing

(a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter or the controller. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

- (b) The data importer shall grant access to the data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify, without undue delay, the data exporter and, where appropriate and feasible, the controller after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the data breach, including measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
- (d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify its controller so that the latter may in turn notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

## 8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter 'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards set out in Annex I.B.

## 8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the controller, as communicated to the data importer by the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union

- (6) (in the same country as the data importer or in another third country, hereinafter 'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:
    - (i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
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- (6) The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purposes of these Clauses.
    - (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679;
    - (iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
    - (iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

## 8.9 Documentation and compliance

- (a) The data importer shall promptly and adequately deal with enquiries from the data exporter or the controller that relate to the processing under these Clauses.
- (b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the controller.
- (c) The data importer shall make all information necessary to demonstrate compliance with the obligations set out in these Clauses available to the data exporter, which shall provide it to the controller.
- (d) The data importer shall allow for and contribute to audits by the data exporter of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. The same shall apply where the data exporter requests an audit on instructions of the controller. In deciding on an audit, the data exporter may take into account relevant certifications held by the data importer.
- (e) Where the audit is carried out on the instructions of the controller, the data exporter shall make the results available to the controller.
- (f) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
- (g) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

MODULE FOUR: Transfer processor to controller **(Not applicable to Forcepoint Personal Data Processing)**

#### 8.1 Instructions

- (a) The data exporter shall process the personal data only on documented instructions from the data importer acting as its controller.
- (b) The data exporter shall immediately inform the data importer if it is unable to follow those instructions, including if such instructions infringe Regulation (EU) 2016/679 or other Union or Member State data protection law.
- (c) The data importer shall refrain from any action that would prevent the data exporter from fulfilling its obligations under Regulation (EU) 2016/679, including in the context of sub-processing or as regards cooperation with competent supervisory authorities.
- (d) After the end of the provision of the processing services, the data exporter shall, at the choice of the data importer, delete all personal data processed on behalf of the data importer and certify to the data importer that it has done so, or return to the data importer all personal data processed on its behalf and delete existing copies.

#### 8.2 Security of processing

- (a) The Parties shall implement appropriate technical and organisational measures to ensure the security of the data, including during transmission, and protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature of the personal data <sup>(7)</sup>, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects, and in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.
- (b) The data exporter shall assist the data importer in ensuring appropriate security of the data in accordance with paragraph (a). In case of a personal data breach concerning the personal data processed by the data exporter under these Clauses, the data exporter shall notify the data importer without undue delay after becoming aware of it and assist the data importer in addressing the breach.
- (c) The data exporter shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

#### 8.3 Documentation and compliance

- (a) The Parties shall be able to demonstrate compliance with these Clauses.
- (b) The data exporter shall make available to the data importer all information necessary to demonstrate compliance with its obligations under these Clauses and allow for and contribute to audits.

## Clause 9

### Use of sub-processors

#### MODULE TWO: Transfer controller to processor

- (a) **OPTION 1: SPECIFIC PRIOR AUTHORISATION** The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the data exporter's prior specific written authorisation. The data importer shall submit the request for specific authorisation at least [Specify time period] prior to the engagement of the sub-processor, together with the information necessary to enable the data exporter to decide on the authorisation. The list of sub-processors already authorised by the data exporter can be found in Annex III. The Parties shall keep Annex III up to date. **(Not applicable to Forcepoint Personal Data Processing)**

**OPTION 2: GENERAL WRITTEN AUTHORISATION** The data importer has the data exporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least [Specify time period] in advance, thereby giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.

- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. <sup>(8)</sup> The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the subprocessor complies with the obligations to which the data importer is subject pursuant to these Clauses.

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- (7) This includes whether the transfer and further processing involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions or offences.
  - (8) This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.
  - (c) The data importer shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
  - (d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
  - (e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the subprocessor contract and to instruct the sub-processor to erase or return the personal data.

#### MODULE THREE: Transfer processor to processor

- (a) **OPTION 1: SPECIFIC PRIOR AUTHORISATION** The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the prior specific written authorisation of the controller. The data importer shall submit the request for specific authorisation at least [Specify time period] prior to the engagement of the sub-processor, together with the information necessary to enable the controller to



decide on the authorisation. It shall inform the data exporter of such engagement. The list of sub-processors already authorised by the controller can be found in Annex III. The Parties shall keep Annex III up to date. (Not applicable to Forcepoint Personal Data Processing)

OPTION 2: GENERAL WRITTEN AUTHORISATION The data importer has the controller's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the controller in writing of any intended changes to that list through the addition or replacement of sub-processors at least [Specify time period] in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the controller with the information necessary to enable the controller to exercise its right to object. The data importer shall inform the data exporter of the engagement of the sub-processor(s).

- (b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the controller), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. <sup>(9)</sup> The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
- (c) The data importer shall provide, at the data exporter's or controller's request, a copy of such a sub-processor agreement and any subsequent amendments. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
- (d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
- (e) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the subprocessor contract and to instruct the sub-processor to erase or return the personal data.

(9) This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

## Clause 10

### Data subject rights

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

- (a) The data importer, where relevant with the assistance of the data exporter, shall deal with any enquiries and requests it receives from a data subject relating to the processing of his/her personal data and the exercise of his/her rights under these Clauses without undue delay and at the latest within one month of the receipt of the enquiry or request. <sup>(10)</sup> The data importer shall take appropriate measures to facilitate such enquiries, requests and the exercise of data subject rights. Any information provided to the data subject shall be in an intelligible and easily accessible form, using clear and plain language.
- (b) In particular, upon request by the data subject the data importer shall, free of charge:
  - (i) provide confirmation to the data subject as to whether personal data concerning him/her is being processed and, where this is the case, a copy of the data relating to him/her and the information in Annex I; if personal data has been or will be onward transferred, provide information on recipients or categories of recipients (as appropriate with a view to providing meaningful information) to which the personal data has been or will be onward transferred, the purpose of such onward transfers and their ground pursuant to Clause 8.7; and provide information on the right to lodge a complaint with a supervisory authority in accordance with Clause 12(c)(i);
  - (ii) rectify inaccurate or incomplete data concerning the data subject;
  - (iii) erase personal data concerning the data subject if such data is being or has been processed in violation of any of these Clauses ensuring third-party beneficiary rights, or if the data subject withdraws the consent on which the processing is based.

- (c) Where the data importer processes the personal data for direct marketing purposes, it shall cease processing for such purposes if the data subject objects to it.
- (d) The data importer shall not make a decision based solely on the automated processing of the personal data transferred (hereinafter 'automated decision'), which would produce legal effects concerning the data subject or similarly significantly affect him/her, unless with the explicit consent of the data subject or if authorised to do so under the laws of the country of destination, provided that such laws lay down suitable measures to safeguard the data subject's rights and legitimate interests. In this case, the data importer shall, where necessary in cooperation with the data exporter:
  - (i) inform the data subject about the envisaged automated decision, the envisaged consequences and the logic involved; and
  - (ii) implement suitable safeguards, at least by enabling the data subject to contest the decision, express his/her point of view and obtain review by a human being.
- (e) Where requests from a data subject are excessive, in particular because of their repetitive character, the data importer may either charge a reasonable fee taking into account the administrative costs of granting the request or refuse to act on the request.
- (f) The data importer may refuse a data subject's request if such refusal is allowed under the laws of the country of destination and is necessary and proportionate in a democratic society to protect one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679.
- (g) If the data importer intends to refuse a data subject's request, it shall inform the data subject of the reasons for the refusal and the possibility of lodging a complaint with the competent supervisory authority and/or seeking judicial redress.

#### MODULE TWO: Transfer controller to processor

- (a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.
- 
- (10) That period may be extended by a maximum of two more months, to the extent necessary taking into account the complexity and number of requests. The data importer shall duly and promptly inform the data subject of any such extension.
  - (b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
  - (c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

#### MODULE THREE: Transfer processor to processor

- (a) The data importer shall promptly notify the data exporter and, where appropriate, the controller of any request it has received from a data subject, without responding to that request unless it has been authorised to do so by the controller.
- (b) The data importer shall assist, where appropriate in cooperation with the data exporter, the controller in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
- (c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the controller, as communicated by the data exporter.

#### MODULE FOUR: Transfer processor to controller (Not applicable to Forcepoint Personal Data Processing)

The Parties shall assist each other in responding to enquiries and requests made by data subjects under the local law applicable to the data importer or, for data processing by the data exporter in the EU, under Regulation (EU) 2016/679.

## Clause 11

### Redress

- (a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

[OPTION: The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body <sup>(11)</sup> at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]

MODULE ONE: Transfer controller to controller **(Not applicable to Forcepoint Personal Data Processing)**

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

- (b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
- (c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
- (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
  - (ii) refer the dispute to the competent courts within the meaning of Clause 18.
- 
- (11) The data importer may offer independent dispute resolution through an arbitration body only if it is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.
- (d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
- (e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- (f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

## Clause 12

### Liability

MODULE ONE: Transfer controller to controller **(Not applicable to Forcepoint Personal Data Processing)**

MODULE FOUR: Transfer processor to controller

- (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (b) Each Party shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages that the Party causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter under Regulation (EU) 2016/679.
- (c) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (d) The Parties agree that if one Party is held liable under paragraph (c), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.

- (e) The data importer may not invoke the conduct of a processor or sub-processor to avoid its own liability.

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

- (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (b) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
- (c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.
- (d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its subprocessor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.
- (e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (f) The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
- (g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

Clause 13

Supervision

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

- (a) [Where the data exporter is established in an EU Member State:] The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation

(EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679:] The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679:] The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

- (b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

## Clause 14

Local laws and practices affecting compliance with the Clauses

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

MODULE FOUR: Transfer processor to controller (where the EU processor combines the personal data received from the third country controller with personal data collected by the processor in the EU) (Not applicable to Forcepoint Personal Data Processing)

- (a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- (b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
- (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
  - (ii) the laws and practices of the third country of destination— including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards <sup>(12)</sup>;
  - (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- (c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
- (d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
- (e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a). [For Module Three: The data exporter shall forward the notification to the controller.]
- (f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation [for Module Three: if appropriate in consultation with the controller]. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by [for Module Three: the controller or] the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

## Clause 15

## Obligations of the data importer in case of access by public authorities

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

MODULE FOUR: Transfer processor to controller (where the EU processor combines the personal data received from the third country controller with personal data collected by the processor in the EU) (Not applicable to Forcepoint Personal Data Processing)

(12) As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

## 15.1 Notification

- (a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
  - (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
  - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.

[For Module Three: The data exporter shall forward the notification to the controller.]

- (b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- (c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.). [For Module Three: The data exporter shall forward the information to the controller.]
- (d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.



## 15.2 Review of legality and data minimisation

- (a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).
- (b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request. [For Module Three: The data exporter shall make the assessment available to the controller.]
- (c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

### SECTION IV – FINAL PROVISIONS

#### Clause 16

##### Non-compliance with the Clauses and termination

- (a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
- (b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
- (c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
  - (i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
  - (ii) the data importer is in substantial or persistent breach of these Clauses; or
  - (iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority [for Module Three: and the controller] of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

- (d) [For Modules One, Two and Three: Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data.] [For Module Four: Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof.] The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
- (e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

Clause 17

Governing law

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

[OPTION 1: These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of Ireland.

[OPTION 2 (for Modules Two and Three): These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of (specify Member State).] (Not applicable to Forcepoint Personal Data Processing)

MODULE FOUR: Transfer processor to controller (Not applicable to Forcepoint Personal Data Processing)

These Clauses shall be governed by the law of a country allowing for third-party beneficiary rights. The Parties agree that this shall be the law of \_\_ (specify country).

Clause 18

Choice of forum and jurisdiction

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

- (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
- (b) The Parties agree that those shall be the courts of Ireland.
- (c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
- (d) The Parties agree to submit themselves to the jurisdiction of such courts.

MODULE FOUR: Transfer processor to controller (Not applicable to Forcepoint Personal Data Processing)

Any dispute arising from these Clauses shall be resolved by the courts of \_\_\_\_\_ (specify country).

\_\_\_\_\_

## APPENDIX

### EXPLANATORY NOTE:

It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can be achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.

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## ANNEX I

### A. LIST OF PARTIES

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

MODULE FOUR: Transfer processor to controller (Not applicable to Forcepoint Personal Data Processing)

Data exporter(s): [Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]

1. Name: Customer as defined in the Measures

Address: . . . As provided in the relevant Customer Agreement.

Activities relevant to the data transferred under these Clauses:

Customer Personal Data is transferred for the purposes of the management and administration of customer/client services, including but not limited to:

- administration of orders and accounts;
- providing Forcepoint Products and associated technical support;
- Forcepoint Product management and development;
- the conduct of Forcepoint's business activities.

Signature and date: . . . . .

Role (controller/processor): Controller

Data importer(s): [Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]

1. Name: Forcepoint (as defined in the relevant Customer Agreement).

Address: As provided in the relevant Customer Agreement

Contact person's name, position and contact details:

Forcepoint  
 Attention: Data Protection Officer  
 10900-A Stonelake Blvd., Quarry Oaks 1, Suite 350 Austin, TX 78759  
 Email: Privacy@forcepoint.com

Activities relevant to the data transferred under these Clauses:

Customer Personal Data is transferred for the purposes of the management and administration of customer/client services, including but not limited to:

- administration of orders and accounts;
- providing Forcepoint Products and associated technical support;
- Forcepoint Product management and development; • the conduct of Forcepoint's business activities

Signature and date: . . . . .

Role (controller/processor): Processor

## B. DESCRIPTION OF TRANSFER

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

MODULE FOUR: Transfer processor to controller (Not applicable to Forcepoint Personal Data Processing)

Categories of data subjects whose personal data is transferred

Through their use of Forcepoint Products, Data Exporter may submit Personal Data to Forcepoint, the extent of which is determined and controlled by the Data Exporter in its sole discretion, and which may include but is not limited to the categories of Personal Data listed below:

- Forcepoint Customer ID information: Customer ID (i.e. the ID used to identify which customer send files to ThreatScope), User ID or Visitor ID (the ID used to identify client IP visiting the file), network user name, first name, last name, company name, country, and email address.
- Communication information: email metadata, including email addresses of sender and recipient, sender email in SMTP transaction and email subject.
- Traffic data: proxy log, web traffic logs, apache browsing logs, browsing and diagnostic logs, IP addresses, URL information, website session data and files submitted by ForcepointCustomers. Categories of personal data transferred

Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

Through their use of Forcepoint Products, Data Exporter may submit Personal Data to Forcepoint, the extent of which is determined and controlled by the Data Exporter in its sole discretion. Forcepoint does not expect to receive sensitive data from the Data Exporter.

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

Customer Personal Data may be transferred for the purposes of the management and administration of customer/client services on a continuous basis.

### Nature of the processing

Customer Data is transferred for the purposes of the management and administration of customer/client services, including but not limited to:

- administration of orders and accounts;
- providing Forcepoint Products and associated technical support;
- Forcepoint Product management and development;
- the conduct of Forcepoint's business activities.

### Purpose(s) of the data transfer and further processing

Customer Data are transferred for the purposes of the management and administration of customer/client services, including but not limited to:

- administration of orders and accounts;
- providing Forcepoint Products and associated technical support;
- Forcepoint Product management and development;
- the conduct of Forcepoint's business activities.

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

Forcepoint will only keep the Data Exporter's Personal Data it collects, as long as necessary, for the purpose or purposes (i) for which it was collected; (ii) of performing or fulfilling contractual obligations; (iii) of complying with law; and/or (iv) of responding to legal actions.

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

A list of Forcepoint's current sub-processors, along with a description of their services, can be found at:

<https://www.forcepoint.com/sites/default/files/resources/files/datasheet-forcepoint-sub-processors-list-en.pdf>. Forcepoint's sub-processor's will only keep the Data Exporter's Personal Data it collects, as long as necessary, for the purpose or purposes (i) for which it was collected; (ii) of performing or fulfilling contractual obligations; (iii) of complying with law; and/or (iv) of responding to legal actions.

## C. COMPETENT SUPERVISORY AUTHORITY

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

Identify the competent supervisory authority/ies in accordance with Clause 13

\_\_\_\_\_



## ANNEX II

### TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

Forcepoint implements various technical and organizational measures designed to ensure a level of security appropriate to the risks posed to Customer Data. Such measures seek to prevent unlawful destruction or accidental loss, alteration, unauthorized disclosure or access and against all other unlawful forms of access to Customer Data. Consistent with industry standard and guidelines set forth in applicable data protection laws, such measures include:

#### Access Control of Processing Areas

Forcepoint implements suitable measures in order to prevent unauthorized persons from gaining access to the data processing equipment (namely telephones, database and application servers and related hardware) where the Customer Data is accessed, processed or used. This is accomplished by:

- establishing security areas;
- protection and restriction of access paths;
- securing the decentralized telephones, data processing equipment and personal computers;
- establishing access authorizations for employees and third parties, including the respective documentation;
- regulations on access card-keys;
- restriction on access card-keys;
- all access to the data center where personal data are hosted is logged, monitored, and tracked; and
- the data center where personal data are hosted is secured by a security alarm system, and other appropriate security measures.

#### Access Control to Data Processing Systems

Forcepoint implements suitable measures to prevent its data processing systems from being used by unauthorized persons. This is accomplished by:

- identification of the terminal and/or the terminal user to the Forcepoint systems;
- automatic time-out of user terminal if left idle, identification and password required to reopen;
- User IDs are monitored and access revoked when several erroneous passwords are entered, log file of events (monitoring of break-in-attempts);
- issuing and safeguarding of identification codes and secure tokens;
- strong password requirements (minimum length, use of special characters, re-use etc.);
- protection against external access by means of a state-of-the-art industrial standard firewall whose connection to the intranet [if applicable] shall in addition be safeguarded by a VPN connection;
- dedication of individual terminals and/or terminal users, identification characteristics exclusive to specific functions; and
- all access to data content on machines or computer systems is logged, monitored, and tracked.

#### Access Control to Use Specific Areas of Data Processing Systems

Forcepoint commits that the persons entitled to use its data processing systems are only able to access the data within the scope and to the extent covered by their respective access permission (authorization) and that Customer Data cannot be read, copied or modified or removed without authorization. This shall be accomplished by:

- employee policies and training in respect of each employee's access rights to the Personal Data;
- allocation of individual terminals and /or terminal user, and identification characteristics exclusive to specific functions;
- monitoring capability in respect of individuals who delete, add or modify the Personal Data;
- effective and measured disciplinary action against individuals who access Personal Data without authorization;
- release of data to only authorized persons;
- control of files, controlled and documented destruction of data; and  policies controlling the retention of back-up copies.

## Transmission Control

Forcepoint implements suitable measures to prevent Customer Data from being read, copied, altered or deleted by unauthorized parties during the transmission thereof or during the transport of the data media and to ensure that it is possible to check and establish to which bodies the transfer of Customer Data by means of data transmission facilities is envisaged. This is accomplished by:

- use of state-of-the-art firewall and encryption technologies to protect the gateways and pipelines through which the data travels;
- use of 128bit SSL-encryption for all http-connections;
- implementation of secure two-factor VPN connections to safeguard the connection to the internet, if applicable;
- encryption of Customer Data by state-of-the-art encryption technology;
- constant monitoring of infrastructure (i.e. ICMP-Ping at network level, disk space examination at system level, successful delivery of specified test pages at application level); and
- monitoring of the completeness and correctness of the transfer of data (end-to-end integrity check).

## Input Control

Forcepoint implements suitable measures to ensure that it is possible to check and establish whether and by whom personal data have been input into data processing systems or removed. This is accomplished by:

- an authorization policy for the input of data into hosted service, as well as for the reading, alteration and deletion of stored data;
- authentication of the authorized personnel;
- protective measures for the data input into memory, as well as for the reading, alteration and deletion of stored data;
- utilization of user codes (passwords and tokens);
- providing that entries to data processing facilities (the rooms housing the computer hardware and related equipment) are capable of being locked;
- automatic log-off of user ID's that have not been used for a substantial period of time;  logging or otherwise evidencing input authorization; and  electronic recording of entries.

## Instructional Control of Personal Data

Forcepoint ensures that Customer's Personal Data may only be Processed in accordance with the Forcepoint Customer Agreement together with any reasonable and relevant instructions received in writing from authorised personnel of the Customer from time to time which may be specific instructions or instructions of a general nature as set out in the Forcepoint Customer Agreement or as otherwise agreed between the Customer and Forcepoint during the term of the Forcepoint Customer Agreement. This is accomplished by binding policies and procedures for Forcepoint's employees.

## Availability Control

Forcepoint implements suitable measures to ensure that Customer Data are protected from accidental destruction or loss. This is accomplished by:

- infrastructure redundancy: reporting data is stored on hardware with redundant disks subsystem backed up in real time with off-site replication backups.

## Separation of Processing for different Purposes

Forcepoint implements suitable measures to ensure that data collected for different purposes can be processed separately. This is accomplished by:

- access to data is separated through multiple diverse applications for the appropriate users; and
  - interfaces, batch processes and reports are designed for only specific purposes and functions, so data collected for specific purposes is Processed separately.

## Subprocessors

Forcepoint engages various sub processors in connection with its cloud infrastructure. Forcepoint ensures that it has robust contractual provisions in place to ensure compliance by such sub processors with the organizational security measures outlined herein.

ANNEX III

LIST OF SUB-PROCESSORS

(Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor MODULE THREE:

Transfer processor to processor

EXPLANATORY NOTE:

This Annex must be completed for Modules Two and Three, in case of the specific authorisation of sub-processors (Clause 9(a), Option 1).

The controller has authorised the use of the following sub-processors:

1. Name: .....  
 Address: .....  
 Contact person's name, position and contact details: .....  
 Description of processing (including a clear delimitation of responsibilities in case several sub-processors are authorised): .....  
 .....
2. ....  
 .....

## Forcepoint Cloud Services Service Level Agreement

### 1. Terms and Conditions

- 1.1 Forcepoint provides these SLAs subject to the terms and conditions of the then current Forcepoint Subscription Agreement at: [Subscription Agreement](#), and the Forcepoint Network Security Products License Agreement at: [Network Security License Agreement](#), as applicable and as may be updated by Forcepoint from time to time (the "Agreement").

The defined terms therein have the same meaning when used in this Service Level Agreement. "Subscriber" and "Licensee" under the Agreement are referred to as "Customer" in these SLAs. The current version of these SLAs can be found at: <https://www.forcepoint.com/company/terms-and-conditions> and may be modified or updated by Forcepoint from time to time in its sole discretion with or without notice to the Customer.

- 1.2 A Customer must submit a claim in writing within 5 days of the occurrence of the failure to meet an SLA (or earlier if specifically set forth below) (the "Credit Request"), and promptly provide Forcepoint with reasonable evidence to support the basis for the Credit Request. If Forcepoint confirms that an SLA was not met, then Customer will be eligible for a "Service Credit" entitling the Customer to the free use of the affected Cloud Service for the time period set forth in the applicable SLA.
- 1.3 Service Credits for any failure to meet an SLA will only be provided under a single SLA for a single claim, as identified by the Customer in the Credit Request. One claim cannot result in Service Credits under multiple SLAs.

- 1.4 The SLAs will not apply to situations where:

#### GENERAL

- The Cloud Service is unavailable for 1 hour or less or the Customer fails to timely submit a Credit Request in compliance with Section 1.2
- The Customer has used the Cloud Service for 30 days or less
- The Customer is a trial or evaluation customer
- The Customer is misusing the Cloud Service (including without limitation acting as an open relay or open proxy, or using the service to send spam or viruses) or is otherwise in violation of the Agreement
- The failure to comply with the SLA is based on reasons beyond Forcepoint's reasonable control as set out in the Agreement

#### CONFIGURATION

- The Cloud Service is incorrectly configured by the Customer, including use of Customer-provided networking equipment that does not meet the guidance in the Documentation
- The Customer configures equipment, network, or software in a manner such that Customer's connection does not utilize the high-availability capabilities of the Cloud Service
- The Customer provides incorrect or inaccurate information (including change information) to Forcepoint
- For Cloud Email, where an account is not configured to use two or more co-location sites (clusters) Operation
- Forcepoint is performing scheduled or routine maintenance of the Cloud Service, where the Customer has been notified of the maintenance no less than 5 days in advance, or as otherwise set forth below
- Forcepoint is performing emergency maintenance to apply security patches to the Cloud Service Connectivity
- The Customer's applications or equipment or Internet connection has failed, or equipment is switching between service connection points
- There is an issue with the Customer's or a third party's hardware or software, or an issue caused by third parties who gain access to the Cloud Services using Customer's accounts or equipment
- There is an issue with the Customer's routing infrastructure (e.g. router, identity-provider or secure web proxy of a third-party)
- There is a network unavailability outside of Forcepoint-controlled systems (servers, hardware, and associated software) that are responsible for delivering the Cloud Service

1.5 The remedies set forth in this Service Level Agreement are the Customer's sole and exclusive remedy for any failure by Forcepoint to comply with the SLAs. Further information regarding remedies is set forth in the Agreement.

2. SLAs for Forcepoint's security access policy enforcement Cloud Services solution ("CASB")

## 2.1 Definitions

- "NI" or 'Network Infrastructure' means the group of Forcepoint controlled systems (servers, hardware, and associated software) that are responsible for delivering CASB.
- "NI Outage" means a period when the Forcepoint NI fails to direct web traffic to the Customer site.
- "PI" or 'Peripheral Infrastructure' means the application access, configuration management, and all nonlinear networking capabilities provided by Forcepoint to Customer for use in connection with CASB.
- "PI Outage" means a period when the Forcepoint PI is unavailable, outside a Scheduled Maintenance window.
- "Outage" means a NI Outage or PI Outage, as applicable.
- "Scheduled Maintenance" means maintenance performed (a) in which Customer is provided electronic notice at least 48 hours in advance if Customer has enrolled in automatic notifications, and (b) a recurring weekly maintenance window pertaining to the "PI" every Sunday between 3:00 AM Pacific to 3:00 PM Pacific. During this maintenance window the "PI" might be intermittently unavailable.

## 2.2 CASB Availability (Uptime)

- CASB will have a NI monthly uptime percentage of 99.999%.
- CASB will have a PI monthly uptime percentage of 99.5%.
- Monthly uptime percentage is calculated by subtracting from 100% the percentage of 60 second periods during the calendar month in which CASB is in a state of Outage. In the event Forcepoint does not meet the Monthly Uptime Percentage commitment, then Customer may be eligible to receive Service Credits calculated and applied as follows:
  - o Forcepoint will use all information reasonably available to it to calculate the Outage length, including analysis of service data immediately prior to the Outage period. If Forcepoint determines that there has been a NI Outage for more than 0.001% or a PI Outage for more than 0.5% of any calendar month, then Forcepoint will make the following Service Credits available to Customer, subject to the conditions of this Service Level Agreement:

<u>Outage Length</u>	<u>Service Credit(s)</u>
1 min. – 120 min.	1 day's credit
Outages of more than 120 min	1 day's credit for every 2 full hours of outage

- A Service Credit due to a Customer will: (a) not exceed 30 days in any one month period; and (b) be applied by Forcepoint to Customer's account. Service Credits for the SLA under this Section 2 will only be credited toward Customer's use of CASB.

## 3. SLAs for Forcepoint's Internet and internal application access policy enforcement Cloud Services solution ("Private Access")

### 3.1 Service Availability (Uptime)

- Private Access will be available 99.999% of the time
- Private Access "Service Unavailability" means the inability of Private Access to receive, process and forward web (HTTP/HTTPS) and non-web traffic in substantial conformance with Forcepoint's Documentation, on behalf of the Customer and measured during any given calendar month.
- In the event of Service Unavailability for more than 0.001% of any calendar month, Customer may be eligible for a Service Credit equal to 1 day for each 2 hour period of Service Unavailability, subject to a maximum credit of 5 days in any 1 calendar month.

### 3.2 Service Latency

- Private Access will process HTTP and HTTPS requests consisting of units of data made into single Internet protocol packages traveling along a network path ("Requests") in no more than 100 milliseconds 95% of the time over any calendar month measured from the time Private Access receives the content to the time Private Access attempts to transmit the content. Communication times outside of Private Access are not included in this SLA
- This service latency SLA only applies to "Qualified Content", which means Requests that are: less than 1 MB HTTP GET request and response; not SSL-intercepted; not related to streaming applications; not subject to bandwidth management rules (e.g. QoS enforcement); and resulting from a reasonable level of consumption (not more than 2,000 Requests per User per day on average).

- If in any one calendar month 5% or more of the Qualified Content is not processed in 100 milliseconds or less as determined by the monthly average Private Access processing time among samples taken by Forcepoint in a given calendar month ("Missed Latency SLA"), Customer may be eligible for a Service Credit equal to 1 week as a result of the Missed Latency SLA subject to a maximum aggregate Service Credit of 4 weeks during any 12-month term.
4. SLAs for Forcepoint's user risk analysis Cloud Services solution ("**Dynamic User Protection**")
- 4.1 **Service Availability**
- Dynamic User Protection will be available 99.9% of the time
  - Dynamic User Protection "Service Unavailability" means the inability of Customer to access the Dynamic User Protection management portal as specified in Forcepoint's published documentation (as may be updated by Forcepoint from time to time), and measured over a calendar month.
  - In the event of Service Unavailability for more than 0.1% of any calendar month, Customer may be eligible for a Service Credit equal to 1 day for each 2 hour period of Service Unavailability, subject to a maximum credit of 5 days in any 1 calendar month.
5. SLAs for Forcepoint's inbound and outbound email scanning Cloud Services solution ("**Cloud Email**")
- 5.1 **Message Tracking**
- For 95% of all emails processed, the following will be available for review in the Message Center within 5 minutes of receipt of an email: Detailed SMTP logs; and all emails that are quarantined (including those that failed a content filtering rule, were classified as spam or were infected with a virus).
  - If more than 5% of email logs or quarantined emails processed in any calendar month are not available for review within 5 minutes when the Customer is using the portal, Customer may be eligible for a Service Credit equal to 1 day for each email log or quarantined email that did not meet this SLA, subject to a maximum credit of 5 days in any 1 month.
- 5.2 **Service Availability**
- Cloud Email will be available 99.999% of the time.
  - Cloud Email "Service Unavailability" means the inability of the email filtering service to receive and process email in substantial conformance with Forcepoint's published documentation for the email filtering service, as may be updated by Forcepoint from time to time, on behalf of the Customer and measured during any given calendar month.
  - In the event of Service Unavailability for more than 0.001% of any calendar month, Customer may be eligible for a Service Credit equal to 1 day for each 2 hour period of Service Unavailability, subject to a maximum credit of 5 days in any 1 month.
- 5.3 **Service Management**
- For 99% of all non-spam emails less than 2 Mega Bytes in size, the time required to process an email will be less than 60 seconds.
  - If in any 1 calendar month, 1% or more of all processed non-spam emails less than 2 Mega Bytes in size takes 60 seconds or longer for Forcepoint to process (following receipt, ready for processing, to attempted delivery), Customer may be eligible for a Service Credit equal to 1 day for each email that takes 60 seconds or longer to receive, process and attempt to deliver, subject to a maximum credit of 5 days in any 1 month. This SLA applies only to legitimate business email (non-bulk email) and does not apply to emails 2 Mega Bytes or larger in size, denial of service (DOS) attacks, or email loops.
- 5.4 **Spam Detection Rates**
- Spam will be detected at a rate of 99% or above during each calendar month for Customer's use of the antispam service.
  - The spam SLA does not apply to emails using a majority of Asian language (or other non-English or nonEuropean language) or emails sent to invalid mailboxes.
  - In the event the spam detection rate drops below 99% for a period of more than 5 days in any 1 calendar month, Customer may be eligible for a Service Credit equal to 1 month.
- 5.5 **Virus Detection**
- For Customers subscribing to the anti-virus service, Forcepoint will protect the Customer from infection by 100% of all Known Viruses contained inside email that has passed through Cloud Email. This excludes links (URLs) inside email messages that take the Customer to a website where Viruses can be downloaded.



- A "Known Virus" means a Virus which has already been identified and a Virus definition has been made available by 1 of the anti-virus services whose technology is used within Forcepoint's Cloud Email, at least 30 minutes before the time the email was processed by Cloud Email. This SLA does not apply to forms of email abuse that are not classified as viruses or malware, such as phishing, adware, spyware, and spam.
- In the event that Forcepoint identifies a Known Virus but does not stop the infected email, Forcepoint will use commercially reasonable efforts to promptly notify the Customer, providing information to enable the Customer to identify and delete the Virus-infected email. If such action prevents the infection of the Customer's systems, then the remedy defined in this Section 5.5 shall not apply. Customer's failure to promptly act on such information will also result in the remedy defined in this Section 5.5 being inapplicable.
- In the event that 1 or more Known Viruses in any calendar month passes through the email filtering service undetected and infects the Customer's systems, Customer may be eligible for a Service Credit equal to 1 month, subject to the Customer providing evidence acceptable to Forcepoint that Cloud Email failed to detect the Known Virus within 5 working days of the Virus infection.
- The SLA under this Section 5.5 will not apply if (a) the Virus was contained inside an email that could not be analyzed by the email filtering service, such as an encrypted email or a password-protected file, (b) the Virus infection occurred because an email which had been identified as containing a Virus was released by Forcepoint on the request of the Customer, or by the Customer through the email filtering portal, or (c) there is deliberate self-infection by the Customer or its authorized user.

## 6. SLAs for Forcepoint's web access filtering Cloud Services solution ("**Cloud Web**")

### 6.1 **Service Availability**

- Cloud Web will be available 99.999% of the time.
- Cloud Web "Service Unavailability" means Cloud Web being unable to receive, process and forward Web Content in substantial conformance with Forcepoint's published documentation as may be updated by Forcepoint from time to time, on behalf of the Customer and measured during any given calendar month.
- In the event of Service Unavailability for 0.001% or more of any calendar month, Customer may be eligible for a Service Credit equal to 1 day for each 2 hour period of Service Unavailability, subject to a maximum credit of 5 days in any 1 calendar month.

### 6.2 **Service Latency**

- Cloud Web will process HTTP and HTTPS requests consisting of units of data made into single Internet protocol packages traveling along a network path ("Requests") in no more than 100 milliseconds 95% of the time over any calendar month measured from the time Cloud Web receives the content to the time Cloud Web attempts to transmit the content. Communication times outside Forcepoint's data center are not included in this SLA.
- This service latency SLA only applies to "Qualified Content", which means Requests that are: less than 1 MB HTTP GET request and response; not SSL-intercepted; not related to streaming applications; not subject to bandwidth management rules (e.g. QoS enforcement); and resulting from a reasonable level of consumption (not more than 2,000 Requests per User per day on average).
- If in any 1 calendar month 5% or more of the Qualified Content is not processed in 100 milliseconds or less as determined by the monthly average Cloud Web processing time among samples taken by Forcepoint in a given calendar month ("Missed Latency SLA"), Customer may be eligible for a Service Credit equal to 1 week as a result of the Missed Latency SLA, subject to a maximum aggregate Service Credit of 4 weeks during any 12-month term.

### 6.3 **Virus Detection**

- Forcepoint will protect the Customer from infection by 100% of all Known Viruses contained inside Web Content that has passed through the cloud web protection service module of Cloud Web.
- A "Known Virus" means a Virus which has already been identified and a Virus definition has been made available by 1 of the anti-virus services whose technology is used within Forcepoint's Cloud Web, at least 30 minutes before the time the Web Content was processed by the web filtering service. This SLA does not apply to forms of Web Content abuse that are not classified as viruses or malware, such as phishing, adware, spyware, and spam
- In the event that Forcepoint identifies a Known Virus but does not stop the infected Web Content, Forcepoint will use commercially reasonable efforts to promptly notify the Customer, providing information to enable the Customer to identify and delete the Virus-infected Web Content. If such action prevents the infection of the Customer's systems, then the remedy defined in this Section 6.3 shall not apply. Customer's failure to promptly act on such information will also result in the remedy defined in this Section 6.3 being inapplicable.

- In the event that 1 or more Known Viruses in any calendar month passes through Cloud Web undetected and infects the Customer's systems, Customer may be eligible for a Service Credit equal to 1 month, subject to the Customer providing evidence that Cloud Web failed to detect the Known Virus within 5 working days of the Virus infection.
- The SLA under this Section 6.3 will not apply if (a) the Virus was contained inside Web Content that could not be analyzed by the web security service, such as HTTPS or a password-protected file, (b) the user bypassed the web security service when downloading the Web Content, (c) the Customer configured the Cloud Service to not filter the web content, or (d) there is deliberate self-infection by the Customer or its authorized user.

7. SLAs for Forcepoint's Cloud Email archiving Cloud Service solution ("**Email Archiving**")

7.1 **Service Availability**

- Email Archiving will be available 99.99% of the time over a calendar month.
- Email Archiving "Service Unavailability" means the inability of the email archiving server to receive and transmit Customer's requests to store and retrieve archived email in conformance with Forcepoint's published documentation, as may be updated by Forcepoint from time to time, and measured over a full calendar month.
- In the event of Service Unavailability for more than 0.01% for any calendar month, Customer may be eligible for a Service Credit equal to 1 day for each calendar month where Service Unavailability exceeds 0.01%.

**Foxit Software Inc.  
41841 Albrae Street  
Fremont, CA 94538**

## **FOXIT SOFTWARE INC. LICENSE AGREEMENT FOR DESKTOP SOFTWARE APPLICATIONS**

**IMPORTANT-READ CAREFULLY:** This Foxit Software Inc. ("Foxit") License Agreement ("License" or "Agreement") is a legal agreement between the General Services Administration (, who will be referred to in this License as "You" or "Your") and Foxit for the use of desktop software applications, and which may include associated media, printed materials, and other components and software modules including but not limited to drivers ("Product"). The Product also includes any software updates and upgrades that Foxit may provide to You or make available to You, or that You obtain after the date You obtain Your initial copy of the Product, to the extent that such items are not accompanied by a separate license agreement or terms of use. **BY INSTALLING, COPYING, DOWNLOADING, ACCESSING OR OTHERWISE USING THE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS FOXIT LICENSE AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT YOU HAVE NO RIGHTS TO THE PRODUCT AND SHOULD NOT INSTALL, COPY, DOWNLOAD, ACCESS OR USE THE PRODUCT.**

The Product is protected by copyright laws as well as other intellectual property laws. The Product is licensed and not sold.

**GRANT OF LICENSE.** Foxit grants You a non-exclusive, nontransferable license to install and use the Product subject to all the terms and conditions set forth here within.

**Single-Use Perpetual License.** You may permit a single authorized end user to install the Product on a single computer for use by that end user only. Remote access to the paid products (such as Foxit PhantomPDF, Microsoft Active Directory® Rights Management Services ("RMS"), DocuSign feature in Foxit Reader and Foxit Redactor for Office) are not permitted without the express written consent of Foxit.

**Single-Use Term License.** Same usage terms as the Single-Use Perpetual License. The period of use is limited to a fixed duration, out of which the Product must be uninstalled from the computer unless the license is renewed for an additional period of time.

**Subscription License.** The Product is licensed on a monthly or annual subscription basis, You may only apply the subscription license on the Permitted Number of Compatible Computer(s) as long as you maintain a currently paid-up subscription of the Product.

**ADDITIONAL LIMITATIONS.** You may not reverse engineer, decompile, or disassemble the Product, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation. You may not rent, lease, lend or transfer the Product, or host the Product for third parties without the express written consent of Foxit. The

Product is licensed as a single integral product; its component parts may not be separated for use on more than one computer. The Product may include copy protection technology to prevent the unauthorized copying of the Product or may require original media for use of the Product on the computer. It is illegal to make unauthorized copies of the Product or to circumvent any copy protection technology included in the Product. The software may not be resold either by You or a third party customer without the prior written permission of Foxit. All rights not expressly granted to You are retained by Foxit.

Third Party Software. The Product may contain third party software that Foxit can grant sublicense to use or in the case of the Microsoft Corporation AD RMS Client Foxit grants a limited use license, all which is protected by copyright law and other applicable laws.

RMS Plug-in Limitations. Organizational users of the Product who use the RMS functionality will be required to pay RMS encryption and decryption fees. Please contact [sales@foxitsoftware.com](mailto:sales@foxitsoftware.com) for further information.

DocuSign Limitations. Organizations having 200 or more registered DocuSign users of the Product will be required to pay the Maintenance Fee for each Product for which Maintenance is desired and as further described in Section 5.4 below. Please contact [sales@foxitsoftware.com](mailto:sales@foxitsoftware.com) for further information.

EDUCATIONAL USE. If the Product You have received with this Agreement is an Educational Software Bundle (where the Product is received by virtue of Your participation in a Foxit program designed for educational or research institutions, or is provided by Foxit to You under some other arrangement), You are not entitled to use the Product unless You are an employee or student of such educational institution. Educational Software Products may be used for educational and research purposes only. Commercial and general production use of Educational Software Products are specifically prohibited. The Product is provided under a Single-Use Term License as described above. You may install one copy of the Product on one desktop computer in a designated computer used for educational purposes under Your license agreement. Your Educational license is granted for a period of one year, unless stated otherwise, from when the Product license keys are made available to You. Your Educational license entitles You to email and telephone support for up to two designated employees and product upgrades during the term of Your license. You grant Foxit the right to use material created under such license for marketing and advertising purposes.

#### SUPPORT, MAINTENANCE, AND UPGRADE PROTECTION TERMS AND CONDITIONS.

Term of Maintenance. Foxit agrees to provide Maintenance (as defined herein) to You pursuant to the terms and conditions set forth herein provided that You pay the Maintenance Fee or Subscription Fee for each Product for which Maintenance is desired and as further described in Section 5.4 below. Maintenance will be provided for a period of one year or as long as a subscription is active and paid-up, unless otherwise agreed to by the parties in writing, from the date of purchase of the Product (the "Initial Support and Maintenance Term"), and with renewals, annually from the expiration date of the prior Support and Maintenance Term. Failure to renew annual maintenance may result in You having to purchase a new license in order to receive future versions of software and associated ongoing support and maintenance.

Maintenance Services. In exchange for the Maintenance Fee, Foxit agrees to provide to You during the term of this Agreement support and maintenance (collectively "Maintenance") as follows:

**Support:** Foxit will provide email and telephone support to You for current versions of the Product. Foxit will investigate all of Your questions and problems promptly. You agree to provide adequate information to Foxit to assist in the investigation and to confirm that any problems have been resolved. Foxit does not provide guaranteed response time but will make good faith effort to answer emails and voice mails within twenty-four (24) hours or less during weekdays, excluding holidays.

**Maintenance:** Foxit will supply to You, at no additional charge, any improvements or modifications to the Product that Foxit makes generally available as a minor release such as: 2.1, 2.2, 2.3 etc. Any such improvements or modifications shall become part of the Product for all purposes of this Agreement.

You acknowledge and agree that the Maintenance to be provided by Foxit hereunder is limited to the most current version of the Product and the immediately preceding version.

**Term of Upgrade Protection.** Foxit agrees to provide Upgrade Protection (as defined herein) to You pursuant to the terms and conditions set forth herein provided that You pay the Upgrade Protection Fee for each Product for which Upgrade Protection is desired and as further described in Section 5.2.1 below. Upgrade Protection will be provided for a period of one year, unless otherwise agreed to by the parties in writing, from the date of purchase of the Product (the "Initial Upgrade Protection Term"), and with renewals (as described in Section 5.4), annually from the expiration date of the prior Upgrade Protection Term. Failure to renew annual Upgrade Protection may result in You having to purchase a new license in order to receive future versions of software and associated ongoing Upgrade Protection.

**Upgrade Protection Services.** In exchange for the Upgrade Protection Fee, Foxit agrees to provide to You during the term of this Agreement Upgrade Protection (collectively "Upgrade Protection") as follows:

**Support:** Foxit will provide email and telephone support to You for current versions of the Product. Foxit will investigate all of Your questions and problems promptly. You agree to provide adequate information to Foxit to assist in the investigation and to confirm that any problems have been resolved. Foxit does not provide guaranteed response time but will make good faith effort to answer emails and voice mails within twenty-four (24) hours or less during weekdays, excluding holidays.

**Maintenance:** Foxit will supply to You, at no additional charge, any improvements, upgrade, or modifications to the Product that Foxit makes generally available. Any such improvements, upgrades, or modifications shall become part of the Product for all purposes of this Agreement.

You acknowledge and agree that the Upgrade Protection Services to be provided by Foxit hereunder is limited to the most current version of the Product and the immediately preceding version.

**Exclusions.** Foxit's obligation to provide Support is contingent upon proper use of the Product and full compliance with this Agreement. Moreover, Foxit shall be under no obligation to provide Support should such services be required due to (a) failure to operate the Product within the systems requirements provided for the Product (b) any modification or

attempted modification of the Product by You or any third party or (C) Your failure or refusal to implement Product changes recommended by Foxit.

Consideration. In payment of the Support, Maintenance and Upgrade Protection services to be provided by Foxit hereunder, You shall pay Foxit, or its authorized agent, the applicable fee for the Initial Support, Maintenance and Upgrade Protection Term as indicated on the related invoice, receipt, purchase order, or other ordering document ("Support, Maintenance and Upgrade Protection Fee"). At the end of the Initial Support, Maintenance and Upgrade Protection Term, or any subsequent Support, Maintenance and Upgrade Protection Term, You may renew participation in Support, Maintenance and Upgrade Protection services for additional annual term(s) provided You (a) are current on all payments due to Foxit and (b) pay Foxit, or its authorized agent, the applicable renewal fee, which Foxit, or its authorized agent, shall invoice prior to the end of the preceding term, unless terminated by You at least 30 days prior to the expiration of the then current Support, Maintenance and Upgrade Protection Term. Support, Maintenance and Upgrade Protection shall be discontinued for any and all subsequent Support, Maintenance and Upgrade Protection Terms for which You fail to pay Foxit the invoice within ten (10) days after the prior Support, Maintenance and Upgrade Protection expiration date.

Exceptions. For use of the Product or a Beta Software Product, only the Maintenance Services and Exclusions paragraphs of this section apply. For use of the Product under Educational Use terms, the Maintenance Services and Exclusion paragraphs apply as long as You pay for the maintenance period defined under Your Single-Use Term License.

**1.1** 6. PAYMENT TERMS. Customer shall pay all fees in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315, and with FAR 52.212-4, subsection (i).

TAXES. The fees and all other amounts due as set forth in this Agreement are net amounts to be received by Foxit, exclusive of all taxes, duties, and assessments, including without limitation all sales, withholding, VAT, excise, ad valorem, and use taxes (collectively, the "Taxes"), and are not subject to offset or reduction because of any Taxes incurred by You or otherwise due as a result of this Agreement. You shall be responsible for and shall pay directly, any and all Taxes relating to the performance of this Agreement, provided that this paragraph shall not apply to taxes based solely on Foxit's income.

#### CONSENT TO USE OF DATA.

The software (main application and plug-ins) may contact a Foxit server periodically to check for software updates and vulnerability fixes.

The software may collect usage information to support the integrity of features and enhance the quality of the software. Such usage information may contain personally identifiable information when it is reasonably needed for providing necessary services to the user, or when the user consents to providing such information and only to the extent as allowed



by the applicable laws. The usage information collected includes:

- File name
- Author
- Created time
- Created device
- Creator application
- Creator location
- Document pages
- Document size
- Document Versions
- Document version description
- Other usage information

You agree that Foxit and its affiliates may collect and use information You provide as a part of any such support services related to the Product. Foxit agrees not to use this information in a form that personally identifies You. Foxit maintains user login information under which Foxit may collect your Foxit product login email only. Collection of this information occurs in accordance with the [Foxit Privacy Policy](#). Such usage information which includes protected data must be safeguarded by Foxit and its third party service providers (if applicable) and shall not used for any purpose other than to fulfill Foxit's obligations under this Agreement and any applicable orders.

INTELLECTUAL PROPERTY RIGHTS. Subject to the license grant hereunder, all right, title and interest in and to the Product, the accompanying printed materials, and any copies of the Product are owned by Foxit and its licensors.

EXPORT RESTRICTIONS. You acknowledge that Product is of U.S. origin. You agree to comply with all applicable foreign, federal, state and local laws and regulations governing Your use of the Product. Without limiting the foregoing, in the event that this Agreement permits export of the Product outside the U.S., You shall be solely responsible for compliance with all applicable U.S. export laws, rules, and regulations. The Product is subject to the U.S. Export Administration Regulations and other U.S. law, and may not be exported or re-exported to certain countries (currently Cuba, Iran, Libya, North Korea, Sudan and Syria) or to persons or entities prohibited from receiving U.S. exports (including those (a) on the Bureau of Industry and Security Denied Parties List or Entity List, (b) on the Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, and (c) involved with missile technology or nuclear, chemical or biological weapons).

## WARRANTY

### LIMITED WARRANTY ON MEDIA

FOXIT warrants that any media on which the Licensed Software is distributed shall be free from material defects for a period of thirty (30) calendar days from the date of receipt of the License. If Licensee discovers a defect in the media during this thirty (30) day period, Licensee may return the defective media to FOXIT within fifteen (15) calendar days of discovering the defect, and Licensee's sole remedy shall be to have the defective media replaced. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from FOXIT'S negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the contract

### NO WARRANTY ON LICENSED SOFTWARE

**1.2 THE LICENSED SOFTWARE IS PROVIDED TO LICENSEE "AS IS". FOXIT, AND FOXIT'S LICENSORS AND SUPPLIERS, MAKE NO WARRANTY AS TO ITS USE OR PERFORMANCE. FOXIT, AND FOXIT'S LICENSORS AND SUPPLIERS, MAKE NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR TERMS (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE, COURSE OF DEALING, TRADE PRACTICE OR OTHERWISE) AS TO THE LICENSED SOFTWARE, INCLUDING WITHOUT LIMITATION TITLE, NON- INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE, EXCEPT FOR, AND ONLY TO THE EXTENT THAT, ANY SUCH REPRESENTATION, WARRANTY CONDITION OR TERM MAY NOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. Notwithstanding the foregoing, Foxit will repair or replacedefective items discovered within a reasonable period of time after acceptance.**

11.3. Warranty Disclaimer. Other than the warranty set forth in Section 11.1 above, and to the maximum extent permitted by applicable law, Foxit, its authorized resellers and their subsidiaries provides the Product and any support services related to the Product ("Support Services") AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, either express, implied or statutory, including, but not limited to, any implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness

of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the Product, and the provision of or failure to provide support services.

LIMIT OF LIABILITY AND EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL FOXIT, ITS AUTHORIZED RESELLERS OR THEIR SUBSIDIARIES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR

PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCT, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS LICENSE, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF FOXIT, EVEN IF FOXIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. . The foregoing

exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from FOXIT's negligence; (2) for fraud;

(3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the contract

LIMITATION OF LIABILITY AND REMEDIES. Notwithstanding any damages that You might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of Foxit, its resellers and their subsidiaries under any provision of this License and Your exclusive remedy for all of the foregoing shall be limited to the amount actually paid by You for the Product. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose. . The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from FOXIT's negligence; (2) for fraud;

(3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the contract.

#### NOTICE TO U.S. GOVERNMENT END USERS

For contracts with agencies of the Department of Defense, the Government's rights in: (1) commercial computer software and commercial computer software documentation shall be governed, pursuant to 48 C.F.R. 227.7201 through 227.7202-4, by Foxit's standard commercial license(s) for the respective product(s); (2) software and software documentation other than commercial computer software and commercial computer software documentation shall be governed by 48 C.F.R. 252.227-7014;

(3) technical data for commercial items other than software or software documentation shall be governed by 48 C.F.R. 252.227- 7015(b); and (4) technical data for non-commercial items other than software or software documentation shall be governed by 48 C.F.R. 252.227-7013.

For contracts with U.S. Government agencies other than the Department of Defense agencies, the Government's rights in:

(1) commercial computer software and commercial computer software documentation shall be governed, pursuant to 48 C.F.R.

2.101 and 12.212, by Foxit's standard commercial license(s) for the respective product(s); (2) software and software documentation other than commercial computer software and commercial computer software documentation shall be governed by 48 C.F.R. 52.227-14, Alternative III; and (3) technical data other than software and software documentation shall be governed by 48 C.F.R. 52.227-14 including, where applicable Alternatives I or II.

GENERAL. This Agreement will be governed by and construed in accordance with the laws of the United States of America. The United Nations Convention on Contracts for the International Sale of Goods will not apply. You may not assign this Agreement or any right or interest hereunder, by operation of law or otherwise, without Foxit's express prior written consent. Any attempt to assign this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this

Agreement will bind and inure to the benefit of each party's successors and permitted assigns. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. All notices or approvals required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All notices or approvals will be sent to the addresses set forth in the applicable ordering document or invoice or to such other address as may be specified by either party to the other in accordance with this section. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. This Agreement, Foxit's Federal Supply Schedule Contract and price list and any subsequent order and Foxit's support and maintenance services terms constitutes the entire and exclusive agreement between the parties concerning its subject matter and supersedes all prior written and oral understandings and agreements between the parties regarding its subject matter. 14. COMPLIANCE WITH LICENSES. If You are a business, company or organization, You agree that upon request from Foxit or its authorized representative You will within thirty (30) days fully document and certify that use of any and all Foxit Products at the time of the request is in conformity with Your valid licenses from Foxit.

DISCONTINUING OR MODIFYING SERVICES. You acknowledge that Foxit has the right to discontinue the manufacture and development of any of the Product and the support for that Product, in its sole discretion at any time, including the distribution of older Product versions, provided that Foxit agrees not to discontinue the support for that Product during the current annual term of this Agreement, subject to the termination provisions herein. Notwithstanding the foregoing, if Foxit discontinues the manufacture and support for a particular Product, Support for any remaining Products covered by this Agreement shall not be adversely affected. Foxit reserves the right to alter the Support, in its sole discretion but in no event shall such alterations result in: (a) diminished support from the level of support set forth herein; (b) materially diminished obligations for Foxit; or (c) Your materially diminished rights.

Termination and Breach – Your termination rights shall be governed by FAR 52.212-4(l) and (m) and Foxit's termination rights shall be governed by the FAR 52.212-4(d). Note: FAR 52.233-1, requires the Foxit to submit a claim to the contracting officer if it believes the Government to be in breach, and to continue performance during the pendency of the claim. Claims shall be addressed in accordance with the Contract Disputes Act.

Should You have any questions concerning this License, or if You desire to contact Foxit for any reason, please call (510) 438-9090.



**FORTINET, INC.**  
**1090 KIFER ROAD**  
**SUNNYVALE, CA 94086**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Fortinet, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of

the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

### FORTINET, INC.

#### **FORTINET, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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##### 1. License Grant.

This is a license, not a sales agreement, between Ordering Activity and Contractor. The term "Software", as used throughout this Attachment A, includes all Fortinet and third party firmware and software provided to Ordering Activity with, or incorporated into, Fortinet appliances and any stand-alone software provided to Ordering Activity by Contractor, with the exception of any open source software contained in Fortinet's Products which is discussed in detail in section 15 below, and the term "Software" includes any accompanying documentation, any updates and enhancements of the software or firmware provided to Ordering Activity by Contractor, at its option. Contractor grants to Ordering Activity a non-transferable (except as provided in section 5 ("Transfer") and section 13 ("Open Source Software") below), non-exclusive, revocable (in the event of your failure to comply with these terms or in the event Contractor is not properly paid for the applicable Product) license to use the Software solely for Ordering Activity's internal business purposes (provided, if a substantial portion of Ordering Activity's business is to provide managed service provider services to Ordering Activity's end-customers, Ordering Activity may use the Software embedded in FortiGate and supporting hardware appliances to provide those services, subject to the other restrictions in this Attachment A), in accordance with the terms set forth in this Attachment A and subject to any further restrictions in Fortinet documentation, and solely on the Fortinet appliance, or, in the case of blades, CPUs or databases, on the single blade, CPU or database on which Fortinet installed the Software or, for stand-alone Software, solely on a single computer running a validly licensed copy of the operating system for which the Software was designed, or, in the case of blades, CPUs or databases, on a single blade, CPU or database. For clarity, notwithstanding anything to the contrary, all licenses of Software to be installed on blades, CPUs or databases are licensed on a per single blade, solely for one blade and not for multiple blades that may be installed in a chassis, per single CPU or per single database basis, as applicable. The Software is "in use" on any Fortinet appliances when it is loaded into temporary memory (i.e. RAM). Ordering Activity agrees that, except for the limited, specific license rights granted in this section 1, Ordering Activity receive no license rights to the Software.

##### 2. Limitation on Use.

Ordering Activity may not attempt to, and, if Ordering Activity is a corporation, Ordering Activity is responsible to prevent Ordering Activity's employees and contractors from attempting to, (a) modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, sublicense, or distribute the Software; (b) rent or lease any rights in the Software in any form to any third party or make the Software available or accessible to third parties in any other manner; (c) except as provided in section 5, transfer assign or sublicense right to any other person or entity, or (d) remove any proprietary notice, labels, or marks on the Software, Products, and containers.

##### 3. Proprietary Rights.

All rights, title, interest, and all copyrights to the Software and any copy made thereof by Ordering Activity and to any Product remain with Fortinet. Ordering Activity acknowledges that no title to the intellectual property in the Software or other Products is transferred to Ordering Activity and Ordering Activity will not acquire any rights to the Software or other Products except for the specific license as expressly set forth in section 1 ("License Grant") above.

##### 4. Limited Warranty.

Contractor provides this limited warranty for its product only to the single Ordering Activity person or entity that originally purchased the Product from Contractor or its authorized reseller or distributor and paid for such Product. The warranty is only valid for Products which are registered on Fortinet's Support Website: <https://support.fortinet.com>; or on the TalkSwitch support website: <http://global.talkswitch.com>; or such other website as provided by Contractor. For the below software warranty to start, registration must take place within three hundred sixty-five (365) days from the date the Product was originally shipped from Contractor's facilities or the warranty is null and void and will not be honored. For the hardware warranty, such warranty starts on the earlier of the date of Product registration on Fortinet's Support Website or ninety (90) days from the date that the Product was originally shipped from Contractor's facilities. It is the Contractor distributor's and reseller's responsibility to make clear to the Ordering Activity the date the product was originally shipped from Contractor, and it is the Ordering Activity's responsibility to understand the original ship date from the party from which the end user purchased the product. All warranty claims must be submitted in writing to Contractor before the expiration of the warranty term or such claims are waived in full, i.e. ninety (90) days from the earlier of registration or the automatically started term for hardware and spare parts claims and three hundred sixty-five (365) days from registration within three hundred sixty-five (365) days from shipment for software claims. Contractor provides no warranty for any beta, donation or evaluation Products, for any spare parts not purchased directly from Contractor by the Ordering Activity, for any accessories, or for any stand-alone software.

Contractor warrants that the hardware portion of the Products, including spare parts unless noted otherwise ("Hardware") will be free from material defects in workmanship as compared to the functional specifications for the period set forth as follows and applicable to the Product type ("Hardware Warranty Period"): a three hundred sixty-five (365) day limited warranty for the Hardware excluding spare parts, and, for spare parts, solely a ninety (90) days limited warranty. Contractor's obligation shall be to repair or replace the defective Hardware at no charge to the original owner. This obligation is exclusive of transport fees, labor or installation costs, and any other cost which are not directly associated to the Product. Such repair or replacement will be rendered by Contractor through Fortinet at an authorized Fortinet service facility as determined by Fortinet. The replacement Hardware need not be new or of an identical make, model, or part; Contractor may, in its discretion, replace the defective Hardware (or any part thereof) with any reconditioned Product that Contractor reasonably determines is substantially equivalent (or superior) in all material respects to the defective Hardware. The Hardware Warranty Period for

the repaired or replacement Hardware shall be for the greater of the remaining Hardware Warranty Period or ninety days from the delivery of the repaired or replacement Hardware. If Contractor determines in its reasonable discretion that a material defect is incapable of correction or that it is not practical to repair or replace defective Hardware, the price paid by the original purchaser for the defective Hardware will be refunded by Contractor upon return to Contractor of the defective Hardware. All Hardware (or part thereof) that is replaced by Contractor, or for which the purchase price is refunded, shall become the property of Contractor upon replacement or refund.

Contractor warrants that the software portion of Hardware Products will substantially conform to Contractor's then current functional specifications for the Software, as set forth in the applicable documentation for a period of ninety (90) days ("Software Warranty Period"), if the Software is properly installed on approved Hardware and operated as contemplated in its documentation. Contractor's obligation shall be to repair or replace the non-conforming Software with software that substantially conforms to Contractor's functional specifications. Except as otherwise agreed by Contractor in writing, the replacement Software is provided only to the original licensee, and is subject to the terms and conditions in this Attachment A of the license granted by Contractor for the Software. The Software Warranty Period shall extend for an additional ninety (90) days after any replacement software is delivered. If Contractor determines in its reasonable discretion that a material non-conformance is incapable of correction or that it is not practical to repair or replace the non-conforming Software, the price paid by the original licensee for the non-conforming Software will be refunded by Contractor; provided that the non-conforming Software (and all copies thereof) is first returned to Contractor. The license granted respecting any Software for which a refund is given automatically terminates immediately upon refund. For purpose of the above hardware and software warranties, the term "functional specifications" means solely those specifications authorized and published by Contractor that expressly state in such specifications that they are the functional specifications referred to in this section 6 of this Attachment A, and, in the event no such specifications are provided to you with the Software or Hardware, there shall be no warranty on such Software.

#### 5. Disclaimer of Other Warranties and Restrictions.

EXCEPT FOR THE LIMITED WARRANTY SPECIFIED IN SECTION 4 ABOVE, THE PRODUCT AND SOFTWARE ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY, IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, OR WARRANTY FOR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IF ANY IMPLIED WARRANTY CANNOT BE DISCLAIMED IN ANY TERRITORY WHERE A PRODUCT IS SOLD, THE DURATION OF SUCH IMPLIED WARRANTY SHALL BE LIMITED TO NINETY (90) DAYS FROM THE DATE OF ORIGINAL SHIPMENT FROM CONTRACTOR. EXCEPT AS EXPRESSLY COVERED UNDER THE LIMITED WARRANTY PROVIDED HEREIN, THE ENTIRE RISK AS TO THE QUALITY, SELECTION AND PERFORMANCE OF THE PRODUCT IS WITH THE PURCHASER OF THE PRODUCT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE HARDWARE WARRANTY PERIOD DISCUSSED ABOVE DOES NOT APPLY TO CERTAIN FORTINET PRODUCTS, INCLUDING FORTIFONE WHICH HAS A NINETY (90) DAY LIMITED WARRANTY AND FORTITOKEN WHICH HAS A 365 DAY WARRANTY FROM THE DATE OF SHIPMENT FROM CONTRACTOR'S FACILITIES, AND THE SOFTWARE WARRANTY DOES NOT APPLY TO CERTAIN FORTINET PRODUCTS, INCLUDING FORTIGATE-ONE AND VDOM SOFTWARE.

The warranty in Section 4 above does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Contractor or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, donation, testing or demonstration purposes or for which Contractor does not charge a purchase price or license fee. In the case of beta, testing, evaluation, donation or free Software or Product, the end user acknowledges and agrees that such Software or Product may contain bugs or errors and could cause system failures, data loss and other issues, and the Ordering Activity agrees that such Software or Product is provided "as-is" without any warranty whatsoever, and Contractor disclaims any warranty or liability whatsoever. An Ordering Activity's use of evaluation or beta Software or Product is limited to thirty (30) days from original shipment unless otherwise agreed in writing by Contractor.

#### 6. U.S. Government End Users.

The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying documentation by the United States Government shall be governed solely by the terms of this Attachment A and shall be prohibited except to the extent expressly permitted by the terms of this Attachment A and its successors.

#### 7. Open Source Software.

Fortinet's products may include software modules that are licensed (or sublicensed) to the user under the GNU General Public License, Version 2, of June 1991 ("GPL") or GNU Lesser General Public License, Version 2.1, of February 1999 ("LGPL") or other open source software licenses which, among other rights, permit the user to use, copy, modify and redistribute modules, or portions thereof, and may also require attribution disclosures and access to the source code ("Open Source Software"). The GPL requires that for any Open Source Software covered under the GPL, which is distributed to someone in an executable binary format, that the source code also be made available to those users. For any Open Source Software covered under the GPL, the source code is made available on this CD or download package. If any Open Source Software licenses require that Contractor provide rights to use, copy or modify a Open Source Software program that are broader than the rights granted in this Attachment A, then such rights shall take precedence over the rights and restrictions herein. All open source software modules are licensed free of charge. There is no warranty for these modules, to the extent permitted by applicable law. The copyright holders provide these software modules "AS-IS" without warranty of any kind, either expressed or implied. In no event will the copyright holder for the open source software be liable to you for damages, including any special, incidental or consequential damages arising out of the use or inability to use the software modules, even if such holder has been advised of the possibility of such damages. A full copy of this license, including additional open source software license disclosures and third party license disclosures applicable to certain Fortinet products, may be obtained by contacting Contractor through Fortinet's Legal Department at [legal@fortinet.com](mailto:legal@fortinet.com).



**EXHIBIT A – FORTICARE/FORTIGUARD SERVICES****DEFINITIONS**

"Ordering Activity" means any person or entity that has purchased a Service Contract from Contractor.

"Defective Unit" means a Product purchased by the Ordering Activity which has ceased to operate in accordance with Fortinet's Product Documentation.

"Hardware" means the Fortinet computer peripheral devices excluding all Software incorporated in or bundled with such devices.

"No Trouble Found Unit(s)" means a Product that has been returned to Fortinet as a Defective Unit by the Ordering Activity, and is later discovered to be in proper working order.

"Product(s)" means any Fortinet Hardware with associated Software or stand-alone Software product which is/are available for sale.

"Registration Date" means the date when the Service Contract is registered via Fortinet's website: <https://support.fortinet.com>.

"Renewal Service Contract" means a Service Contract (FortiCare and/or FortiGuard), as identified in Contractor's then current GSA price list, which may be purchased for any hardware that has previously been registered with an accompanying Service Contract at Fortinet's Support site.

"Return Material Authorization" or "RMA" means the required number or code obtained from Fortinet prior to returning a Defective Unit for a Replacement Unit.

"Replacement Unit" means a Product shipped by Fortinet to replace an Ordering Activity reported Defective Unit for which the Ordering Activity has obtained an RMA.

"Service Contract" means the purchase order for the Services purchased by the Ordering Activity as evidenced by their Service Contract Registration Document.

"Service Plan Documentation" means the Fortinet issued collateral, product description, or documentation which outlines the Services to be performed by Fortinet.

"Service Contract Registration Document" means the electronic document emailed by Fortinet with a contract registration number to the email address provided for in the Order Documentation which contains the Ordering Activity's entitlements.

"Services" means any individual or combination of Support and/or Subscription services purchased by the Ordering Activity and evidenced in the Ordering Activity's Service Entitlement Document.

"Software" means the Fortinet computer software which is licensed in object code form, including any error corrections, updates and bug fixes provided by Fortinet.

"Subscription Services" means Fortinet's FortiGuard suite of services, per Fortinet's current Customer Support Services Reference Guide, which may include one or all of the following: Antivirus, Antispam, IPS, and Web Filtering.

"Support" or "Support Services" means Fortinet's technical telephone, email, and web assistance provided by Fortinet or its Partners, per Fortinet's current Customer Support Services Reference Guide, to help the Ordering Activity with problem resolutions.

**SUPPORT AND SUBSCRIPTION SERVICE CONTRACTS OFFERED**

**Service Contracts Offered.** Contractor through Fortinet offers various Support and Subscription Service Contracts ranging in hours of operation and included Services. In addition, Fortinet offers Subscription Services and other Product service offerings to protect Ordering Activity's newly purchased assets.

**Ordering and Use.** Each Service Contract purchased by Ordering Activity is valid for a single unit of Product. For clarity, use of a Service Contract with a replacement unit, or with certain upgraded units identified by Contractor through Fortinet as applicable to the Service Contract, shall not be considered a material breach of this Attachment A.

**TERMS OF SERVICE**

**Registration.** Ordering Activity must register the Product for which the Service Contract was purchased within three hundred sixty-five (365) days from the date of the original shipment by Contractor through Fortinet of the applicable Product and Service Contract to Ordering Activity. **SERVICE CONTRACTS WHICH ARE NOT REGISTERED WITHIN THREE HUNDRED SIXTY-FIVE (365) DAYS FROM THE DATE THE SERVICE CONTRACT WAS ORIGINALLY SHIPPED FROM CONTRACTOR THROUGH FORTINET SHALL BE FORFEITED AND CONTRACTOR SHALL HAVE NO OBLIGATION TO THE ORDERING ACTIVITY REGARDING THIS ATTACHMENT A OR ANY RELATED SUPPORT SERVICES.** It is Ordering Activity's responsibility to ensure it knows the deadline to register the Service Contract within the three hundred sixty-five (365) day period. Notwithstanding anything to the contrary, Contractor through Fortinet may register any

Renewal Service Contract upon invoicing. Upon renewal of the Service Contract, Ordering Activity authorizes Contractor through Fortinet to automatically register the Renewal Service Contract for subsequent renewal periods for which a purchase order has been placed.

**Renewal Registration.** In order to maintain a continual service period, the effective date of any Renewal Service Contract shall begin as set forth herein, (the "Renewal Service Contract Effective Date"). In the event that registration of a Renewal Service Contract is beyond ten (10) calendar days following the expiration date of the previous Service Contract, such Renewal Service Contract Effective Date will be the later of (a) the calendar day following the expiration date of the Ordering Activity's previous service Contract and (b) the date that is one hundred eighty (180) calendar days prior to the actual registration date of the Renewal Service Contract. The above does not apply if Renewal Service Contracts are registered and started within ten (10) calendar days following the expiration date of the Ordering Activity's previous Services Contract. In such case the start date shall be the date of registration.

For example and for illustration purposes only, in the event a one year Renewal Service Contract is registered ninety (90) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 275 days (365 – 90) from the date of registration of such Renewal Service Contract. As another example, in the event a one year Renewal Service Contract is registered two-hundred (200) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 180 days from the date of registration of such Renewal Service Contract.

**Support Policy.** The delivery of all Services shall be subject to and provided in accordance with Contractor through Fortinet's then current Customer Support Services Reference Guide ("Reference Guide"). The Reference Guide details the Service and Support process and any service levels provided by Contractor through Fortinet with your specific Fortinet Support Services. The Reference Guide is available at the following link <https://support.fortinet.com/Login/UserLogin.aspx>. The Reference Guide is subject to change and Fortinet shall post notices of any changes on the support website <https://support.fortinet.com/Login/UserLogin.aspx> with no less than thirty (30) days notice prior to the effective date of the change. The Ordering Activity hereby agrees and acknowledges that by continuing to accept Services beyond the effective date of the change as provide for in any notification, the Ordering Activity accepts and agrees the changes to the Reference Guide. Furthermore, the Ordering Activity hereby acknowledges and agrees that Ordering Activity is solely responsible for adhering to and monitoring Contractor through Fortinet's support website for updates and changes to the Reference Guide.

**Product Life Cycle Policy.** All Services provided hereunder are subject to Fortinet's Product Life Cycle Policy which is available Fortinet's Support website.

#### POINT OF CONTACT

Contractor through Fortinet may, at its option, provide the Services directly or indirectly, through any of its FortiPartner, agents, or sub-contractors.

#### DESCRIPTION OF PROGRAMS

**Principle Period of Services.** Services are provided during the hours described in the Reference Guide.

**Telephone and Email Support.** All telephone and email support will be delivered in accordance with any Service Plan Documentation and Fortinet's Support Policy.

**Web-based Support.** The Fortinet corporate website [www.fortinet.com](http://www.fortinet.com) provides access to a variety of information including on-line documentation. To engage Customer Services and Support on an ongoing basis, an account must be created on the Fortinet support website <https://support.fortinet.com>. This site includes access to the FortiCare ticketing system for product and contract registration as well as creation of ticket and webchat requests. It may also include Subscription Service updates, Maintenance and Feature Releases, and technical support alerts. Login information and passwords are provided upon registration of the account. Ordering Activity hereby agrees and warrants that only authorized information technology personnel shall have access to the login and password information. Contractor through Fortinet shall use reasonable efforts to ensure web access is available on a 24x7x365 basis, but will not be responsible for internet downtime beyond its reasonable control.

**Hardware Support.** If the Customer's Service Contract includes hardware support, the Services shall be delivered as described in the applicable Service Plan Documentation and shall be provided in accordance with Fortinet's Support Policy. Please refer to Fortinet's Support Policy regarding the Hardware Support claim process. For Service Contracts containing Advanced Hardware repair or replacement, Contractor through Fortinet is not responsible for any delays in delivery related to export or customer regulations or processes. For any Service Contract which incorporates four-hour replacement Services, Ordering Activity acknowledges that Contractor through Fortinet shall have 30-days from the date of Product's Registration Date to stage replacement Product in a local depot ("Staging Period"). As such Ordering Activity's four-hour replacement Services shall not commence until the end of such Staging Period.

**Software/Firmware Updates.** If Ordering Activity's Service Contract includes software/firmware updates, all official software and firmware maintenance releases and feature updates shall be included in this Attachment A. Ordering Activity may access such updates via password-protected web access. Ordering Activity may install only one (1) copy of the upgrade per product covered by a Service Contract. Support shall be provided on the then-current major release of Product and the previous release of software. At Contractor through Fortinet's option, Fortinet may provide technical assistance on older versions of a registered Product, but such services may be limited and are not guaranteed. Support Services do not include education/training-related services or professional services such as installation or network configuration.

**Real-Time Updates.** If the Ordering Activity's Service Contract contains Subscription Services, the Ordering Activity will have access to Contractor through Fortinet's real-time Anti-Virus and Network Intrusion Detection System ("NIDS") updates that will protect the Ordering



Activity against some of the latest network-based threats. These updates may either be pushed to properly configured and authorized Products, retrieved on a pre-scheduled basis, or retrieved manually by the Ordering Activity.

## EXCLUSIONS

**General.** Ordering Activity acknowledges that software and/or hardware is/are neither perfect nor error-free and that, despite commercially reasonable efforts, Contractor through Fortinet may be unable to provide answers to, or be able to resolve, some or all requests for software or hardware support. The Services provided by Contractor through Fortinet hereunder do not include warranty, support and/or maintenance for any third party software or hardware, whether or not such third party software or hardware is provided by Contractor through Fortinet. Contractor through Fortinet is not required to provide Services for problems arising from: (i) Ordering Activity's failure to implement all maintenance or features issued under this Attachment A; (ii) any alterations of or additions to the Products performed by parties other than Contractor through Fortinet; (iii) accident, negligence, or misuse of the Products (such as, without limitation, operation outside of environmental specifications or in a manner for which the Products were not designed); or (iv) interconnection of the Products with other products not supplied by Contractor through Fortinet.

**On-Site Support Not Included.** Support Services are strictly limited to telephone and electronic support.

## LICENSE

All updates or upgrades to Software or Hardware provided for under this Attachment A shall be deemed to be included within the Products and subject to these Attachment A License terms and conditions. Further, Ordering Activity hereby agrees (i) not to create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the source code, internal structure, hardware design or organization of the Product or support updates or software, or any part thereof, or to aid or to permit others to do so, except and only to the extent as expressly required by applicable law; (ii) not to remove any identification or notices of any proprietary or copyright restrictions from any Product or support updates or software; (iii) not to copy the Product or support updates or software, modify, translate or, unless otherwise agreed, develop any derivative works thereof or include any portion of the Software in any other software program; (iv) only to use the Product and support updates and software for internal business purposes, and (v) to keep confidential any software and support updates and not share them with third parties.

## WARRANTY

Except as expressly stated otherwise, maintenance releases, updates and upgrades provided hereunder are warranted for the remaining software warranty period of the original Product purchased, if any, as specified in this Attachment A. Nothing in this Attachment A shall be construed as expanding or adding to the warranty set forth above. Contractor cannot guarantee that every question or problem raised in connection with the Services will be addressed or resolved. EXCEPT FOR WARRANTIES CLEARLY AND EXPRESSLY STATED HEREIN, NOTWITHSTANDING ANYTHING TO THE CONTRARY, CONTRACTOR MAKES, AND ORDERING ACTIVITY RECEIVE, NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS ATTACHMENT A OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND, TO THE EXTENT PERMISSIBLE BY LAW, FORTINET SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

**FUJITSU NETWORK COMMUNICATIONS, INC.  
2801 TELECOM PARKWAY  
RICHARDSON, TX 75082**

### EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

1. **Scope.** This Rider and the attached **Fujitsu Network Communications, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions

affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

### FUJITSU NETWORK COMMUNICATIONS

#### FUJITSU NETWORK COMMUNICATIONS LICENSE, WARRANTY AND SUPPORT TERMS

**Grant of License.** Upon delivery or access of the Licensed Product to Ordering Activity and payment by Ordering Activity of the applicable annual license fee for base software and individually licensed Software features or other consideration as determined by Contractor, Contractor grants to Ordering Activity a restricted, personal, nontransferable and non-exclusive right-to-use license to the Software that is embedded in, loaded, activated, or downloaded into applicable Fujitsu Network Communications ("FNC") equipment and use of the Documentation, solely for Ordering Activity's internal business purposes and only on or for the products Ordering Activity obtains from Contractor.

**U.S. Government Rights.** If the Licensed Products are being provided to the United States Government they are, to the maximum extent permitted under applicable laws and regulations, provided pursuant to the terms, and subject to the limitations, of this Attachment A. To the extent that applicable laws and regulations grant the Government greater rights than provided by this Attachment A, then the Government receives only the minimum rights required by such laws and regulations. Development of the Licensed Products was privately funded and use, reproduction, or disclosure is subject to restrictions set forth in any of the following that are applicable: paragraph (c) of the Commercial Computer Software - Restricted Rights (June 1987) clause at FAR 52.227-19, the Restricted Rights Notice of subparagraph (g)(3) of the Rights in Data - General (June 1987) clause at FAR 52.227-14, DFARS 227.7202-3, and the Technical Data - Commercial Items (Nov. 1995) clause at DFARS 252.227-7015, all as may be amended from time to time.

**Restrictions.** Ordering Activity may not: (i) modify, adapt, translate, reverse engineer, disassemble, decompile, or otherwise attempt to derive source code from or create or prepare derivative works of or from the Licensed Products, (ii) distribute, sublicense, rent, lease, loan, or make unauthorized copies of any portion of the Licensed Products, (iii) publicly display visual output or publish any test results of the Software, or (iv) use the Software in inherently high-risk applications such as, but not limited to, aircraft navigation or communications, nuclear facilities, mass transit, or medical emergency communications. Ordering Activity is authorized to make one copy of the Software in any machine-readable medium for backup or archival purposes in support of Ordering Activity's permitted use hereunder. Ordering Activity

may not lend, sublicense, rent or lease the Software, or otherwise make it available to any third party, or transfer or assign this Attachment A or any rights hereunder. Any portion of the Software merged into another software program will continue to be subject to the terms and conditions of this Attachment A. The Software is licensed as a single product with individual Software license features, and it may not be separated for use other than as permitted above.

**SOFTWARE ACCESS.** Ordering Activity may obtain the Software by downloading a copy from the FNC website or a CD, or entering the applicable machine line code ("TL1 Command") on equipment preloaded with the Software.

**Ownership of the Licensed Products.** The Licensed Products are licensed, not sold. Ordering Activity agrees that all right, title, and interest, including all copyright, patent, trademark, trade secret and other intellectual property rights in and to the Licensed Products and all complete or partial copies thereof belong exclusively to FNC or its licensors, and this Attachment A does not transfer or assign any such rights. The Licensed Products are protected by copyright and other laws and international treaties. Ordering Activity agrees to mark any copies of the Software Ordering Activity is permitted to make under this Attachment A with the applicable copyright notice provided by FNC. Except as expressly granted in this Attachment A, no right or license, whether express or implied, by estoppel or otherwise, is granted in any copyright, patent, trademark, trade secret, or other intellectual property of FNC or its licensors.

**Warranty Disclaimer and Limitation.** EXCEPT AS PROVIDED IN THE AGREEMENT BETWEEN CONTRACTOR AND ORDERING ACTIVITY, THE LICENSED PRODUCTS ARE LICENSED TO ORDERING ACTIVITY "AS IS". CONTRACTOR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE, AND ANY WARRANTIES CLAIMED TO ARISE FROM PERFORMANCE OR CUSTOM OR USAGE OF TRADE WITH RESPECT TO THE LICENSED PRODUCTS. ORDERING ACTIVITY ASSUMES ALL RISK RELATING TO USE OF THE LICENSED PRODUCTS. IN NO EVENT WILL CONTRACTOR BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOST PROFITS, BUSINESS INTERRUPTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF DATA, OR ANY OTHER LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED PRODUCTS, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**GETVISIBILITY  
UNIT 17A GROUND FLOOR  
BUILDING 4700 AVENUE 4000  
CORK AIRPORT BUSINESS PARK  
CORK T12XE1E  
REPUBLIC OF IRELAND**

**EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)**

**Scope.** This Rider and the attached Getvisibility (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order



and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.



**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**END-USER LICENSE AGREEMENT FOR GETVISIBILITY SYNERGY. IMPORTANT****PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT CAREFULLY BEFORE CONTINUING WITH THIS PROGRAM INSTALL**

End-User License Agreement ("EULA") is a legal agreement between the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document ("you" or "Ordering Activity") and Getvisibility for the Getvisibility software product(s) identified above which may include associated software components, media, printed materials, and "online" or electronic documentation ("SOFTWARE PRODUCT"). By both parties executing this EULA, or by executing a purchase order incorporating this EULA, you agree to be bound by the terms of this EULA. This license agreement represents the entire agreement concerning the program between you and Getvisibility, (referred to as "licenser"), and it supersedes any prior proposal, representation, or understanding between the parties. If you do not agree to the terms of this EULA, do not install or use the SOFTWARE PRODUCT.

The SOFTWARE PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold.

**GRANT OF LICENSE.**

The SOFTWARE PRODUCT is licensed as follows:

**INSTALLATION AND USE.**

Getvisibility grants you the right to install and use copies of the SOFTWARE PRODUCT on your computer running a validly licensed copy of the operating system for which the SOFTWARE PRODUCT was designed which are Windows 7 SP1 and Windows 10.

**BACKUP COPIES.**

You may also make copies of the SOFTWARE PRODUCT as may be necessary for backup and archival purposes.

**DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.****Maintenance of Copyright Notices.**

You must not remove or alter any copyright notices on any and all copies of the SOFTWARE PRODUCT.

**DISTRIBUTION.**

You may not distribute registered copies of the SOFTWARE PRODUCT to third parties. Evaluation versions available for download from Getvisibility's websites may be freely distributed if available.

**PROHIBITION ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY.**

You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

**RENTAL.**

You may not rent, lease, or lend the SOFTWARE PRODUCT.

## **SUPPORT SERVICES.**

Getvisibility or an approved Getvisibility reseller or partner may provide you with support services related to the SOFTWARE PRODUCT ("Support Services"). Any supplemental software code provided to you as part of the Support Services shall be considered part of the SOFTWARE PRODUCT and subject to the terms and conditions of this EULA.

## **COMPLIANCE WITH APPLICABLE LAWS.**

You must comply with all applicable laws regarding use of the SOFTWARE PRODUCT.

## **TERMINATION**

Without prejudice to any other rights, Getvisibility may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the SOFTWARE PRODUCT in your possession.

## **COPYRIGHT**

All title, including but not limited to copyrights, in and to the SOFTWARE PRODUCT and any copies thereof are owned by Getvisibility or its suppliers. All title and intellectual property rights in and to the content which may be accessed through use of the SOFTWARE PRODUCT is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA grants you no rights to use such content. All rights not expressly granted are reserved by Getvisibility.

## **LIMITED WARRANTY**

GETVISIBILITY WARRANTS THAT THE SOFTWARE PRODUCT WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SOFTWARE PRODUCT WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Getvisibility expressly disclaims any warranty for the SOFTWARE PRODUCT. The SOFTWARE PRODUCT is provided 'As Is' without any express or implied warranty of any kind, including but not limited to any warranties of merchantability, noninfringement, or fitness of a particular purpose. Getvisibility does not warrant or assume responsibility for the accuracy or completeness of any information, text, graphics, links or other items contained within the SOFTWARE PRODUCT. Getvisibility makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb, or other such computer program. Getvisibility further expressly disclaims any warranty or representation to Authorized Users or to any third party.

## **LIMITATION OF LIABILITY**

In no event shall Getvisibility be liable for any consequential, indirect or special damages (including, without limitation, lost profits, business interruption, or lost information) rising out of 'Authorized Users' use of or inability to use the SOFTWARE PRODUCT, even if Getvisibility has been advised of the possibility of such damages. In no event will Getvisibility be liable for loss of data or for indirect, special, incidental, consequential (including lost profit), or other damages based in contract, tort or otherwise. Getvisibility shall have no liability with respect to the content of the SOFTWARE PRODUCT or any part thereof, including but not limited to errors or omissions contained therein, libel, infringements of rights of publicity, privacy, trademark rights, business interruption, loss of privacy, moral rights or the disclosure of confidential information. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

# EC America, Inc.

a subsidiary of  immixGroup

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GITLAB, INC.  
1233 HOWARD ST #2F  
SAN FRANCISCO, CA 94103

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached GitLab, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is

triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS  
GITLAB, INC.**

**GITLAB, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**1. LICENSE AND SUPPORT**



1.1 Subject to the terms and conditions of this Agreement, GitLab hereby grants to Customer and its Affiliates (as defined below) a limited, non-exclusive, nontransferable, non-sublicensable license for Customer's and its Affiliates' employees and contractors to (1) internally (a) use, reproduce, modify, prepare derivative works based upon, and display the code of GitLab Enterprise Edition at the tier level selected by Customer with the specifications generally promulgated by GitLab from time to time (the "Software"), excluding additional Products for the Enterprise Edition unless listed on the Quote, solely (i) for its internal use in connection with the development of Customer's and/or its Affiliates' own software, and (ii) by the number of internal users for which

Customer has paid GitLab; and (b) use the documentation, training materials or other materials supplied by GitLab (the "Other GitLab Materials"); and (2) modify the Software and publish patches to the Software, solely by the number of internal users for which Customer has paid GitLab. Notwithstanding anything to the contrary, Customer agrees that GitLab and/or its licensors (as applicable) retain all right, title and interest in and to all Software incorporated in such modifications and/or patches, and all such Software may only be used, copied, modified, displayed, distributed, or otherwise exploited in full compliance with this Agreement, and with a valid GitLab Enterprise Edition subscription for the correct number of user seats. The Software and Other GitLab Materials are collectively referred to herein as the "Licensed Materials." "Affiliate" means any entity(ies) controlling, controlled by, and/or under common control with a party hereto, where "control" means the ownership of more than 50% of the voting securities in such entity.

1.2 Subject to the terms hereof, GitLab will provide reasonable support to Customer for the Licensed Materials as set forth in the underlying GSA Schedule Contract. 1.2.1 GitLab will use reasonable commercial efforts to respond to support questions by phone or email during the next business day at the latest. The number of support questions is not limited.

## 2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Except as expressly authorized in Section 1.1, Customer will not, and will not permit any third party to: use the Licensed Materials for any purpose other than as specifically authorized in Section 1, or in such a manner that would enable any unlicensed person to access the Licensed Materials; use the Licensed Materials or any other GitLab software for timesharing or service bureau purposes or for any purpose other than its own internal use (including without limitation, sublicensing, distributing, selling, reselling any of the foregoing); except as expressly permitted herein; use the Licensed Materials in connection with any high risk or strict liability activity (including, without limitation, space travel, firefighting, police operations, power plant operation, military operations, rescue operations, hospital and medical operations or the like); use the Licensed Materials or software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any privacy laws, and laws and regulations concerning intellectual property, consumer and child protection, obscenity or defamation); or use the Licensed Materials in any manner that (1) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, or libelous (including without limitation, accessing any computer, computer system, network, software, or data without authorization, breaching the security of another user or system, and/or attempting to circumvent any user authentication or security process), (2) impersonates any person or entity, including without limitation any employee or representative of GitLab, or (3) contains a virus, Trojan horse, worm, time bomb, unsolicited bulk, commercial, or "spam" message, or other harmful computer code, file, or program (including without limitation, password guessing programs, decoders, password gatherers, keystroke loggers, cracking tools, packet sniffers, and/or encryption circumvention programs).

2.2 Customer will cooperate with GitLab in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as GitLab may reasonably request. Customer will also cooperate with GitLab in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of the Licensed Materials. Customer shall maintain during the term of this Agreement and through the end of the third year after the date on which the final payment is made under this Agreement, books, records, contracts and accounts relating to the payments due GitLab under this Agreement (collectively, the "Customer Records"). GitLab may, at its sole expense, upon 30 days' prior written notice to Customer and during Customer's normal business hours and subject to industry-standard confidentiality obligations, hire an independent third party auditor to audit the Customer Records only to verify the amounts payable under this Agreement.

2.3 Customer will be responsible for maintaining the security of Customer's account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer's knowledge or consent.

## 3. CONFIDENTIALITY

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Without limiting the foregoing, the Licensed Materials are GitLab Proprietary Information.

3.2 The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, GitLab may collect data with respect to and report on the aggregate response rate and other aggregate measures of the Licensed Materials' performance and Customer's usage of the Licensed Materials; provided that GitLab will not identify Customer as the source of any such data without Customer's prior written consent. However, courts of competent jurisdiction may require certain information to be released. Federal agencies are subject to the Freedom of Information Act (FOIA) (5USC 552), and some information may be released despite being characterized as confidential by GitLab.

3.3. Both parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

4.1 Except as expressly set forth herein, GitLab alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Licensed Materials and any suggestions, ideas, enhancement requests, feedback, code, recommendations or other information provided by Customer or any third party relating to the Licensed Materials, which are hereby assigned to GitLab. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Licensed Materials, or any intellectual property rights.

4.2 Customer shall not remove, alter or obscure any of GitLab's (or its licensors') copyright notices, proprietary legends, trademark or service mark attributions, patent markings or other indicia of GitLab's (or its licensors') ownership or contribution from the Licensed Materials. Additionally, Customer agrees to reproduce and include GitLab's (and its licensors') proprietary and copyright notices on any copies of the Licensed Materials, or on any portion thereof, including reproduction of the copyright notice. Notwithstanding anything to the contrary herein, any part of the Licensed Materials distributed by GitLab as part of the GitLab Community Edition is licensed under the terms of the MIT License.

4.3 Customer and its licensors shall (and Customer hereby represents and warrants that they do) have and retain all right, title and interest (including, without limitation, sole ownership of) all software, information, content and data provided by or on behalf of Customer or made available or otherwise distributed through use of the Licensed Materials ("Content") and the intellectual property rights with respect to that Content. Subject to the foregoing, GitLab may participate in the defense and/or settlement of any applicable Claim with counsel of its choosing at its own expense to the extent permitted by 28 U.S.C. 516

4.4 GitLab will defend, indemnify and hold Customer harmless from liability and other amounts paid or payable to unaffiliated third parties resulting from (i) the infringement or violation of any intellectual property or proprietary rights by the Licensed Materials or (ii) the violation of applicable law or regulation by GitLab in performance of its obligations hereunder, provided GitLab is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume control over defense and settlement thereof. Subject to the foregoing, Customer may participate in the defense and/or settlement of any claim that is indemnifiable by GitLab with counsel of its choosing at its own expense. The foregoing obligations do not apply with respect to portions or components of the Licensed Materials (i) not created by GitLab, (ii) that are modified after delivery by GitLab, (iii) combined with other products, processes or materials where the alleged infringement relates to such combination, (iv) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (v) where Customer's use of the Licensed Materials is not strictly in accordance with this Agreement and all related documentation.

#### **5. PAYMENT OF FEES**

5.1 Unless and until GitLab and Customer have executed a quote document specifically referencing this Agreement with respect to amounts due on account of the Licensed Materials (a "Quote", which is hereby incorporated by reference, if applicable), Customer will pay GitLab the applicable fees as set forth at <https://about.gitlab.com/pricing/> (the "Pricing") for the Licensed Materials selected and/or used by Customer (the "Fees") without any right of set-off or deduction. To the extent applicable, Customer will pay GitLab for additional services, such as integration fees or other consulting fees agreed by both parties hereto in writing (email to suffice). On each anniversary of the Effective Date, GitLab will invoice Customer with respect to any and all additional Customer users of the Licensed Materials beyond those for whom Customer has pre-paid, as of such date (and for whom the Fees due pursuant to such invoice will be the per-year user fee set forth in the Quote or Pricing (as applicable) with respect to the year just ended, and the per-year user fee set forth in the Quote or Pricing (as applicable) with respect to all subsequent years, unless otherwise agreed in writing by both parties (collectively, a "True-Up"). For Customers that have pre-paid all Fees for multi-year subscriptions for Licensed Materials pursuant to a Quote, on each anniversary of the Effective Date during the term of this Agreement, (i) a new license key will be provided, and (ii) a True-Up will be conducted. All additional users purchased shall be coterminated through the end of the original Subscription period.

5.2 All payments and invoice terms will be made in accordance with FAR 52.212-4 and the underlying GSA Schedule Contract. Except as expressly set forth in this Agreement, all Fees paid and/or due hereunder (including any prepaid amounts) are non-refundable, including without limitation if this Agreement is terminated in accordance with Section 6 below. If Customer terminates this Agreement pursuant to Section 6.2 within 45 calendar days from receipt of the initial invoice for the Licensed Materials, GitLab will refund all Fees paid hereunder.

5.3 Payments not received when due shall be governed by the Prompt Payment Act (31 USC 3901 *et seq*) and Treasury regulations at 5 CCR 1315. Additionally, notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Gitlab shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

#### **6. TERMINATION**

6.1 When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this agreement must be made as a dispute under the Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Geotab shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

6.2 Customer's rights to the Licensed Materials, and any licenses granted hereunder, shall terminate upon any termination of this Agreement. **7.**

#### **WARRANTY; CUSTOMER SOFTWARE SECURITY**

GitLab represents and warrants that (i) it has all rights and licenses necessary for it to perform its obligations hereunder, and (ii) it will not knowingly include, in any GitLab software released to the public and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, Trojans, or time bombs, that are intentionally designed to disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If, at any time, GitLab fails to comply with the warranty in this Section, Customer may promptly notify GitLab in writing of any such noncompliance. GitLab will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance.

#### **8. WARRANTY DISCLAIMER**

Gitlab warrants that the SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. Except as just stated, THE LICENSED MATERIALS, SOFTWARE AND GITLAB PROPRIETARY INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. GITLAB HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

#### **9. LIMITATION OF LIABILITY**

IN NO EVENT WILL EITHER PARTY OR THEIR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE LICENSED MATERIALS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, ANY DELAY OR INABILITY TO USE THE LICENSED MATERIALS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF EACH PARTY AND ITS LICENSORS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE GREATER OF (i) ONE THOUSAND DOLLARS (\$1,000), OR (ii) THE FEES PAID TO GITLAB HEREUNDER IN ONE YEAR PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Gitlab's negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

#### **10. U.S. GOVERNMENT MATTERS**

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Licensed Materials or any software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of the Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of the Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Licensed Materials is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by GitLab are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

#### **11. MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by either party without the other party's prior written consent, not to be unreasonably withheld or delayed; provided that either party may transfer and/or assign this Agreement to a successor in the event of a sale of all or substantially all of its business or assets to which this Agreement relates. Both parties agree that this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed or otherwise agreed to by each party, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or

# EC America, Inc.

a subsidiary of  immixGroup

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e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. GitLab will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the Federal laws of the United State of America.

GLOBALSCAPE, INC.  
4500 LOCKHILL SELMAN RD.  
SUITE 150  
SAN ANTONIO, TX 78249

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

**Scope.** This Rider and the attached Globalscape, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract").

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The Government Customer is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

**Choice of Law.** Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

**Force Majeure.** Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

**Assignment.** All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

**Customer Indemnities.** Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

**Contractor Indemnities.** All Manufacturer Specific Terms that (1) violate DOJ's jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

**Renewals.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

**Future Fees or Penalties.** All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.



**Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.

**Installation and Use of the Software.** Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Dispute Resolution and Venue.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS  
GLOBAL SCAPE, INC.**

**GLOBAL SCAPE, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

1. **SOFTWARE.** The capitalized term "Software" refers to the object code for the computer program known as Enhanced File Transfer Server Enterprise (or EFT Server Enterprise) Version 7.1, including the Server Program and the Administrator Interface and all Optional Add-On Modules, which may include without limitation the AWE Module (as defined in Section 2 below), you may purchase and any updates, supplemental code or programs provided to you by GlobalSCAPE with or in connection with Enhanced File Transfer Server Enterprise Version 7.1, such as the user's manual and Help file, any components, any related media and printed materials, and any related "online" or electronic documentation.

2. **GRANT OF LICENSE.**

A. **EVALUATION LICENSE.** If you acquired the license for any component of the Software on an evaluation or trial basis, you may use the Software without charge for the evaluation period. Your evaluation period begins on the day the evaluation serial number is issued by GlobalSCAPE. You must pay the license fee and activate your copy in the manner required below to continue to use the Software after the evaluation period. An evaluation license for the Software may not be transferred to any other person.

B. **STANDARD LICENSE.**

(i) **SERVER PROGRAM.** You may install and use one copy of the Server Program on that number of server computers for which you have purchased a separate license as indicated on your ordering document.

(ii) **ADMINISTRATOR INTERFACE.** For so long as you have an active license to use the Server Program, you may copy, install and use the Administrator Interface on as many personal desktop computers as you wish.

(iii) **OPTIONAL ADD-ON MODULES.**

(a) **WEB TRANSFER CLIENT.** You may concurrently use that number of Web Transfer Clients for which you have paid a separate license fee as indicated on your invoice or sales receipt. If you wish to increase the number of concurrent users after your initial license purchase, upon issuing an order for the additional license fee you will be issued a new registration serial number which will be utilized to activate the additional Web Transfer Client licenses purchased and to re-activate the Web Transfer Client licenses previously purchased.

(b) **SECURE AD HOC TRANSFER MODULE.** If you have purchased a separate license for the Secure Ad Hoc Transfer module (hereafter referred to as "SAT Module"), you may install and use one copy of the SAT Module on that number of server computers for which you have purchased a license as indicated on your ordering document. The SAT Module shall be installed solely on the same server(s) as the Server Program. It is your duty, at your cost, to install and maintain the SAT Module and to acquire, install and maintain Microsoft IIS and all necessary equipment and connectivity required to use the SAT Module. Notwithstanding the restrictions in Section 7.1 but subject at all times to GlobalSCAPE's rights set forth in Section 13, you may modify the SAT Module solely to customize the web interface to the Software created through the SAT Module. Upon modification, however, GlobalSCAPE shall have no further obligations under Section 8 or any related M & S Plan in relation to the Secure SAT module. If you purchase additional copies of the SAT Module for back-up or archival purposes, you will need to make all applicable modifications to the newly licensed copies.

(c) **ADVANCED WORKFLOW ENGINE.** If you have purchased a separate license for the Advanced Workflow Engine module ("AWE Module"), you may install and use one copy of the AWE Module on that number of computers for which you have purchased a license as indicated on your invoice or sales receipt. You may not separate the AWE Module for use on more than one computer. Certain consents required to be obtained from GlobalSCAPE pursuant to this Agreement may also require the consent of Network Automation, Inc. ("NAI"). You acknowledge that you have only the limited, non-exclusive right to use and copy the AWE Module as expressly stated in this Agreement and that GlobalSCAPE and NAI, as the case may be, retains title to the Software and all other rights not expressly granted herein.



(d) **MOBILE TRANSFER CLIENT.** If you have purchased a license for The Mobile Transfer Client (hereafter referred to as "MTC") module, each user for which you have paid may install and use the MTC on as many devices as desired. For example, if you purchase a license to the MTC for up to 99 users, up to 99 individuals can use the MTC on any device(s) on which they choose to install the MTC application, but only up to 99 named individuals, in aggregate, may access and use the MTC module. If you wish to increase the number of users after your initial license purchase, upon issuing an order for the additional license fee, you will be issued a new registration serial number that will be used to activate the additional MTC licenses purchased and to re-activate the licenses previously purchased.

(e) **WORKSPACES.** If you have purchased a license for Workspaces, each user for which you have paid may create as many Workspaces as desired. For example, if you purchase a Workspaces license for up to 99 Workspace owners, up to 99 individuals can create and maintain Workspaces at a given time. If you wish to increase the number of users after your initial license purchase, upon issuing an order for the additional license fee, you will be issued a new registration serial number that will be used to activate the additional Workspaces licenses purchased and to re-activate the licenses previously purchased.

**C. STANDBY OR DEVELOPMENT LICENSE.** If you have purchased a license to use the Server Program and/or the Add-On on a non-production basis, then you may use the Server Program and/or Add-On so licensed only as follows:

(i) **STANDBY LICENSE:** One (1) copy on a standby computer that is not processing traffic or doing work of any kind except in the event that, and only for so long as, the primary production server upon which the Server Program license is associated is offline.

(ii) **DEVELOPMENT LICENSE:** One (1) copy on a server (and associated desktop personal computers) used solely for testing, evaluation, or API development, so long as such server does not process actual traffic in a production environment.

**D. ACTIVATION.** You must activate the evaluation or standard license for the Software by entering the evaluation or registration serial number as prompted by the Software and as otherwise instructed by GlobalSCAPE

**E. RESERVED.**

**3. RIGHT TO COPY OR BACKUP.** You may make one copy of the Software or the installation media for the Software solely for back-up or archival purposes at no additional charge.

**4. UPGRADES.** To use Software identified as an upgrade, or new version, you must first be licensed for the Software identified by GlobalSCAPE as eligible for the upgrade and issue an order for the purchase of the upgrade or new version. After upgrading, you may no longer use the Software that formed the basis for your upgrade eligibility and the license for that Software shall be deemed immediately terminated upon your installation of the upgrade.

**5. TRANSFER.** You may use the Software solely for your internal business process as contemplated by this Agreement and shall not license, sub-license, sell, re-sell, rent, lease, lend, transfer, assign, distribute, time share or otherwise commercially exploit or make the Software available to any third party, other than as contemplated by this Agreement, without the prior written consent of GlobalSCAPE. You shall not sell, sell access to, or sell use of the Software or utilize the Software as the basis for any software as a service or application service provider solution that You offer for sale or license to third parties. You shall not use the Software in connection with the provision of a service to any third party that includes file transfer or any other service that is a substitute for some or all the Software's functions without the prior written consent of GlobalSCAPE. If modifications are made to a SAT Module as permitted herein, such modification may only be used for your internal business purposes and may not be licensed or sublicensed or otherwise provided to any third party. You may, however, make a one-time permanent transfer of all of your license rights to the Software to another party, provided that: (a) the transfer must include all of the Software, including all component parts, programs, media, printed materials, all registration serial numbers, all modules you purchase in conjunction with the Software, and this license in connection with the sale of all or substantially all of the assets for that line of business; (b) you do not retain any copies of the Software, full or partial, including copies stored on a computer or other storage device; (c) the person to whom you transfer the Software agrees to be bound by the terms of this license; and (d) you provide notice to GlobalSCAPE at least 10 days prior to such transfer of the identity and contact information for the transferee and such transferee is not a competitor of GlobalSCAPE as determined by GlobalSCAPE in its sole discretion. If you purchased the license for the Software on a multi-computer basis—that is, one registration serial number valid for the number of computers indicated on your invoice, you may permanently assign your rights under this license to only a single person or entity. Notwithstanding anything else in this Agreement to the contrary, a license for the Software provided on a free, promotional, or "not-for-resale" (NFR) basis may be used only for testing, demonstration or evaluation and may not be sold or transferred to another person in any manner.

**6. INFORMATION COLLECTION AND PRIVACY.** The Software includes a feature that assigns a unique identifier to your computer based on system information. The Software reports this identifier to GlobalSCAPE either when you install the Software, enter your evaluation serial number, or enter your registration serial number, or upon the occurrence of each of these. During the evaluation period, the Software will contact our registration and activation servers periodically to verify that the Software is still eligible for use on an evaluation basis. The Software may also identify and report to us your Windows language identifier setting, IP address, and the date and time of installation and/or activation. GlobalSCAPE uses this information to count installations, detect piracy of the Software, and develop rough statistical data regarding the geographic location of the Software users. GlobalSCAPE may tie this information to personally identifiable information it has about you. GlobalSCAPE may use any non-proprietary information you provide as part of obtaining support services for GlobalSCAPE's business purposes, including product support and development.

**7. RESTRICTIONS.** You may not reduce the Software to human readable (or source code) form, reverse engineer, de-compile, disassemble, merge, adapt, or modify the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. You may not use the Software to perform any unauthorized transfer of information, such as copying or transferring a file in violation of a copyright, in violation of any laws related to the transfer of encrypted data or for any illegal purpose.

**8. MAINTENANCE AND TECHNICAL SUPPORT SERVICES.** If you purchased a maintenance and support plan ("M & S Plan"), GlobalSCAPE shall provide the support services at the level agreed by you and Contractor in an applicable ordering document and as defined in the GlobalSCAPE Maintenance and Support Guide (Exhibit 1) (the "Guide"). To be eligible for maintenance and support services, the Server Program and the Administrator Interface as well as all associated Add-On Modules must be covered by an active M & S Plan.

**9. RESERVED.**

10. SECURITY. The Software creates a means for others to gain access to your computer. Although we have taken commercially reasonable measures to prevent unauthorized persons from gaining access to your computer via the Software, we cannot foresee or control the actions of third parties. Therefore, use of the Software will make you vulnerable to security breaches that you might not otherwise face and could result in the loss of your privacy or property. You are responsible for your use of the Software or otherwise. Use of secure passwords and keeping passwords confidential are not the responsibility of GlobalSCAPE or the Software.

11. RESERVED.

12. RESERVED.

13. INTELLECTUAL PROPERTY. You acknowledge that you have only the limited, non-exclusive right to use and copy the Software as expressly stated in this Agreement and that GlobalSCAPE retains title to the Software and all other rights not expressly granted. You agree not to remove or modify any copyright, trademark, patent, or other proprietary notices that appear, on, in or with the Software. The Software and all derivatives thereof, including any modifications made to the SAT Module are protected by United States copyright, patent and trademark law and rights granted by international treaties related to intellectual property rights. The Software is copyright (c) 2004-2015 GlobalSCAPE, Inc. All rights reserved.

14. EXPORT RESTRICTIONS. THE SOFTWARE CONTAINS ENCRYPTION TECHNOLOGY THAT IS CONTROLLED FOR EXPORT BY THE U.S. GOVERNMENT. You agree to comply fully with all relevant export laws and regulations of the United States ("Export Laws") to assure that (i) the Software is not exported, directly or indirectly (including as a result of providing access to the Software to a national or resident of and embargoed or restricted country), in violation of Export Laws, or the applicable laws of any other jurisdiction or (ii) or provided to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders or Entity List. Among other things, the Export Laws provide that the Software may not be exported or re-exported to certain countries that are embargoed or restricted, or to certain restricted persons. Embargoed and restricted countries currently include but are not limited to Cuba, Iran, Libya, North Korea, Syria and Sudan. In addition to other restrictions described in this section, you may not use the Software, or export the Software to any destination where you know or have reason to know that the Software may be used, in connection with the proliferation of nuclear, chemical or biological weapons or missiles.

15. WARRANTIES. THE WARRANTY IS LIMITED TO NINETY (90) DAYS FROM YOUR RECEIPT OF A COPY OF THE SOFTWARE. COMPUTER PROGRAMS ARE INHERENTLY COMPLEX, AND THE SOFTWARE MAY NOT BE FREE OF ERRORS. THE SOFTWARE IS PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. GLOBALSCAPE DISCLAIMS ALL LIABILITY FOR ANY ACTION THAT YOU, YOUR DESIGNEE, OR YOUR AGENTS MIGHT TAKE IN CONNECTION WITH, OR IN RELIANCE UPON, THE TRANSMISSION OR RECEIPT OF ANY MESSAGE USING THE SOFTWARE. SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES SO THESE LIMITATIONS MAY NOT APPLY TO YOU.

16. RESERVED.

17. U.S. GOVERNMENT. The Software is commercial computer software developed solely at private expense. The rights of civilian and non-civilian agencies of the U.S. Government to use, disclose and reproduce the Software are governed by the terms of this Agreement. Publisher is GlobalSCAPE Inc., 4500 Lockhill-Selma, Suite 150, San Antonio, Texas, 78249, USA.

18. RESERVED.

Exhibit 1 – Client Support Services Maintenance and Support Guide Meeting Client Needs

Our Client Support Services team is committed to helping you, our trusted partner, be successful! To this end, Globalscape offers world-class client support and product maintenance to help ensure that your Globalscape implementation is a success. We take pride in optimizing the business value of your security solution and realize that one size doesn't always fit all. That's why we've developed varying levels of technical support to ensure that you get the service your business deserves.

Online services include product updates, user guides, a knowledgebase, online help files, printable documentation, a user community discussion forum, and more. In addition to our self-service resources that are available to all customers at the Globalscape website, we offer two Maintenance and Support plans: a Standard Plan and a Platinum Plan. Both plans include the same level of software maintenance protection. The Platinum Maintenance and Support plan provides you with emergency support anytime, 24 hours per day, seven days per week from your assigned support technicians. As part of this commitment, our maintenance and support program includes the following:

World Wide Web Support

Take advantage of the easy-to-use, 24-hour support resources that are available on the Globalscape Support Center Web site at <http://support.globalscape.com>. Online services include product updates/ notifications, user's guides, a knowledge base, online help files, printable documentation, a user community discussion forum and more.

Email Support

Submit your request via our online submission form available on the Globalscape Support Center Web site at

<http://www.globalscape.com/support/techsupport.aspx> and receive an answer via email or telephone. Our response will include a ticket number and the name of the assigned support professional.

Telephone Support

Standard Support Plan members can call us at 1-210-366-3993, Monday through Friday from 8:00 A.M. to 6:00 P.M. (Central Time) for help with any product-related issue.

Additionally, Platinum Support Plan members can receive emergency after-hours technical support 24 hours per day, seven days per week. After hours Platinum Support services are available only via a special telephone number that will be provided when you purchase a Platinum Support Plan.

**Maintenance and Support Plans**

Included with your active support plan is software maintenance, which provides all major upgrades and minor updates that are publicly released during the term of the agreement at no additional charge. Free upgrades must be requested or obtained while the maintenance and support plan remains in force.

Globalscape offers both Standard and Platinum Support plans for our enterprise software solutions. Both plans include the same level of software maintenance protection. A Platinum Maintenance and Support plan provides you with emergency access to our support professionals anytime, 24 hours per day, seven days per week.

**Plan Details**

<b>Plan Benefits</b>	<b>Standard Plan</b>	<b>Platinum Plan</b>
Priority Telephone Support	Regular business hours	24h/7d*
Minimum Term	12 Months	12 Months
Priority Email Technical Support†	Unlimited	Unlimited
Access to the User Discussion Forum	Unlimited	Unlimited
Access to Online Self-Help Resources	Unlimited	Unlimited
Software Upgrades and Updates	Unlimited	Unlimited

†Email technical support is available through our online submission form.

**Business Hours**

Our regular business hours are Monday through Friday from 8:00 A.M. to 6:00 P.M. (Central Time). Platinum support plan members can call the Platinum Support Line anytime, 24 hours per day, seven days per week\*.

\*Routine requests are handled during normal business hours. Priority service for production system emergencies is available at any time.

†Email technical support is available through our online submission form.

**Contacting Technical Support**

<b>Type of Contact</b>	<b>Address or Number</b>	<b>Hours</b>
Standard Technical Support Line	1-210-366-3993	8:00am to 6:00pm M – F
Platinum Technical Support Line	(Provided with Platinum Plan)	Anytime
Priority Email Technical Support	<a href="http://www.globalscape.com/support/techsupport.aspx">http://www.globalscape.com/support/techsupport.aspx</a>	Anytime
Online Support Center / Software Upgrades and Updates	<a href="http://www.globalscape.com/support/">http://www.globalscape.com/support/</a>	Anytime
Serial Number Assistance	<a href="http://www.globalscape.com/support/lostserial.aspx">http://www.globalscape.com/support/lostserial.aspx</a>	Anytime
Knowledge Base	<a href="http://kb.globalscape.com">http://kb.globalscape.com</a>	Anytime
User Discussion Forum	<a href="http://forums.globalscape.com">http://forums.globalscape.com</a>	Anytime

**Troubleshooting and Diagnostics**

When contacting the Globalscape Technical Support team, it is important to provide as much detail as possible about the problem. Please gather as much diagnostic and logging information as possible to help us in our diagnosis of the issue. Be prepared to provide us with relevant error logs or messages including server log files, screen shots, and event log reports. At a minimum, please gather the following details. If you are submitting an inquiry via our online submission form, please provide these details with your submission:

- Your name and company name
- Your telephone number and email address
- The name of the program and complete version information (From Help > About)
- Product serial number (From Help > About or Platinum Support Plan membership card)
- Your operating system and specific version information
- A complete description of the problem including:
  - o All of the steps necessary to reproduce the problem
  - A description of the environment and the network; useful information includes the data flow, Java runtime version, and database versions

Generally, service tickets are not closed until you and the Globalscape Support Professional both agree that the issue has been satisfactorily resolved. However, Globalscape support may close a service ticket

if you have not provided requested information within a reasonable period.

**Your Responsibilities**

During the course of an issue's diagnosis and resolution, we ask you to respond to all technical information requests as quickly as possible so that our Technical Support team can resolve your case in a timely manner.

<b>Level of Severity</b>	<b>After-hours Acknowledgement<sup>1</sup></b>	<b>Target Initial 2 Response Time</b>	<b>Resolution<sup>3</sup></b>
<b>Production system outage</b> Product unusable, complete disruption of work, critical business impact. No workaround immediately available.	Standard Plan - Not Applicable Platinum Plan - One Hour	Standard Plan - Same Business Day Platinum Plan - Two Hours	<ul style="list-style-type: none"> <li>• Satisfactory workaround is provided</li> <li>• Product patch is provided</li> <li>• Fix incorporated into future release</li> <li>• Fix or workaround incorporated into knowledge base</li> </ul>
<b>Major feature or function failure</b> Operations are severely restricted, but a workaround is available.	Standard Plan - Not Applicable Platinum Plan - One Hour	Standard Plan - One Business Day Platinum Plan - 12 Hours	<ul style="list-style-type: none"> <li>• Satisfactory workaround is provided</li> <li>• Product patch is provided</li> <li>• Fix incorporated into future release</li> <li>• Fix or workaround incorporated into knowledge base</li> </ul>
<b>Minor feature or function failure. General usage questions.</b> Product not working as designed. Minor usage impact; acceptable workaround deployed. Documentation, general information, or enhancement requested.	Standard Plan - Not Applicable Platinum Plan - One Hour	Standard Plan - Three Business Days Platinum Plan - One Business Day	<ul style="list-style-type: none"> <li>• Answer to question is provided</li> <li>• Satisfactory workaround provided</li> <li>• Fix or workaround incorporated into knowledge base</li> <li>• Fix incorporated into future release</li> </ul>

1. After-Hours Acknowledgement: An initial call back to acknowledge our receipt of the issue and to determine the level of severity. The acknowledgement may be combined with the Initial Response.
2. Target Initial Response Time: Globalscape uses commercially reasonable efforts to respond within the target response time but cannot guarantee response times.
3. Resolution: A satisfactory resolution may not be immediately available or provided with the initial response, in which case Globalscape will use commercially reasonable means and effort to provide a resolution within a reasonable period.

**Issue Escalation**

Our support professionals follow predefined processes to gather information for identification and resolution of issues. For some issues, our support professionals may need to escalate the issue to software development in order to resolve it.

The escalation process allows for wider review of the issue, including technical and management directives for applying additional resources to the problem, and increased levels of communication between your organization and Globalscape.

If at any time you are not satisfied with the level of support that is being provided to you, we encourage you to bring this to the attention of Globalscape's management staff. Please contact one of the Globalscape Support managers listed below. At our discretion, we may assign an account manager, product manager, or problem resolution team to focus on your issue.

Director, EFT Product Support	Amit Patel	1-210-293-7909	apatel@globalscape.com
Senior Director, Client Support Services	Jason Reams	1-210-308-8267	jreams@globalscape.com

**Scope of Technical Support**

While we are happy to support your use of our products, and will help in overcoming any difficulties you may encounter, there are certain limitations to the technical support that we can provide.

- Technical Support is limited to the reporting and correction of product defects and installation and configuration assistance.
  - Technical Support does not include support for problems related to the failure of your system, network, or environment to comply with the system requirements for the software.
  - Technical Support does not include support for development or consulting issues such as COM or other programmatic development. This includes HTML development and custom script creation.
  - While we constantly strive to assist in any way we can, there can be situations that are outside our control. Technical support does not include support for any other issues not directly related to the workings of our software.
  - Technical support is offered for recent versions of Globalscape software only. Technical support for older versions is available only through our online self-help resources.
- It is always recommended that you begin by examining the program help files, knowledgebase articles, and user forums if you are interested in customizing your environment or software beyond the availability of technical support options. You can also engage the services of our Professional Services team, described on our website at <http://www.globalscape.com/services/pro-services.aspx>.

#### Globalscape End of Life (EOL) and Support Life Policy

Rapidly changing technologies as well as competitive pressures influence the level, timing, and nature of demand for a particular product or group of products. These factors drive the need to introduce new products and services and to actively plan for end-of-life for older software versions as well as specific product lines. With that in mind, we have provided the Globalscape end-of-life (EOL) policy to help customers better manage their end-of-life transition and to understand the role that Globalscape can play in helping to migrate to alternative Globalscape technologies. A copy of the policy can be provided upon request.

#### Support Agreement

The technical support services described in this Guide are provided pursuant to the terms of the License Agreement you entered into as a condition to the installation of the software indicated below.

Please complete the information below and fax or mail to:

GlobalSCAPE, Inc.  
4500 Lockhill Selma Rd., Suite 150  
San Antonio, Texas 78249-2073  
Fax: 1-210-293-8003

**GUPTA TECHNOLOGIES**  
**1420 ROCKY RIDGE DRIVE, SUITE 380**  
**ROSEVILLE, CA 95661**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Gupta Technologies** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.



**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**GUPTA TECHNOLOGIES**

**GUPTA TECHNOLOGIES LICENSE, WARRANTY AND SUPPORT TERMS**

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**1. DEFINITIONS**

“Application Solution” defined as the Application Solution developed by Ordering Activity with the Software.

- b.) “Central Processing Unit (CPU)” defined as a computation hardware unit such as a microprocessor that serves as the main arithmetic and logic unit of the computer.
- c.) “Developer Seat” defined as a single computer utilized by a single person at any one time to perform the tasks associated with the development of Application Solutions.
- d.) “Deployment Software” defined as the Deployment Software specified in Exhibit A and licensed by payment of the proper License Fee.
- e.) “Development Software” defined as the Development Software specified in Exhibit A and licensed by payment of the proper License Fee.
- f.) “Services” defined as Unify provided Services for Support and Maintenance, Consulting and Training services.
- g.) “Software” defined as the Development and Deployment Software, including User Documentation as defined in Exhibit A. Unify reserves the right to discontinue Software at its sole discretion. The Software is protected by applicable intellectual property laws including copyright laws and international treaties.
- h.) “User Documentation” defined as the Unify user manual(s) and other materials on the proper installation and use of the Software, which is normally distributed with the Software.

## 2. LICENSE GRANT AND LIMITATIONS

**License Grant.** Pursuant to this Attachment A, Ordering Activity agrees to properly license and pay the appropriate License Fee for the Software (as set forth on Exhibit A and or the Contractor quote), and Contractor agrees to grant Ordering Activity a non-exclusive, non-transferable, non-assignable license to use the Development Software to design, develop, test and maintain the Application Solutions, and to use the Deployment Software to deploy the Application Solutions into a production environment subject to the conditions set forth in this Attachment A.

**Limitations.** All rights not expressly granted herein are reserved by Contractor and/or its licensors. Without limiting the generality of the preceding sentence, Ordering Activity agrees: (i) not to modify, port, translate, localize, or create derivative works of the Software; (ii) not to disassemble, decompile, reverse engineer or otherwise reduce the Software to human perceptible form, except as permitted by the 1991 EC Directive; (iii) not to remove, or allow to be removed, any Contractor or its Licensors copyright, trade secret, or other proprietary rights notice from any Software; (iv) not to make copies of the Software except for normal backup purposes; (v) not to transfer, assign, (except as permitted by Section 9.2) re-use or re-license the Software licenses to any third party without the prior written consent of Contractor; and (vi) not to use the Software to develop an Application Solution for re-sale or usage as an Application Service Provider or any other “access fee basis”.

## 3. GUPTA TECHNOLOGIES SERVICES

3.1 Ordering Activity will purchase Support and Maintenance Services for the first year from Contractor under the terms and conditions set forth in Exhibit B. All items (upgrades and updates) delivered by Contractor through Gupta Technologies shall be deemed to become a part of the applicable Software licensed hereunder and shall be subject to all terms and conditions of this Attachment A.

3.2 Ordering Activity may obtain Consulting Services from Contractor through Gupta Technologies under the terms and conditions as defined in Exhibit C. Ordering Activity may also participate in Gupta Technologies's standard training programs by contacting [info@GuptaTechnologies.com](mailto:info@GuptaTechnologies.com).

## 4. TITLE

4.1 Title, ownership and all intellectual property rights in and to the Software belong exclusively to Gupta Technologies and its licensors (which licensors shall have third party beneficiary rights to the extent permitted by applicable law). This Attachment A grants Ordering Activity no additional express or implied license, right or interest in any copyright, patent, trade secret, trade name, trademark, invention or other intellectual property right of Gupta Technologies. Ordering Activity will not sell, assign, lease, transfer, encumber or allow any security interest on the Software or take any action that would cause the Software to be placed in the public domain.

## 5. LIMITED WARRANTIES

5.1 Contractor warrants that (i) it has full right to enter into and perform this Attachment A; (ii) to the best of Contractor's knowledge, the Software does not violate any intellectual property rights of a third party under applicable patent or copyright laws; (iii) during the first sixty (60) days of normal use from the date Ordering Activity receives the Software from Contractor, the media will be free of defects in materials and workmanship and the Software will perform substantially in accordance with the Documentation or Contractor will replace the defective media without charge if returned to Contractor during this period; and (iv) Contractor warrants that it will perform the work associated with the Services in accordance with professional standards for similar work.

5.2 EXCEPT FOR THESE EXPRESS LIMITED WARRANTIES, ORDERING ACTIVITY ACCEPTS THE SOFTWARE AND SERVICES “AS IS”, WITH NO OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, OR IMPLIED BY STATUTE, COMMON LAW, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Contractor has no control over the conditions under which Ordering Activity uses the Software and does not and cannot warrant the results obtained by such use. Additionally, Contractor makes no warranties that the Software will satisfy Ordering Activity's data processing needs or function without interruption, errors or defects. Contractor makes no warranties regarding the applications developed with the Software or regarding Software which has been modified or altered by any party other than Contractor or to any problems caused by computer hardware or operating systems. The parties further agree that Contractor shall not be liable to Ordering Activity for any

delay or failure of Contractor to perform its obligations hereunder if such delay or failure arises from any cause beyond the reasonable control of Contractor, such as acts of God, delays or non-responsiveness of Ordering Activity, or the temporary unavailability of qualified personnel.

**EXHIBIT A - Products licensed by this EULA**

**DEFINITIONS**

“Developer Seat-based” is defined as requiring the Ordering Activity to purchase a license for each computer where the Software is installed and used by a Developer to develop the Application Solutions.

“CPU-based” is defined as requiring the Ordering Activity to purchase a license equal to or greater than the number of CPUs in the computer(s) where the deployed Application Solution, including the Software, is installed.

“User- based” is defined as any machine or device that executes, utilizes or displays the Software. User would include a server, client, or X-terminal as a hardware device or software emulator, batch processes, interactive users, and connecting devices.

**SOFTWARE LICENSED:**

Product Licensed	License Type
Gupta Technologies Vision AppBuilder	1 User-
Gupta Technologies Vision AppServer Desktop	1 User
Gupta Technologies Vision AppServer Enterprise	_ CPUs

**EXHIBIT B - Software Support & Maintenance Services Terms and Conditions**

Contractor through Gupta Technologies is pleased to provide the Annual Software Support and Maintenance Services (the “Support Services”) to Ordering Activity. Gupta Technologies has developed multiple Support Service offerings to meet the individual needs of each of our valued customers. Gupta Technologies agrees to provide the Support Services pursuant to the Attachment A terms and conditions and the additional Support Services terms and conditions below:

**Annual Software Support and Maintenance Service Programs.**

- 1.1 Ordering Activity is required to purchase the first year of Support Services for the Software purchased.
- 1.2 All updates, patches, fixes and other error corrections pertaining to the Software provided to Ordering Activity shall become a part of the Gupta Technologies Software, which is licensed under the terms and conditions of the Attachment A.

**EXHIBIT C - Consulting Services Terms and Conditions**

**1. Consulting Agreement Terms and Conditions**

1.1 Pursuant to the Attachment A terms and conditions and the additional Consulting Services terms and conditions as follows, Contractor through Gupta Technologies agrees to provide, upon Ordering Activity’s request, the consulting services (“Assignments”) described on separately executed assignment orders (the “Assignment Orders”).

**2. Assignment(s) Scope and Changes**

- 2.1 Each Assignment Order shall define a specific Assignment authorized by Ordering Activity, the Assignment schedule or term, the applicable rates and charges, and any other specific terms and conditions as required to complete the Assignment. Each Assignment Order shall be governed by the terms and conditions of this Exhibit C and only the terms or conditions set forth herein.
- 2.2 Contractor through Gupta Technologies reserves the right to select and assign personnel to each Assignment based on the skill classifications required and available personnel resources. Should an employee be unable to perform the required services because of reasons beyond Gupta Technologies’s reasonable control, Gupta Technologies will replace such person within a reasonable period of time. Gupta Technologies shall have the right to use third parties in performance of its obligations and services hereunder and for purposes of this Consulting Agreement all references to Gupta Technologies or its employees shall be deemed to include such third parties. Gupta Technologies shall insure that all such third parties shall execute confidentiality agreements as may be necessary to comply with Gupta Technologies’s obligations or confidentiality under any confidentiality agreements between the parties.

**3. Ownership**

3.1 All development tools, database management programs, programming languages, or programs provided by Contractor through Gupta Technologies which contain any of Gupta Technologies’s proprietary program code or related documentation (the “Gupta Technologies Software”) are not Works Made for Hire and shall belong exclusively to Gupta Technologies and no ownership rights thereto shall accrue in any manner to Ordering Activity. This Attachment A grants no express or implied license, right or interest in any copyright, patent, trade secret, trade name, trademark, invention or other intellectual property right of Gupta Technologies. Ordering Activity will not sell, assign, lease, transfer, encumber or allow any security interest on the Gupta Technologies Software or take any action that would cause the Gupta Technologies Software to be placed in the public domain. Ordering Activity shall not disassemble, decompile, reverse engineer or otherwise reduce the Gupta Technologies Software to human perceptible form.

3.2 Except as provided in 3.1 above, Contractor through **Gupta Technologies** agrees that all work undertaken by **Gupta Technologies** under this Attachment A or any Assignment Order (in whole or in part, either alone or jointly with others) shall be the sole property of Ordering Activity. UOrdering Activity shall be the sole owner of all rights in connection therewith. Furthermore, except as provided in section 3.1 above, all works of authorship will be "works made for hire" to the extent allowed by law. Ordering Activity acknowledges that during the term of this Attachment A **Gupta Technologies** will be acting as a consultant to other entities and, providing **Gupta Technologies** does not violate these terms and conditions, Ordering Activity shall have no rights in any such work provided by **Gupta Technologies** to such entities.

HackerOne Inc.  
22 4th St 5th floor  
San Francisco, CA 94103

## EC America Rider to Product Specific License Terms and Conditions(for U.S. Government End Users)

1. **Scope.** This Rider and the attached HackerOne Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the

Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (*e.g.*, the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

- a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
- b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
- c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
- d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
- e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
- f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
- g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
- h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a



Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A

## HACKERONE INC.

## MANUFACTURER SPECIFIC TERMS (FOR U.S. GOVERNMENT END USERS)

These HackerOne Inc. (“HackerOne”) Manufacturer Specific Terms (these “*Terms*”) govern the use of HackerOne’s software as a service Solutions (the “*Services*”) by customers (“*Customers*” or “*Ordering Activities*”) purchasing the *Services* under EC America’s GSA MSA contract number GS- 35F-0511T.

**1. DEFINITIONS.** The following capitalized terms used herein shall have the meanings given to them below:

- A. “**Affiliate**” means any entity which controls, is controlled by or under common control with a party, where “control” means ownership or control, direct or indirect, of fifty percent (50%) or more of such entity’s voting capital, and any such entity shall be an affiliate of such party only as long as such ownership or control exists.
- B. “**Applicable Law**” shall mean all laws (including the requirements of any government or regulatory authority) applicable to a party and/or the *Services* under these *Terms* for the time being in force in the relevant jurisdiction. These include but are not limited to anti-money laundering, anti-bribery, data privacy, export and intellectual property laws.
- C. “**Confidential Information**” means any confidential or proprietary business or technical information about a party disclosed by it or its Affiliates or made available in connection with these *Terms*, whether disclosed in written, oral, electronic or visual form, which is identified as confidential at the time of disclosure or should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding the disclosure, including without limitation business, operations, finances, technologies, products and services, pricing, personnel, customer and suppliers, including the HackerOne Platform and the content of Finder Submissions. Confidential Information does not include any information that (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party; (iii) is already in the possession the receiving party at the time of disclosure by the disclosing party; (iv) is obtained by the receiving party from a third party without a breach of such third party’s obligations of confidentiality; or (v) is independently developed by the receiving party without use of the disclosing party’s Confidential Information.
- D. “**Customer Report**” means a report or similar documentation made available by HackerOne to Customer through the HackerOne Platform or otherwise that summarizes or is based upon Finder Submissions, including, without limitation, penetration test reports, checklist reports, re-testing reports and similar documentation regarding Finder activities related to a Program.
- E. “**Feedback**” means any feedback, comments or suggestions for improvements to the *Services*.
- F. “**Finder**” means an individual or entity using the HackerOne Platform to provide Finder Submissions.
- G. “**Finder Submission**” means documents and related materials evidencing a Finder’s activities related to a Program, including, without limitation, Vulnerability Reports.
- H. “**Finder Terms and Conditions**” means the terms and conditions applicable to Finders at <https://www.hackerone.com/terms/finder>.
- I. “**HackerOne Aggregate Data**” shall have the meaning set forth in Section 6(A) of these *Terms*.
- J. “**HackerOne Fees**” shall have the meaning set forth in Section 4(A) of these *Terms*.
- K. “**HackerOne Platform**” means the software-as-a-service platform offered by HackerOne.
- L. “**HackerOne Property**” means any property of any kind, tangible or intangible, which is acquired, created, developed or licensed by HackerOne prior to or outside the scope of these *Terms* and any improvement or modification thereof and all intellectual property rights therein, including without limitation the HackerOne Platform and *Services*.
- M. “**HackerOne Site**” means HackerOne or its Affiliate’s website located at hackerone.com and related domains and subdomains.
- N. “**Program**” means the security initiative(s) for which Customer desires to receive Finder Submissions from Finders, which Customer posts to the HackerOne Platform.
- O. “**Program Materials**” means the Program Policy, the description of the Program and any other materials made available by Customer to Finders in connection with a Program.
- P. “**Program Policy**” means a Customer created description of the security-related and other services that Customer is seeking from Finders, which includes, among other things, the terms, conditions and requirements governing the Program to which the Finders must agree, and the Rewards (if applicable) that Customer may award to Finders who participate in the Program.
- Q. “**Reward(s)**” means bounties, grants, pay for effort payments and other financial or non-financial rewards that are awarded to Finders participating in a Program.
- R. “**Services**” means HackerOne’s software as a service solution made available by HackerOne to Customer through the HackerOne Platform together with any ancillary services purchased by Customer and as set forth in an Order Form. A general description of HackerOne’s SaaS solution and examples of such ancillary and related *Services* provided by HackerOne’s program operations and customer success teams or other HackerOne personnel or consultants is set forth in [Exhibit A](#) hereto.
- S. “**Vulnerability Reports**” means bug reports or other vulnerability information, in text, graphics, image, software, works of authorship of any kind, and information or other material that Finders provide or otherwise make available through the HackerOne Platform to Customer resulting from participation in a Program.

**2. HACKERONE PLATFORM AND SERVICES.**

- A. HackerOne Platform.** Customer may access and use the HackerOne Platform solely for its own business purposes in order to connect with Finders and utilize the Services set forth in an Order Form. Among other things, Customer may create Programs and offer Rewards to Finders for Finder Submissions to such Programs. Finders can browse the Programs and contact Customer through the HackerOne Platform if Finders are interested in participating in such Programs and submitting Finder Submissions for the Programs on the terms described in Finder Terms and Conditions and/or the Program Policy. HackerOne may change all or any part of the HackerOne Platform or HackerOne Site provided that such change in compliance with the terms of these Terms and does not diminish the Services provided to Customer. Customer can submit Feedback regarding the HackerOne Platform and Services by emailing HackerOne at [feedback@hackerone.com](mailto:feedback@hackerone.com). By submitting any Feedback, Customer grants to HackerOne a worldwide, perpetual, irrevocable, non-exclusive, transferable, sublicenseable, fully-paid and royalty-free license to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose. HackerOne acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.
- B. HackerOne Services.** HackerOne will provide the Services purchased by Customer. The Services may contain links to third-party websites or resources. HackerOne provides these links only as a convenience and is not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. Customer acknowledges sole responsibility for and assumes all risk arising from Customer's use of any third-party websites or resources. HackerOne may delegate certain rights and obligations relating to the performance of these Terms to its Affiliates, provided however, HackerOne shall be the sole responsible party for all obligations under these Terms and shall ensure the compliance of its Affiliates with these Terms.
- C. Service Level Agreement.** The HackerOne Service Level Agreement, a copy of which is attached as Exhibit B, will apply to HackerOne's provision of the HackerOne Platform and the Services.

### 3. FINDER SUBMISSIONS AND FINDERS.

- A.** Unless otherwise expressly agreed to in writing by HackerOne, any use of or reliance on Finder Submissions that Customer receives is at Customer's own risk. HackerOne does not endorse, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any Finder Submission and HackerOne will not be liable for any errors or omissions in any Finder Submission, or any loss or damage of any kind incurred as a result of the use of any Finder Submission.
- B.** Unless otherwise expressly agreed to in writing by HackerOne, HackerOne does not endorse any Finders, or assume any liability for any damage or harm resulting from Customer's communications or interactions with Finders or other HackerOne customers, either through the HackerOne Platform and Services or otherwise. Any reputation ranking or description of any Finder as part of the Services is not intended by HackerOne as an endorsement of any type. Any selection or use of any Finder is at Customer's own risk.
- C.** Finders are not employees, contractors or agents of HackerOne, but are independent third parties who want to participate in Programs and connect with Customer through the Services. Unless otherwise expressly agreed to in writing by HackerOne, Customer agrees that any legal remedy that Customer seeks to obtain for actions or omissions of a Finder regarding Customer's Program or Finder Submissions will be limited to a claim against the particular Finder. Any contract or other interaction between Customer and a Finder, including with respect to any Customer Program Policy, will be between Customer and the Finder. HackerOne is not a party to such contracts and disclaims all liability arising from or related to such contracts.

### 4. FEES.

- A. Fees.** Customer agrees to pay the GSA Schedule Contract holder on behalf of HackerOne all fees for HackerOne's Services (collectively, "**HackerOne Fees**") and any Reward prepayments listed in any applicable Order Form in accordance with the GSA Schedule Pricelist within thirty (30) days of receipt of HackerOne's invoice unless otherwise stated on Order Form. HackerOne, or the GSA Schedule Contract Holder as applicable, will refund any unused Reward prepayments at the end of the term. Except for any amounts disputed in good faith, all undisputed past due amounts will incur interest at a rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.
- B. Taxes.** HackerOne shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

### 5. PROGRAMS AND PROGRAM MATERIALS.

- A.** HackerOne makes available through the HackerOne Platform both managed Programs, under which HackerOne is responsible for the management and the administration of Customer's Programs with input and approval from Customer as mutually agreed throughout the Program, and Programs that are self-managed by Customers. If an Order Form does not specifically identify HackerOne as being responsible for the management and administration of Customer's Programs, then Customer is solely responsible for the management and administration of Customer's Programs through the Services. HackerOne's Vulnerability Guidelines, the current version of which is attached hereto as Exhibit C and is available at <https://www.hackerone.com/disclosure-guidelines>, describes the default disclosure policy governing vulnerability reporting through the Services and will be applicable to the Services except to the extent Customer adopts its own Program Policy with respect to its Program. In the event of any conflict between Customer's Program Policy and HackerOne's Vulnerability Guidelines, Customer's Program Policy shall prevail.
- B.** Where any Program is inactive or unattended by Customer, HackerOne shall have the right to remove or disable access to the relevant Program Material and/or pause Finder Submissions if Customer has not responded to HackerOne's written notice (by email) requiring

attention within ten (10) business days of such written notice.

- C. While HackerOne may assist Customer in preparing Customer's Program Material, Customer is solely responsible for Customer's Program Material.

**6. INTELLECTUAL PROPERTY OWNERSHIP AND LICENSES.**

- A. HackerOne does not claim any ownership rights in any Program Material or Finder Submissions, and nothing in these Terms or otherwise will be deemed to restrict any rights that Customer may have to use and exploit Customer's Program Material and Finder Submissions. Customer acknowledges and agrees that HackerOne may collect aggregated and anonymized statistical and other information from Finder Submissions and Customer's use of the HackerOne Platform and Services ("HackerOne Aggregate Data"), which information will not identify particular customers, and may use such information for, among other things, reporting, research, improvements of the Platform and the Services, industry collaboration, and other reasonable business purposes. HackerOne and its licensors exclusively own all right, title and interest in and to the HackerOne Property.
- B. By making any Program Material available through the Services, Customer hereby grants to HackerOne a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to use, copy, reproduce, display, modify, adapt, transmit and distribute copies of Customer's Program Material for the sole purpose of providing the Services.
- C. HackerOne hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to access and view the content and other HackerOne Property that HackerOne makes available on the Services solely in connection with Customer's permitted use of the HackerOne Platform and Services.
- D. HackerOne hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to access and view the Finder Submissions that are made available through the HackerOne Platform and the Services solely in connection with Customer's permitted use of the HackerOne Platform and Services.
- E. Subject to HackerOne's ownership of any HackerOne Property contained therein, Customer will own all right, title and interest to each Customer Report. HackerOne hereby grants Customer a non-exclusive, non-transferable, perpetual, worldwide license to access, use and reproduce any HackerOne Property included in each Customer Report.

**7. CONFIDENTIALITY; PRIVACY; SECURITY.** HackerOne understands that it may receive Confidential Information of Customer, and Customer understands that it may receive Confidential Information of HackerOne. Except as expressly provided in these Terms, the receiving party agrees not to divulge to any third person any Confidential Information of the disclosing party and not to use any Confidential Information of the disclosing party for any purpose not contemplated by these Terms, provided the parties acknowledge and agree that the anonymized HackerOne Aggregate Data is not Confidential Information. HackerOne's Privacy Policy, the current version of which is attached hereto as Exhibit D and which is available at <https://www.hackerone.com/privacy>, describes how HackerOne collects, uses and discloses information from HackerOne's Customers and Finders and is applicable to the Services. HackerOne will provide the Services and the HackerOne Platform in accordance with HackerOne's Data and Information Security Terms, the current version of which is attached as Exhibit E and is located at <https://www.hackerone.com/terms/security>. At Customer's request, HackerOne will, on an annual basis, furnish to Customer the current version of any independent third-party attestation report related to the HackerOne Services and Platform.

**8. WARRANTY; WARRANTY DISCLAIMER.** HackerOne represents and warrants that the HackerOne Platform and the Services provided to Customer will be provided as described in the applicable Order Form, by qualified personnel in a professional manner, and will comply in all material respects with the documentation and content made available by HackerOne with respect thereto. In order to state a claim for breach of the foregoing warranty, Customer must provide notice of such non-compliance within the thirty (30) day period following such non-compliance specifying the details of such non-compliance. If Customer timely provides HackerOne with the required notice, as Customer's sole and exclusive remedy, HackerOne shall re-perform such portion of the Services or otherwise use commercially reasonable efforts to correct any such non-compliance, at its expense, within thirty (30) days of its receipt of such notice. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED BY HACKERONE "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, HACKERONE EXPLICITLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, CUSTOM OR USAGE OF TRADE. HackerOne makes no warranty that the Services will meet Customer's specific requirements or be available on an uninterrupted, secure or error-free basis.

**9. LIMITATION OF LIABILITY.** NEITHER CUSTOMER NOR HACKERONE WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL CUSTOMER'S OR HACKERONE'S TOTAL LIABILITY TO THE OTHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICES EXCEED THE TOTAL OF THE AMOUNTS PAID BY CUSTOMER TO HACKERONE FOR USE OF THE SERVICES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH

## LIABILITY CANNOT BE EXCLUDED BY LAW.

10. **COMPLIANCE WITH LAWS.** Each party shall comply with all Applicable Laws in connection with the performance of its obligations and the exercise of its rights under these Terms.
11. **PUBLICITY.** Except for information that is already made public by Customer through the Customer's Programs and Program Materials and except as may be required by law, neither party shall make any public announcement or conduct any advertising or public relations regarding these Terms unless mutually agreed by the parties. With the Customer's prior written consent (which consent may be withdrawn at any time) and to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71, HackerOne may refer to Customer as a customer on its website and utilize Customer's logo for such purpose.
12. **TERM AND TERMINATION.** These Terms shall continue in effect for the subscription period of the Services purchased by the Customer. The Customer may terminate these Terms and the applicable subscription if HackerOne fails to cure a material breach of hereof or thereof within thirty (30) days after receiving written notice of the breach from the Customer. When the Customer is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, HackerOne shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon any termination or expiration of these Terms or the subscription period of the Services purchased, Customer shall be entitled to a refund of any unused Reward prepayment.
13. **GOVERNING LAW.** This Agreement and any action related thereto will be governed by the Federal laws of United States. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the transactions contemplated by these Terms. The Uniform Computer Information Transactions Act ("UCITA") will not apply to these Terms regardless of when and howsoever adopted, enacted and further amended under the governing state laws.
14. **GENERAL.** To the extent of any conflict between these Terms and any of the HackerOne policies or documents linked to or referenced in these Terms, the terms of these Terms shall govern and control. During the Term, HackerOne shall provide notice to Customer of any material changes to any such linked policies or documents and shall not alter any such policies or documents in any way that would derogate or degrade in any way the Services or modify any of its obligations to Customer hereunder. Any waiver, modification or amendment of any provision of these Terms will be effective only if in writing and signed by duly authorized representatives of both parties. Any terms and conditions contained in any Customer purchase order that are inconsistent with or in addition to the terms and conditions of these Terms will be deemed stricken from such purchase order, unless expressly agreed to in writing by HackerOne. If any provision of these Terms is held to be invalid, prohibited or otherwise unenforceable by legal authority of competent jurisdiction, the other provisions of the Agreement shall remain enforceable, and the invalid or unenforceable provision shall be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Customer shall not use the Services, or any portion thereof, for the benefit of any third party or in any manner not permitted by these Terms. Any notices or other communications provided by HackerOne under these Terms will be given via email or by posting to the HackerOne Site.



## Exhibit A Services Description

HackerOne provides the HackerOne Platform that allows its customers to gain access to Finders and leverage the Finders to, among other things, find security vulnerabilities on the various systems or scope as set forth in the customer's Program Policy or to perform such other tasks as may be set forth in the customer's Program Policy or agreed to by the customer and the Finders. Finders are independent contractors, not HackerOne's employees or consultants. Programs can be run in private mode where only invited Finders will be notified of the existence of such Program and are permitted to participate in the Program. Depending on the Services purchased from HackerOne, HackerOne may perform or assist in performing various vetting of the Finders before invitations are sent out to Finders for private Programs. The Programs can also be run in public mode, in which case all Finders on the HackerOne Platform are notified of the existence of the Program, no specific invitation is needed, and any Finder who meets the condition set forth on the Program Policy will be eligible to participate in the Program. Finders do their tasks independently using their own systems and resources, and then use the HackerOne Platform to describe and submit Finder Submissions. Because Finders discover the vulnerability and create the Vulnerability Report, unless the customer's Program Policy or the details of the specific Services provide otherwise, the intellectual property of the Vulnerability Report belongs to the submitting Finder. Typically, the Finder grants via Finder Terms and Conditions or the customer's Program Policy the necessary license right, free of charge, to allow HackerOne and HackerOne's customer to use the Finder Submissions via the HackerOne Platform, including use via the HackerOne API and integrations with third party tools. All Finders on the HackerOne Platform agree to the HackerOne Finder Terms and Conditions as well as the HackerOne Privacy Policy and the default Disclosure Guidelines when the Finder joins the HackerOne Platform. However, any customer can have its own Program Policy that may be different from or supplement the HackerOne's default Disclosure Guideline and which may set any rules or requirements the customer desires to impose on Finders participating in its Program. When there is a difference between a customer's Program Policy and the default Disclosure Policy or the Finder Terms and Conditions, the Program Policy will govern. HackerOne may also process Reward payments on behalf of a customer after a monetary Reward is awarded under a Program. When a Finder initially signs up on HackerOne Platform, only username and email address are collected. When a Reward is awarded and before payment is processed by HackerOne, HackerOne first requires the Finder to fill out an appropriate tax form, which collects necessary personal data per IRS tax forms. HackerOne checks to make sure the tax form appears valid, and then uses the information from the tax form to perform an OFAC check. If the Finder passes the OFAC check, and payment preference and payment information are supplied, HackerOne will process the payment to the Finder according to the Finder designated payment preference. If the Finder fails the OFAC check, the customer is informed, and the customer and HackerOne will decide jointly the subsequent actions to take.

If purchased by a customer, HackerOne may also provide report management/triage Services, in which HackerOne views the information contained in a Vulnerability Report and performs a series of activities, including attempting to reproduce and validate the vulnerability submitted by the Finder, communicating to Finders, and (if applicable) performing activities on the customer's systems as part of reproducing and validating the vulnerability. HackerOne utilizes staff augmentation contractors to provide such Services. Each such contractor has agreed to confidentiality obligations at least as protective of the Vulnerability Report as HackerOne is subject to under these Terms and HackerOne remains fully liable for all acts or omissions of any such contractors in performing the report management/triage Services. By purchasing such Services, Customer consents to HackerOne's access to and use of the Vulnerability Reports for the purpose of providing such Services and to the use of such staff augmentation contractors.

**Exhibit B  
Service Level Agreement**

This is the Service Level Agreement (this “SLA”) by HackerOne for the HackerOne Platform and the associated Services HackerOne provides to its customers who pay for the HackerOne Platform and/or for the Services including all HackerOne Enterprise and Professional offerings. This SLA is not intended for customers who use the HackerOne Platform for free, nor for Finders.

**1. Service Level Agreement.** HackerOne commits to provide a level of service for the HackerOne Platform demonstrating:

**1.1 Platform Uptime.** The HackerOne Platform will be operational and available to customers 24 hours per day, 7 days per week at least 99.5% of the time in any calendar month, except for scheduled maintenance and upgrades, and excluding API interruptions or third party system interruptions. HackerOne shall provide at least 24 hours’ advance notice to Customer on scheduled maintenance in excess of 30 minutes. Notice will be delivered via electronic means including via the HackerOne Platform.

**1.2 Severity Levels and First Response Time.** HackerOne Platform software defects/errors will be classified by the reporting party in accordance with the following severity incident guidelines. HackerOne will respond to Customer and provide a First Response in accordance with the time requirements set forth in the table below. “First Response” means a written electronic response from HackerOne to the customer regarding a reported or discovered error acknowledging receipt. Response may be delivered via the HackerOne Platform.

<b>Incident Severity Level</b>	<b>Definition</b>	<b>SLA for Customers on Enterprise Product Edition</b>	<b>SLA for Customers on Professional Product Edition</b>
<b>Severity 1</b>	A critical problem with the HackerOne Platform software in which any of the following occur: the entire services are down, inoperable, inaccessible or unavailable, the entire services otherwise materially cease operation.	2 business hours	4 business hours
<b>Severity 2</b>	A problem with the HackerOne Platform software in which any of the following occur: the services are severely limited or degraded, major functions are not performing properly, the situation is causing a significant impact to certain portions users’ operations or productivity.	4 business hours	8 business hours (1 business day)
<b>Severity 3</b>	A problem with the HackerOne Platform software in which any of the following occur: the problem is an irritant, affects non-essential functions, has minor impact to business operations; the problem is localized or has isolated impact; the problem is an operational nuisance.	1 business days	3 business days

**1.3. Report Management/Triage Services SLA.** HackerOne provides report management, or triage, services for customers who have purchased such Services. Triage Services include validating the Vulnerability Reports submitted by Finders. HackerOne commits to the following First Response timelines for the triage Services it performs for its customers:

- Triage First Response to customers generally: 2 business days
- Triage First Response for Enterprise tier customers: 1 business day

**2. SLA Exclusions.** This SLA and any applicable Service Levels do not apply to any performance or availability issues:

- (a) Due to factors outside HackerOne’s reasonable control;
- (b) That resulted from the customer’s or a third party’s (not within HackerOne’s control) hardware or software;
- (c) That resulted from actions or inactions of the customer (or the customer’s employees, agents, contractors, or vendors gaining access to HackerOne’s Service by means of the customer’s authorized users’ accounts or equipment) or third parties not within HackerOne’s control;
- (d) Caused by the customer’s use of the Service after HackerOne advised the customer to modify its use of the Service, if the customer did not modify its use as advised; or

(e) During any beta, pre-release and/or trial Services.

**3. Service Credit Claims.**

**3.1** In the event HackerOne fails to deliver against the service levels as described above (an “Incident”), the sole and exclusive remedy for such failure shall be in the form of service credit to the customer. If the Service fails to meet the above service levels, a customer can file a claim to and will receive a service credit equal calculated in accordance with Section 4 of this SLA.

**3.2** In order to be eligible to submit a claim for a service credit (a “Claim”) with respect to any Incident, the customer must first have notified HackerOne’s Customer Support of the Incident, using the procedures set by HackerOne, within five business days following the Incident.

**3.3** To submit a Claim, the customer must submit, by the end of the calendar month following the month in which the Incident occurred, the Claim to [claims@hackerone.com](mailto:claims@hackerone.com) and provide to Customer Support all reasonable details regarding the Claim, including but not limited to, detailed descriptions of the Incident(s), the duration of the Incident, network traceroutes, the URL(s) affected and any attempts made by the customer to resolve the Incident.

**3.4** HackerOne will use the information submitted and all information reasonably available to it to validate Claims and make a good faith judgment on whether a service credit is due with respect to such Claims.

**4. Service Credits.** Service credits are a customer’s sole and exclusive remedy for any violation of this SLA. Service credits are provided in the form of a no charge subscription extension and will only be calculated as set forth below.

<b>Outage in a Month (Minutes)</b>	<b>Service Credit in Subscription Extension</b>	<b>Comments</b>
< 216 Minutes	0	This is for 99.5% platform uptime
217 – 500 Minutes	One week	Customer subscription will be extended by one week
500 – 1,000 Minutes	Two weeks	Customer subscription will be extended by two weeks
>1,000 Minutes	Four weeks	Customer subscription will be extended by four weeks

## Exhibit C

### Current Version of Vulnerability Disclosure Guidelines

All technology contains bugs. If you've found a security vulnerability, we'd like to help out. By submitting a vulnerability to a program on HackerOne, or signing up as a Security Team, you acknowledge that you have read and agreed to these guidelines.

#### VULNERABILITY DISCLOSURE PHILOSOPHY

Finders should...

- **Respect the rules.** Operate within the rules set forth by the Security Team, or speak up if in strong disagreement with the rules.
- **Respect privacy.** Make a good faith effort not to access or destroy another user's data.
- **Be patient.** Make a good faith effort to clarify and support their reports upon request.
- **Do no harm.** Act for the common good through the prompt reporting of all found vulnerabilities. Never willfully exploit others without their permission.

Security Teams should...

- **Prioritize security.** Make a good faith effort to resolve reported security issues in a prompt and transparent manner.
- **Respect Finders.** Give finders public recognition for their contributions.
- **Reward research.** Financially incentivize security research when appropriate.
- **Do no harm.** Not take unreasonable punitive actions against finders, like making legal threats or referring matters to law enforcement.

#### Safe Harbor

We are committed to protecting the interests of Finders. However, vulnerability disclosure is an inherently murky process. The more closely a Finder's behavior matches these guidelines, the more we'll be able to protect you if a difficult disclosure situation escalates.

#### Submission Process

Security Teams will publish a program policy designed to guide security research into a particular service or product. You should always carefully review this program policy prior to submission as they will supersede these guidelines in the event of a conflict.

If you believe you have found a vulnerability, please submit a Report to the appropriate program on the HackerOne platform. The Report should include a detailed description of your discovery with clear, concise reproducible steps or a working proof-of-concept. If you don't explain the vulnerability in detail, there may be significant delays in the disclosure process, which is undesirable for everyone.

The Report will be updated with significant events, including when the vulnerability has been validated, when more information is needed from you, or when you have qualified for a bounty.

#### Vulnerability Disclosure Process

The contents of the Report will be made available to the Security Team immediately, and will initially remain non-public to allow the Security Team sufficient time to publish a remediation. After the Report has been closed, Public disclosure may be requested by either the Finder or the Security Team.

- **Default:** If neither party raises an objection, the contents of the Report will be made public within 30 days.
- **Mutual agreement:** We encourage the Finder and Security Team members to remain in open communication regarding disclosure timelines. If both parties are in agreement, the contents of the Report can be made public on a mutually agreed timeline.
- **Protective disclosure:** If the Security Team has evidence of active exploitation or imminent public harm, they may immediately provide remediation details to the public so that users can take protective action.
- **Extension:** Due to complexity and other factors, some vulnerabilities will require longer than the default 30 days to remediate. In these cases, the Report may remain non-public to ensure the Security Team has an adequate amount of time to address a security issue. We encourage Security Teams to remain in open communication with the Finder when these cases occur.
- **Last resort:** If 180 days have elapsed with the Security Team being **unable or unwilling to provide a vulnerability disclosure timeline**, the contents of the Report may be publicly disclosed by the Finder. We believe transparency is in the public's best interest in these extreme cases.

#### Private Program

Some Finders may receive invitations to private Programs. Your participation in a private Program is entirely optional and subject to strict non-disclosure by default. Prior to accepting an invitation to a private Program, Finders should carefully review any program policies and non-disclosure agreements required for participation. Finders that intend any form of public disclosure should not participate in private Programs.

HackerOne recommends two alternatives:

- (a) Submit directly to the Security Team outside of the Program. In this situation, Finders are advised to exercise good judgement as any safe harbor afforded by the Program Policy may not be available.

(b) Utilize our [disclosure assistance](#) process.

## Public Recognition

You may receive public recognition for your find if 1) you are the first person to file a Report for a particular vulnerability, 2) the vulnerability is confirmed to be a valid security issue, and 3) you have complied with these guidelines. If a Finder prefers to remain anonymous, we encourage them to submit under a pseudonym.

## Bug Bounty

Some Security Teams may offer monetary rewards for vulnerability disclosure. Not all Security Teams offer monetary rewards, and the decision to grant a reward is entirely at their discretion. The amount of each bounty payment will be determined by the Security Team. Bounty payments are subject to the following eligibility requirements:

- Because we're based in the United States, we aren't able to pay bounties to residents or those who report vulnerabilities from a country against which the United States has trade restrictions or export sanctions as determined by the U.S. Office of Foreign Assets Control (OFAC).
- Minors are welcome to participate in the program. However, the [Children's Online Privacy Protection Act](#) restricts our ability to collect personal information from children under 13, so you will need to claim your bounties through your parent or legal guardian if you are 12 or younger.
- All payments will be made in U.S. dollars (USD) and will comply with local laws, regulations and ethics rules. You are responsible for the tax consequences of any bounty you receive, as determined by the laws of your country.
- It is your sole responsibility to comply with any policies your employer may have that would affect your eligibility to participate in this bounty program.

## Definitions

**Security Team:** A team of individuals who are responsible for addressing security issues found in a product or service. Depending on the circumstances, this might be a formal security team from an organization, a group of volunteers on an open source project, or an independent panel of volunteers (such as the [Internet Bug Bounty](#)).

**Finder:** Also known as [hackers](#). Anyone who has investigated a potential security issue in some form of technology, including academic security researchers, software engineers, system administrators, and even casual technologists.

**Report:** A Finder's description of a potential security vulnerability in a particular product or service. On HackerOne, Reports always start out as non-public submissions to the appropriate Security Team.

**Vulnerability:** A software bug that would allow an attacker to perform an action in violation of an expressed security policy. A bug that enables escalated access or privilege is a vulnerability. Design flaws and failures to adhere to security best practices may qualify as vulnerabilities. Weaknesses exploited by viruses, malicious code, and social engineering are not considered vulnerabilities unless the Security Team says otherwise in the program's policy.

**Programs:** Security Teams may publish a Program and Program Policy designed to guide security research into a particular service or product. If this program is private, your participation is entirely optional and subject to non-disclosure by default.

### Contact

HackerOne is always open to feedback, questions, and suggestions. If you would like to talk to us, please feel free to email us at [support@hackerone.com](mailto:support@hackerone.com) or follow us on Twitter [@hacker0x01](https://twitter.com/hacker0x01).

### Changes to These Guidelines

We may revise these guidelines from time to time. The current version is 1.2, updated on July 29, 2019 will always be at <https://www.hackerone.com/disclosure-guidelines>. If we make changes that we believe will substantially alter your rights, we will email you and prominently display a notice on our site 7 days before we make those changes.

## Exhibit D Current Version of Privacy Policy

**Effective as of April 12, 2021, HackerOne Inc. and its affiliates (collectively, "HackerOne", "we", "us", or "our") have updated our Privacy Policy.**

Your data is just that, **YOUR** data. HackerOne is committed to ensuring the privacy of your data. We are further committed to preventing unauthorized access to that data. Our Privacy Policy details what data is collected from our Customers and Finders, how we use it, and how it is stored.

### 1. WHO WE ARE

HackerOne is an industry leader in hacker-powered security. HackerOne partners with the global security researcher community, which may be referred to as hackers or Finders (we will use the term Finder(s) for the purposes of our Privacy Policy), to provide businesses with access to top talent Finders who identify and surface relevant security issues in a business's products or services. HackerOne operates a bug bounty & vulnerability disclosure software-as-a-service platform known as the HackerOne Platform, the website located at hackerone.com and related domains and subdomains, and related services, including live hacking events, marketing, and customer service and ancillary support services (collectively referred to as "Services"). HackerOne is a Delaware corporation headquartered in San Francisco, California with offices currently in London and the Netherlands.

We respect your privacy and take safeguarding your data seriously. Please read this Privacy Policy carefully together with the General Terms and Conditions ("Terms") available at <https://www.hackerone.com/terms/general>, which governs your use of the Services, to understand what Personal Information (defined below) we collect from you, how we use it, and your choices related to our use of your Personal Information. By using the Services, you acknowledge our collection, use, disclosure, and retention of your personal information as described in the Privacy Policy. If you do not agree with the terms of this Policy, please do not use the Services.

### 2. WHAT IS PERSONAL INFORMATION?

**"Personal Information"** means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person. Under specific laws, Personal Information may include any information relating to a household.

### 3. WHERE IS (Y)OUR INFORMATION STORED?

As a global company we understand that there are many different privacy and data protection laws where our Customers and Finders are based. We know and understand the value of your information. We will take all reasonable steps to ensure that your Personal Information is treated securely and in accordance with the laws and regulations relevant to where you are located.

We are a company headquartered in California and so, our Sites and Servers are hosted here in the United States. Therefore, the Personal Information that we collect from you will be received, transferred and/or stored in the United States.

If you are located outside the United States, please see our section on International Data Transfer below.

### 4. PERSONAL INFORMATION WE PROCESS

We process Personal Information that you actively submit to us, that we automatically collect through your use of our Services, and that we collect from third-parties for the following reasons. We may, when securing our website and Services, collect details about your device, your computer's internet protocol (IP addresses) and other technical information, through our data security and firewall providers and/or when marketing our Services, we may collect identity and contact data from publicly available sources. For compliance with applicable laws (including but not limited to anti-money laundering and financing laws and regulations), we may through third parties who use verification providers or due diligence, and screening information providers verify your information and collect information from publicly available sources or check data against government sanction lists.

We may process your Personal Information with or without automatic means, including collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction of your Personal Information.

**We DO NOT sell the Personal Information we collect to other parties.**

#### 4.1 Personal Information that you actively submit to us.

We collect Personal Information that you actively submit to us through your account, website forms, email subscriptions, surveys, events, conferences, customer service and ancillary support services, inquiries, and other interactions. You will normally know when we collect your Personal Information because we will directly ask you for the information. Examples are provided below. We will require certain Personal Information in order for you to use our Services or for us to be able to contact you. There may also be circumstances where providing Personal Information is optional and does not impact your access to Services.

**4.1.1 Your Account.** Whether you are a Customer or a Finder (or both), when you create a HackerOne account, you are required to provide us with profile information, including your email address and password. HackerOne stores this information to help identify you when you log in. Once you've registered, you create a user profile. Your profile information includes your name (if you choose to provide it), chosen username, company name (if applicable), and if you choose, a profile photo, your location, your social media and other third-party affiliations, and any other information you include in the "About me" or "Intro" fields. We may display your profile information on our site where other users of the Services and visitors to



our website will be able to see that information. If you enable two-factor authentication, we will store a phone number used for account recovery purposes.

If you are a Customer, in addition to your profile information, you may provide us with financial information, such as your credit card or debit card information or your banking information, in order to assist us in awarding bounties, collecting bounty deposits, or collecting HackerOne fees.

If you are a Finder, in addition to your profile information, you may need to provide us with other personally identifying information necessary for background and fraud checking purposes where required. This includes your date of birth, nationality, current and previous addresses, your social security number (or tax identification number), and for Reward purposes, your banking, Coinbase, PayPal, or similar information in order to allow us to pay you monetary Rewards from Customers. In addition, in order that we can award any "swag" where available, we may ask for information such as a mailing address, telephone number, and clothing size. In addition to Personal Information we collect, your profile may be publicly associated with any vulnerability reports or other content that you submit, in the event these are published on the Services.

**4.1.2 Events.** We host events to bring together industry professionals in a casual setting. We also host live hacking events where top Finders from all over the globe join together to find vulnerabilities on HackerOne Customer programs. To register in advance for these events, we may collect your first name, last name, email address, company name (if applicable), job title (if applicable), and give you an option to provide us a website reference.

**4.1.3 Email Subscriptions.** We actively communicate with subscribers through newsletters, webinars, and education content, and also send emails about product updates, events, the status of the HackerOne Platform, and updates to the third-party service providers (sub-processors) used to process Personal Information. A subscriber may be required to provide their email address and other contact information to receive communications.

**4.1.4 Text Subscriptions.** We may communicate with subscribers through text messages concerning the status of the HackerOne Platform. A subscriber is required to provide their phone number to receive texts.

**4.1.5 Recruitment.** We are always looking out for new employees. So should you decide to apply to us (or a partner recruitment provider or service) for a role, we will collect the information contained in your resume/cv, (information such as where you went to school or previous employment) along with any other relevant information you choose to provide to us.

**4.1.6 Surveys.** We occasionally conduct surveys in order to gather data central to assessing our business objectives and understanding the Finder community. Participation in surveys is always optional. Information provided in surveys is anonymized and aggregated for analysis.

**4.1.7 Contact Us.** There are multiple opportunities for you to contact us, including for support, to report a bug, make a suggestion, make a sales inquiry, request a product demonstration, request research, and for customer service and ancillary support services. Online forms collect Personal Information such as a first name, last name, email address, company (if applicable), job title (if applicable), reason for contact, and may provide an option to attach a file. When we contact you in response to your request, we may collect additional Personal Information.

4.2 Personal Information we automatically collect through your use of the Services.

We receive some Personal Information automatically when you visit HackerOne Services. This includes information about the device, browser, and operating system you use when accessing our site and Services, your IP address, the website that referred you, which pages you request and visit, and the date and time of each request you make. If you visit the HackerOne Platform when you are logged into your account, we also collect the user identification number we assign you when you open your account.

4.3 Personal Information we collect from third-party sources.

We are continually expanding our Customer reach. As part of our business-to-business marketing, we collect Personal Information from third-party sources to identify individuals who hold relevant job roles in key industries. Personal Information collected generally includes a first name, last name, job title, company name, email address, and phone number. We generally communicate via email or telephone to provide information about HackerOne programs and offer businesses an opportunity to try out HackerOne Services.

4.4 Personal Information of minors.

We welcome all Finders to register a HackerOne account as a Finder, participate in our programs, and submit reports to HackerOne. We believe that skilled Finders are not determined by age. However, applicable laws may restrict our ability to collect Personal Information from minors unless we have first obtained the consent of the minor's parent or guardian. Please note that the definition of a minor varies by jurisdiction and various laws institute age related requirements. If you are considered a minor and want to submit a vulnerability report to us, please ask your parent or guardian to submit it for you. Please note that in addition, any Reward payments that may apply are only issued to an adult. HackerOne does not otherwise knowingly collect Personal Information of minors, and the HackerOne Services are not directed to minors. If we become aware that we have collected Personal Information from a minor in conflict with applicable law, we will delete that information or obtain the requisite consent from the minor's parent or guardian.

4.5 Personal Information we collect using cookies and similar tracking technologies.

We (and the third-party service providers working on our behalf) use various technologies to collect Personal Information. This may include saving cookies to your device, using pixels and similar technologies. For information on what cookies and pixels are, which ones we use, why we use them, and how you can manage their use, please see our Cookies Policy, which provides more information about how and why we or our commercial partners may process certain personal data relating to you, and should be read in conjunction with this privacy policy.

## 5. HOW WE USE YOUR PERSONAL INFORMATION

We use your Personal Information to operate our Services, fulfill our contractual obligations in our contracts with Customers and Finders or take steps preparatory to entering into those contracts, to review and enforce compliance with our Terms, guidelines, and policies, to analyze the use of the Services in order to understand how we can improve our content and service offerings and products, and for administrative and other business purposes. We process Personal Information for sales leads, subscription services, payments, employee training, marketing, data analysis, security monitoring, auditing,

research, and to comply with applicable laws, to exercise legal rights, and meet tax and other regulatory requirements.

In this context, the legal basis for our processing of your Personal Information is either the necessity to perform or enter into contractual and other obligations, our legitimate business interests as a provider of security services (and the other legitimate interests described above), compliance with legal and regulatory requirements, or in some instances your consent.

## 6. SHARING OF PERSONAL INFORMATION

### **WE DO NOT SELL YOUR PERSONAL INFORMATION!**

We may share your Personal Information in the following circumstances:

#### 6.1 Third-party Service Providers.

We may share information we collect about you with third-party service providers to perform tasks on our behalf in supporting the Services. The types of service providers, or sub-processors, to whom we entrust Personal Information include: (i) payment providers; (ii) providers of hosting services; (iii) sales and marketing providers; (iv) providers of document and content management tools; (iv) providers of analytic data services; and (v) other services such as system support, subscription services, verification, and ticketing.

#### 6.2 Customers.

For Finders who participate in certain Customer programs, to the extent described in the policies of such Customer programs, HackerOne may share contact information about those Finders (for example, name, company name (if applicable), and email address) to allow those Customers to contact those Finders to allow them to interact directly or as otherwise authorized by the Finder with respect to the specific Customer program or service. For Finders who choose to submit a vulnerability report directly to a Customer outside the HackerOne Platform, HackerOne may provide that Customer with a reference to your public profile information. In the event of a serious security concern, HackerOne may determine, in its sole discretion, that Personal Information will be shared with a Customer to identify and resolve the security concern.

#### 6.3 Regulatory Bodies, Public Authorities, and Law Enforcement.

We may access and disclose your Personal Information to regulatory bodies if required under applicable law or regulation. This may include submitting Personal Information required by tax authorities. We may disclose your Personal Information in response to lawful requests by public authorities or law enforcement, including to meet national security or law enforcement requirements. If we are going to release your Personal Information in this instance, our policy is to provide you with notice unless we are prohibited from doing so by law or court order (including orders under 18 U.S.C. § 2705(b)).

#### 6.4 Merger, Sale, or Other Asset Transfers.

If we are involved in a merger, acquisition, financing due diligence, reorganization, bankruptcy, receivership, sale of company assets, or transition of service to another provider, then your Personal Information may be disclosed or transferred as part of such a transaction as permitted by law and/or contract. Should such an event occur, HackerOne will endeavor to direct the transferee to use Personal Information in a manner that is consistent with the Privacy Policy in effect at the time such Personal Information was collected.

#### 6.5 Other Disclosures.

Where there is agreement by Customers and Finders that Finder Submissions are publicly disclosed, then certain information about the submission associated with your profile may be published through our Services. We may share Personal Information with our affiliated companies. We may also disclose your Personal Information to exercise or defend legal rights; to take precautions against liability; to protect the rights, property, or safety of HackerOne, other users of our Services, of any other individuals, or of the general public; to maintain and protect the security and integrity of our Services or infrastructure; to protect HackerOne and our Services from fraudulent, abusive, or unlawful uses; or to investigate and defend HackerOne against third-party claims or allegations. Disclosures may be made to courts of law, attorneys and law enforcement, or other relevant third parties in order to meet these purposes.

Please note that we share aggregated information and non-identifying information with third parties for industry research and analysis, demographic profiling, and other similar purposes. In addition, our Services may contain links to other websites not controlled by us, and these other websites may reference or link to our Services; we encourage you to read the privacy policies applicable to these other websites.

#### 5.6 California Consumer Privacy Act of 2018 ("CCPA").

Pursuant to §§ 1798.110 and 1798.115 of the CCPA, the categories of Personal Information we have **collected about consumers and disclosed about consumers for a business purpose** in the preceding 12 months are:

- Identifiers such as a real name, alias, postal address, email address, unique personal or online identifier, Internet Protocol address, account name, SSN, driver's license or passport number, or other similar identifiers;
- Other information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including signature, bank account number, credit card number, debit card number, or any other financial information;
- Commercial information, including products or services purchased, obtained, or considered; other purchasing or consuming histories or tendencies;
- Internet or other electronic network activity information, including, browsing history, search history, and information regarding a consumer's interaction with an internet website, or advertisement;
- Professional or employment-related information; and
- Inferences drawn from any of the information identified to create a profile about a consumer reflecting the consumer's preferences,

intelligence, abilities, and aptitudes (applies only to Finders who have registered an account and participate in programs and subsequent skill ratings).

Please note that not all of this information is collected or disclosed from all consumers using our Services.

#### 7. RETENTION OF PERSONAL INFORMATION

HackerOne retains Personal Information for a reasonable time period to fulfill the processing purposes mentioned above. Personal Information is then archived for time periods required or necessitated by legal or regulatory considerations. When archival is no longer required, Personal Information is deleted from our records.

You may choose to disable your HackerOne account at any time. This means your user profile will no longer be visible on the Services. However, for the purposes mentioned above, we may need to retain information within our internal systems. In addition, public vulnerability reports and associated information that you have submitted will still be available on the Services.

We retain Personal Information that we are required to retain to meet our regulatory obligations including tax records and transaction history. We regularly review our retention policies to ensure compliance with our obligations under data protection laws and other regulatory requirements. We regularly audit our databases and archived information to ensure that Personal Information is only stored and archived in alignment with our retention policies.

#### 8. PROTECTION OF PERSONAL INFORMATION

HackerOne uses technical and organizational measures to protect the Personal Information that we store, transmit, or otherwise process, against accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. We regularly consider appropriate new security technology and methods as we maintain and develop our software and systems.

However, you should keep in mind that the Services are run on software, hardware, and networks, any component of which may, from time to time, require maintenance or experience problems or breaches of security beyond our control. Please also be aware that despite our best efforts to ensure the security of your data, we cannot guarantee that your information will be 100% secure.

Please recognize that protecting your Personal Information is also your responsibility. We urge you to take every precaution to protect your information when you are on the Internet, such as using a strong password, keeping your password secret, and using two-factor authentication. If you have reason to believe that the security of your account might have been compromised (for example, your password has been leaked), or if you suspect someone else is using your account, please let us know immediately.

#### 9. INTERNATIONAL DATA TRANSFER

If you are located outside the United States and choose to provide your Personal Information to us, we will transfer your Personal Information to (or receive it in) the United States and process it there. Your Personal Information may be transferred to, and maintained on, computers located outside of your state, province, country, or other governmental jurisdiction where the privacy laws may not be as protective as those in your jurisdiction.

Whenever we transfer your Personal Information, we will take all reasonable steps to ensure that your privacy rights continue to be protected. Wherever you are based, we are responsible for the processing of your Personal Information, including any subsequent transfers to third parties.

##### 9.1 EU - US Data Transfers

If HackerOne transfers Personal Information to a jurisdiction (or to a third party in a jurisdiction) for which the European Commission, Switzerland or the UK (as applicable) has not issued an adequacy decision, HackerOne will implement appropriate technical and security safeguards as required, including Standard Contractual Clauses (see below) approved by competent authorities, to transfer Personal Data in accordance with data protection and privacy laws, either internally between our group entities, or between us and our Finders and Customers (such as where we process personal data on their behalf).

##### 9.2 Standard Contractual Clauses

In order to comply with the transfer of data rules between the US and the UK, Switzerland or EU we offer Standard Contractual Clauses (sometimes also referred to as EU Model Clauses). Standard Contractual Clauses are contractual clauses designed to ensure HackerOne meets the legal and regulatory requirements for Customers and Finders using the Services in the European Economic Area ("EEA"), Switzerland and the UK. A copy of our standard Data Processing Agreement which incorporates the Standard Contractual Clause is available here.

Much like our Privacy Policy, should you or others (on whose behalf you lawfully share Personal Information) be located in the EEA, Switzerland or the UK and use the Services, all parties will be deemed to have accepted these Standard Contractual Clauses. HackerOne is committed to safeguarding Personal Information and will always undertake to meet the approved safeguards and findings of adequacies, under all applicable data protection and privacy laws. Please let us know if you would like more information about the measures we have in place.

#### 10. PRIVACY RIGHTS

Subject to where you are based you may have rights under data protection and privacy laws, including but not limited to the CCPA and the EU General Data Protection Regulation ("GDPR"). Under these laws, individuals have the right to access Personal Information and to correct, amend, restrict, or delete that information where it is inaccurate, or has been processed in violation of your rights, except in some cases where their request is manifestly unfounded or excessive, or where certain other circumstances apply, for example where the rights of persons other than the individual will be violated.

If you have a HackerOne account, we rely upon you to keep your information up to date. You may edit your profile information and may also choose to disable your HackerOne account at any time through your account settings. For subscription services, such as newsletters, webinars, events, and the like,

we offer you the ability to manage your preferences and choose whether to receive email communication for each service. To manage your preferences, please visit the Email Subscription Preference Center at <https://ma.hacker.one/SubscriptionManagement.html>. Where you are receiving communication from us of a marketing nature, we provide the ability for you to unsubscribe directly from the email.

Where we rely upon consent as a legal basis for processing, you may withdraw your consent at any time. Please note the withdrawal of your consent does not affect the lawfulness of processing based on consent before withdrawal.

Individuals in the many territories where we operate have certain rights that may be subject to limitations and/or restrictions. These include but are not limited to, the right to: (i) request access to and rectification or erasure of their Personal Information; (ii) obtain restriction of processing or to object to processing of their Personal Information; and (iii) ask for a copy of their Personal Information to be provided to them, or a third party, in a digital format. If you wish to exercise one of the above-mentioned rights, please send us your request to the contact details set out below. Individuals also have the right to lodge a complaint about the processing of their Personal Information with their local data protection authority.

Personal Information subject rights under the CCPA may also apply to certain individuals and households. These rights include the right to: (i) know what Personal Information is being collected about them, (ii) know whether their Personal Information is sold or disclosed to whom, (iii) say no to the sale of Personal information, (iv) access their Personal Information, and (v) equal service and price, even if they exercise their privacy rights.

#### 10.1 Exercising your rights and Privacy Disputes

You may also contact us with your Personal information inquiries or for assistance in modifying or updating your Personal Information and to exercise any additional applicable statutory rights. We respect the privacy of all individuals and invite you to submit your requests, irrespective of where you reside. Our contact details are provided at the end of this Privacy Policy.

#### 11. CHANGES TO THIS POLICY

We may modify this Privacy Policy from time to time, which will be indicated by changing the date indicated at the top of this page. The most current version of the Privacy Policy will govern our use of your Personal Information and will always be at <https://www.hackerone.com/privacy>. If we make changes that we believe will substantially alter your rights, we will notify you by email (sent to the email address specified in your HackerOne account), by means of a notice on our Services prior to the change becoming effective, or as otherwise required by law. In certain cases, we may also seek your consent to further use of your Personal Information where this is required.

#### 12. CONTACT INFORMATION

If you would like to contact us with questions or concerns about this Privacy Policy, our privacy practices, or would like to exercise your privacy rights, you may contact us via any of the following methods:

Email: [privacy@hackerone.com](mailto:privacy@hackerone.com)  
Toll-free Number (USA): +1 (855) 242-8699

Mailing Address:

Attn: Privacy Officer  
HackerOne Inc.  
548 Market Street, PMB 24734 San  
Francisco, CA 94104-5401 United  
States of America

Our EU representative:

Attn: Privacy Officer  
HackerOne B.V. Griffeweg  
97/4  
9723 DV Groningen The  
Netherlands

## Exhibit E

### Current Version of Data and Information Security Terms

**Last Updated: February 16, 2021**

Certain capitalized terms used in this document are defined in the General Terms and Conditions found at <https://www.hackerone.com/terms/general>, which are incorporated by reference. This document shall form a part of the Terms.

1. **Policies and Procedures.** HackerOne shall maintain written security management policies and procedures to prevent, detect, contain, and correct violations of measures taken to protect the confidentiality, integrity, and availability of HackerOne information systems and/or Customer's Confidential Information. Such policies and procedures shall (i) assign specific data security responsibilities and accountabilities to specific individual(s); (ii) include a formal risk management program, which includes periodic risk assessments; and (iii) provide an adequate framework of controls that safeguard Customer's information systems, including without limitation any hardware or software supporting Customer, and Customer's Confidential Information.
2. **Security Evaluations.** HackerOne shall engage one or more third parties to periodically (no less than annually) evaluate its processes and systems to ensure continued compliance with obligations imposed by law, regulation, or contract with respect to the confidentiality, integrity, availability, and security of Customer's Confidential Information within HackerOne information systems as well as the maintenance and structure of HackerOne's information systems. The results of these evaluations and any remediation activities taken in response to such evaluations will be documented and available to Customers upon request.
3. **Physical Security.** HackerOne shall maintain appropriate physical security controls (including facility and environmental controls) to prevent unauthorized physical access to HackerOne information systems and areas in which Customer's Confidential Information is stored or processed.
4. **Visitor Access Logs.** HackerOne shall maintain sign in access logs for visitors and guests and ensure that such visitors and guests are escorted while in the facility. In addition, these access logs shall be maintained in a secure location for three (3) months.
5. **Perimeter Controls.** HackerOne shall maintain reasonable network perimeter controls such as firewalls at all perimeter connections. HackerOne shall periodically (no less than annually) evaluate its network perimeter controls.
6. **Vulnerability Management.** HackerOne shall employ reasonable vulnerability management processes to mitigate data security risks to Customer's Confidential Information. These processes shall include mitigation steps to resolve issues identified by HackerOne, Customer, or any regulator, auditor, or other external constituent of either party.
7. **System Hardening.** System configuration parameters shall include procedures to disable all unnecessary services on devices and servers. This practice shall at a minimum be applied to all systems that access, transmit, or store Customer's Confidential Information.
8. **Patch Management.** HackerOne shall establish and adhere to policies and procedures for patching systems. Systems and applications used to access, process or store Customer's Confidential Information shall be maintained at current stable patch level.
9. **Anomaly Detection.** HackerOne shall install commercially reasonable anomaly detection software, to include anomaly / intrusion detections and deviations from standard system configuration, on all systems used to access, process or store Customer's Confidential Information as well as other information that HackerOne hosts. In addition, definition files shall be updated regularly.
10. **Incident Response.** HackerOne shall maintain formal processes to detect, identify, report, respond to, and resolve any event that compromises the confidentiality, availability, or integrity of Customer's data or service provider's systems ("Security Incidents") in a timely manner.
11. **Incident Notification.** HackerOne shall immediately provide Customer with notification of any known or reasonably suspected breach of security relating to Customer Systems or Customer's Confidential Information. HackerOne will notify Customer immediately following discovery of any suspected breach or compromise of the security, confidentiality, or integrity of any Customer's Confidential Information. Written notification provided pursuant to this paragraph will include a brief summary of the available facts and the status of HackerOne's investigation.
12. **System Logs.** For all systems that access, transmit or store Customer's Confidential Information, system logs shall be in place to uniquely identify individual users and their access to associated systems and to identify the attempted or executed activities of such users. All systems creating system logs shall be synchronized to a central time source. Reasonable processes shall be in place to review privileged access and identify, investigate and respond to suspicious or malicious activity. System log trails shall be secured in a manner to prevent unauthorized access, modification, and accidental or deliberate destruction. These logs shall be maintained in accordance with the retention requirements set forth in the Agreement or upon a mutual written agreement signed by both parties.
13. **Background Checks.** HackerOne shall maintain processes to determine whether a prospective member of HackerOne's workforce is

sufficiently trustworthy to work in an environment which contains HackerOne information systems and Customer's Confidential Information.

14. **Change Control Process.** HackerOne shall maintain reasonable change control processes to approve and track all changes within HackerOne's computing environment. Substantive changes to the HackerOne production environment require a separate tracking and review process with additional authorizations.
15. **Protection of Storage Media.** HackerOne shall ensure that storage media containing Customer's Confidential Information is properly sanitized of all Customer's Confidential Information or is destroyed prior to disposal or re-use for non-HackerOne processing. All media on which Customer's Confidential Information is stored shall be protected against unauthorized access or modification. HackerOne shall maintain reasonable and appropriate processes and mechanisms to maintain accountability and tracking of the receipt, removal and transfer of storage media used for HackerOne information systems or on which Customer's Confidential Information is stored.
16. **System Accounts.** HackerOne shall maintain appropriate processes for requesting, approving, and administering accounts and access privileges for HackerOne information systems and Customer's Confidential Information. HackerOne personnel, who access systems that store, transmit or process Customer's Confidential Information shall be assigned individual system accounts to ensure accountability for access granted. This information is logged and stored in accordance with HackerOne's Data Retention guidelines.
17. **Passwords.** HackerOne shall implement appropriate password parameters for systems that access, transmit or store Customer's Confidential Information ("Related Systems"). HackerOne shall implement strong authentication services, complex passwords ("Passwords"), and Multi-factor Authentication (where applicable) for all network and systems access to Related Systems. Default manufacturer passwords used in HackerOne's products shall be changed upon installation.
18. **Third Parties.** HackerOne shall ensure that any agent, including without limitation any third-party subprocessor or subcontractor, to whom HackerOne provides Customer's Confidential Information agrees to maintain reasonable and appropriate safeguards to protect such Customer's Confidential Information.



**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Haivision (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A

### CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

#### HAIVISION NETWORK VIDEO

#### HAIVISION NETWORK VIDEO LICENSE, WARRANTY AND SUPPORT TERMS

##### 1 DEFINITIONS

1.1. Entitlement. The collective set of applicable documents (e.g., warranty, support and maintenance documents, data sheets, etc.) authorized by Haivision Systems Inc. or its affiliate Haivision (collectively, "Haivision") evidencing your obligation to pay associated fees (if any) for the license, associated Services, and the authorized scope of use of Product under the applicable Ordering Document.

1.2. License Fee. License Fee shall mean the consideration paid to Haivision for use of the Product. The License Fee is part or all of the price paid for the relevant Product in applicable Ordering Document

1.3. Product. Product shall mean the executable version of Haivision's computer software, program or code, in object code format (specifically excluding source code), together with any related material including, but not limited to the hardware, Reference Manuals or database schemas provided for use in connection with the Product and including, without limitation, all Upgrades through the date of installation.

1.4. Reference Manuals. Reference Manuals shall mean the most current version of the documentation for use in connection with the Product provided by Haivision to You.

1.5. Third-Party Content. Services or materials, which are not proprietary to Haivision or may not be part of the materials of the company, entity or individual using the Product.

1.6. Updates. Updates shall mean any periodic software releases, additions, fixes, and enhancements thereto, release notes for the Product and related Reference Manuals, (other than those defined elsewhere in this section as Upgrades) which have no value apart from their operation as part of the Product and which add minor new functions to the Product, but none so significant as to warrant classification as an Upgrade, which may be provided by Haivision to fix critical or non-critical problems in the Product on a scheduled, general release basis. Updates to the Product ("Version") are denoted by number changes to the right of the decimal point for a version and revision number (for example, going from 2.0.0 to 2.1.0).

1.7. Upgrades. Upgrades shall mean any modification to the Product made by Haivision, which are so significant, in Haivision's sole discretion, as to warrant their exclusion under the current license grant for the Product. Upgrades of Product are denoted by number changes to the left of the decimal point for a release number (for example, going from 2.0 to 3.0).

1.8. You (or Your). The ordering activity specified in the Entitlement, or for evaluation purposes, the entity performing the evaluation.

## 2 RIGHTS AND RESTRICTIONS

2.1. License to Use. Subject to the terms and conditions set forth herein and subject to the terms of the applicable Ordering Document, Haivision hereby grants to You a non-exclusive, personal, limited and non-transferable right and license to use the Product in accordance with the terms of this Agreement. This license is granted to You and not, by implication or otherwise, to any parent, subsidiary or affiliate of Yours without Haivision's specific prior written consent. This license is for the limited use of the Product by You for the purpose of creating, managing, distributing and viewing IP Video assets. This license does not grant any license for content whatsoever. All rights not expressly granted to You by this Agreement are reserved by Haivision.

### 2.2. Restrictions.

(a) Reproduction. You shall not copy, modify, distribute, use or allow access to any of the Product, except as explicitly permitted under this Agreement and only in the quantities designated in the Entitlement. However, You have the right to make copies of the Product solely for archival purposes, but only in quantities necessary and typical for your Organization. You shall not modify, adapt, translate, export, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code, hardware designs or other proprietary information from the Product or any internal data files generated by the Product, or use the Product embedded in any third party hardware or software. You shall also not use the Product in an attempt to, or in conjunction with, any device, program or service designed to circumvent technological measures employed to control access to, or the rights in other work protected by copyright laws. You shall not remove, modify, replace or obscure Haivision's copyright and patent notices, trademarks or other proprietary rights notices affixed to or contained within any Product. No right is granted hereunder for any third party who obtains access to any Product through You to use the Product to perform services for third parties. Most sublicensing arrangements are prohibited under this Agreement.

(b) Ownership. The Product is conditionally licensed and not sold. As between the parties, Haivision and/or its licensors owns and shall retain all right, title and interest in and to all of the Product, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein, and nothing in this Agreement shall be deemed to transfer to You any ownership or title to the Product. You agree that you will not remove, alter or otherwise obscure any proprietary rights notices appearing in the Product. All Haivision technical data and computer software is commercial in nature and developed solely at private expense.

## 3 RESERVED.

## 4 REPRESENTATIONS, DISCLAIMER

4.1. Limited Warranty. Haivision warrants that: (i) the Product will operate substantially in accordance with the Reference Manuals provided and (ii) any media on which the Product is provided will be free of material damage and defects in materials and workmanship under normal use for a term of ninety (90) days (the "Warranty Period") after its delivery date. As Your sole and exclusive remedy for any breach of this warranty, Haivision will use its commercially reasonable efforts to correct any failure of the Product to operate substantially in accordance with the Reference Manuals which is not the result of any improper or unauthorized operation of the Product and that is timely reported by You to Haivision in writing within the Warranty Period, provided that in lieu of initiating commercially reasonable efforts to correct any such breach, Haivision may, in its absolute discretion, either: (i) replace the Product with other software or technology which substantially conforms to the Reference Manuals or (ii) refund to You a portion of the fee paid for the relevant Product, whereupon this Agreement shall terminate. This warranty shall immediately terminate if You or any third party makes or attempts to make any modification of any kind whatsoever to the Product, engages in any improper or unauthorized operation of the Product, including uses prohibited by the Entitlement or installs or uses the Product on or in connection with any hardware or software not specified in the Entitlement or product data sheets.

4.2. Warranty Disclaimers. THE EXPRESS WARRANTIES SET FORTH IN SECTION 4.1 ABOVE IN RESPECT TO THE PRODUCT ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, REGARDING THE PRODUCT, OR ITS OPERATION, FUNCTIONALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS (ALL OF WHICH ARE DISCLAIMED). HAIVISION DOES NOT WARRANT THAT ANY OF THE PRODUCT(S) WILL MEET ALL OF YOUR NEEDS OR REQUIREMENTS, OR THAT THE USE OF ANY OF THE PRODUCT(S) WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE DETECTED OR CORRECTED.

4.3. Reserved.

## 5 RESERVED.

## 6 OTHER PROVISIONS

6.1. Export and Other Restrictions. This Agreement, and all Your rights and Your obligations under this Agreement, are subject to all applicable U.S. Government laws and regulations relating to exports including, but not limited to, the U.S. Department of Commerce Export Administration Act and its associated Regulations and all administrative acts of the U.S. Government thereunder. In the event the Product or the Hardware is exported from the United States or re-exported from a foreign destination, You shall ensure that the distribution and export/re-export of the Product or the Hardware is in compliance with all laws, regulations, orders, or other restrictions of the U.S. Export Administration Act and its associated Regulations. You agree that neither you nor any of your Affiliates will export/re-export any Product, any hardware on which the Product is loaded or embedded, technical data, process, or service, directly or indirectly, to any country for which the United States government (or any agency thereof) requires an export license, other governmental approval, or letter of assurance, without first obtaining such license, approval or letter.

6.2. Content. Your data and/or your use of the Product may not: (i) interfere in any manner with the functionality or proper working of the Product; (ii) stream any material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless You are the owner of such rights or have permissions from the rightful owner to post the material; (iii) constitute, promote, facilitate or permit any illegal activities, including without limitation, activities that might be libelous or defamatory, invasive of privacy or publicity rights, abusive or otherwise malicious or harmful to any person or entity; (iv) distribute, share or facilitate unauthorized data, malware, viruses, Trojan horses, spyware, worms or other malicious or harmful distributions; or (v) otherwise violate, misappropriate or infringe the intellectual property, privacy, publicity, contractual or other proprietary rights of any third party.

6.3. Consent to Use Data. You agree that Haivision may collect and use technical data and related information, including but not limited to technical information about Your device, system and application software and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to You (if any) related to the Product. Haivision may use this information, as long as it is in a form that does not personally identify You, to improve its products or to provide services or technologies to You.

6.4. Reserved.

6.5. Reserved.

6.6. Reserved.

6.7. Third Party Content. Haivision is not responsible for examining or evaluating the data, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of any Third Party Content. Haivision does not warrant or endorse and does not assume and will not have any liability or responsibility to You or any other person for any Third Party content.

6.8. Reserved.

6.9. Reserved.

6.10. Reserved.

6.11. Reserved.

6.12. Reserved.

6.13. Reserved.

6.14. Reserved.

6.15. US Government Rights. Some Products are commercial computer software, as such, term is defined in 48 C.F.R. §2.101.

Accordingly, if You, as the Licensee, is the US Government or any contractor therefor, You shall receive only those rights with respect to the Product and Reference Materials as are granted to all other end users under license, in accordance with:

(a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors;

or

(b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

6.16. Reserved.

HEWLETT PACKARD ENTERPRISES  
13600 EDS DRIVE  
HERNDON, VA

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Hewlett Packard Enterprises (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.



**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS  
HEWLETT PACKARD ENTERPRISES**

**HEWLETT PACKARD ENTERPRISES LICENSE, WARRANTY AND SUPPORT TERMS**

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**HPE CUSTOMER PASS THROUGH TERMS**

HPE's obligations with respect to products or services supplied by HPE and procured by an end-user customer (hereinafter "Customer") from authorized HPE Business Partners are limited to the terms and conditions in these HPE CUSTOMER PASS THROUGH TERMS ("Terms") and the specific Supporting Material included with the HPE supplied products and services. HPE is not responsible for the acts or omissions of HPE Business Partners, for any obligations undertaken by them or representations that they may make, or for any other products or services that they supply to Customer.



**Orders.** “Order” means the accepted order issued by Customer under the GSA Schedule Contract, including any HPE-branded supporting material which is identified as incorporated either by attachment or reference (“**Supporting Material**”). Supporting Material may include (as examples) product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements and statements of work (SOWs), HPE Care Pack Support Service Agreement, published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated HPE website, provided that in the event of inconsistency between the terms of any Supporting Material and the terms of the GSA Schedule Contract (including HPE’s GSA Addendum), the latter shall control to the extent of the inconsistency.

**Title.** When HPE delivers to Customer directly, risk of loss or damage and title for hardware products will pass upon delivery to Customer or its designee. Where permitted by law, HPE retains a security interest in products sold until full payment is received.

**Installation.** If HPE is providing installation with the product purchase, HPE’s site guidelines (available upon request) will describe Customer requirements. HPE will conduct its standard installation and test procedures to confirm completion.

**Support Services.** HPE’s support services will be described in the applicable Supporting Material, which will cover the description of HPE’s offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported.

**Software-as-a-Service.** HPE’s online software-as-a-service solution that HPE provides to Customer, including support, and related professional services will be described in the Supporting Material (“**SaaS**”). The SaaS term is specified in the Supporting Material or HPE quotation (the “**SaaS Term**”). If Customer previously purchased a perpetual license to the on-premise version of the HPE branded software product (“**HPE Software**”), the price of SaaS shall reflect such purchase and such pre-existing license shall be deemed to be used in relation to SaaS. During the SaaS Term, Customer may not use such HPE Software installed on Customer infrastructure except in connection with receipt of SaaS.

**SaaS Rescheduling.** Customer has the one-time right to reschedule the Order start date without charge (for a date that is no more than three (3) months after the originally scheduled start date) upon no less than three (3) business days’ written notice prior to the date that delivery is scheduled to begin.

**Professional Services.** - Reserved

**Professional Services Acceptance.** - Reserved.

**Eligibility.** HPE’s service, support and warranty commitments do not cover claims resulting from: improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material; modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE; failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service; malware (e.g. virus, worm, etc.) not introduced by HPE; or abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE’s control.

**Dependencies.** HPE’s ability to deliver services will depend on Customer’s reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.

**Change Orders.** Reserved

**Product Performance.** All HPE-branded hardware products are covered by HPE’s limited warranty statements that are provided with the products or otherwise made available. Hardware warranties begin on the date of delivery or if applicable, upon completion of HPE installation, or (where Customer delays HPE installation) at the latest 30 days from the date of delivery. Non-HPE branded products receive warranty coverage as provided by the relevant third party supplier.

**Software Performance.** HPE warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. HPE warranties for software products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. HPE does not warrant that the operation of software products will be uninterrupted or error-free or that software products will operate in hardware and software combinations other than as authorized by HPE in Supporting Material.

**Services Performance.** Services are performed using generally recognized commercial practices and standards.

**SaaS Performance.** SaaS is provided consistent with generally recognized practices and standards for software-as-a-service. HPE does not warrant that SaaS will be uninterrupted or error free.

**Services with Deliverables.** If Supporting Material for services defines specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such non-conformity during the 30 day period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.

**SaaS Performance.** SaaS is provided consistent with generally recognized practices and standards for software-as-a-service. HPE does not warrant that SaaS will be uninterrupted or error free.

**Services with Deliverables.** If Supporting Material for services defines specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such non-conformity during the 30 day period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.

**Product Warranty Claims.** When we receive a valid warranty claim for an HPE hardware or software product, HPE will either repair the relevant defect or replace the product. If HPE is unable to complete the repair or replace the product within a reasonable time, Customer will be entitled to a full refund upon the prompt return

of the product to HPE (if hardware) or upon written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. HPE will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to HPE.

**Remedies.** This Agreement states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.

**Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under these Terms. Customer grants HPE a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for HPE and its designees to perform the ordered support services. If deliverables are created by HPE specifically for Customer and identified as such in Supporting Material, HPE hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverable internally.

**Intellectual Property Rights Infringement.** For Federal government customers, the Government will control litigation or settlement of any patent infringement claims arising out of the performance of this contract and brought against the government notwithstanding anything to the contrary in a "Patent Indemnity" provision of this contract or other related transaction document. HPE reserves the right to intervene in the proceedings at its own expense through counsel of its choice.

**License Grant.** HPE grants Customer a non-exclusive license to use the version or release of the HPE-branded software listed in the Order. Permitted use is for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information that is in the software product or its Supporting Material.

**Updates.** Customer may order new software versions, releases or maintenance updates ("Updates"), if available, separately or through an HPE software support agreement. Additional licenses or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the license terms in effect at the time that HPE makes them available to Customer.

**License Restrictions.** HPE may monitor use/license restrictions remotely and, if HPE makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licensed software product only for archival purposes or when it is an essential step in the authorized use of the software. Customer may use this archival copy without paying an additional license only when the primary system is inoperable. Customer may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Customer's intranet require restricted access by authorized users only. Customer will also not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of any software licensed to Customer under these Terms unless permitted by statute, in which case Customer will provide HPE with reasonably detailed information about those activities.

**License Term and Termination.** Unless otherwise specified, any license granted is perpetual in the case of a limited-term license, upon expiration, Customer will either destroy all copies of the software or return them to HPE, except that Customer may retain one copy for archival purposes only.

**License Transfer.** Customer may not sublicense, assign, transfer, rent or lease the software or software license except as permitted by HPE. HPE-branded software licenses are generally transferable subject to HPE's prior written authorization, and payment to HPE of any applicable fees. Upon such transfer, Customer's rights shall terminate and Customer shall transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software license terms. Customer may transfer firmware only upon transfer of associated hardware.

**License Compliance.** HPE may audit Customer compliance with the software license terms. Upon reasonable notice, HPE may conduct an audit during normal business hours (with the auditor's costs being at HPE's expense). If an audit reveals underpayments then Customer will pay to HPE such underpayments. If underpayments discovered exceed five (5) percent of the contract price, Customer will reimburse HPE for the auditor costs.

**Confidentiality.** Information exchanged under these Terms will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under these Terms, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.

**Personal Information.** Each party shall comply with their respective obligations under applicable data protection legislation. HPE does not intend to have access to personally identifiable information ("PII") of Customer in providing services. To the extent HPE has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. HPE will use any PII to which it has access strictly for purposes of delivering the services ordered. **For SaaS purposes, Customer** acknowledges that HPE may route, process or store, and could access business contact information and the data that Customer enters into HPE's SaaS infrastructure, from countries other than the country from which Customer entered such data.

**US Federal Government Use.** If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under HPE's standard commercial license.

**Global Trade Compliance.** Products and services provided under these Terms are for Customer's internal use and not for further commercialization. If Customer exports, imports or otherwise transfers products and/or deliverables provided under these Terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. HPE may suspend its performance under these Terms to the extent required by laws applicable to either party.

**Limitation of Liability.** Reserved

**Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.

**General.** These Terms represent our entire understanding with respect to its subject matter and supersede any previous communication or agreements that may exist. Modifications to these Terms will be made only through a written amendment signed by HPE and Customer.

**Aruba Networks, Inc. End-User Software License Agreement (“Agreement”)**

**YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS BEFORE INSTALLATION OR USE OF ANY SOFTWARE PROGRAMS FROM ARUBA NETWORKS, INC. AND ITS AFFILIATES OR AIRWAVE WIRELESS (COLLECTIVELY, “ARUBA”). INSTALLATION OR USE OF SUCH SOFTWARE PROGRAMS SHALL BE DEEMED TO CONFIRM YOUR ACCEPTANCE OF THESE TERMS. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS. YOUR RIGHTS UNDER THIS AGREEMENT BEGIN WHEN YOU RECEIVE YOUR LICENSE KEY FROM ARUBA, AND NOT ON THE DATE THAT YOU INSTALL THE SOFTWARE. IT IS UP TO YOU TO INSTALL THE SOFTWARE PROMPTLY UPON RECEIPT OF A LICENSE KEY FROM ARUBA. IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST PROMPTLY RETURN ALL SUCH SOFTWARE AND HARDWARE PRODUCTS TO ARUBA (OR IF YOU PURCHASED SUCH PRODUCTS FROM A RESELLER, THE RESELLER FROM WHICH YOU PURCHASED SUCH PRODUCTS) AND ANY FEES YOU HAVE PAID FOR SUCH PRODUCTS WILL BE REFUNDED.**

**1. LICENSE**

Subject to your full compliance with all the terms and restrictions set forth in this agreement (“Agreement”), Aruba grants you a non-exclusive, non-transferable (except as expressly permitted below), non-sublicensable license to use the Aruba software programs (“Programs”). Any third party software programs obtained through the use of the Programs are exclusively subject to the terms and conditions accompanying those third party programs (“Third Party Programs”).

The Programs may use certificates, provisioning profiles, keys, and other such authorization and management controls that you provide as part of your use of the Programs (“Controls”). Aruba disclaims any responsibility whatsoever for your usage of such Controls as part of the Program(s) and you agree not to hold Aruba responsible for such usage of such Controls.

**2. PROPRIETARY RIGHTS**

Aruba and its suppliers shall at all times retain title, all ownership rights, and all intellectual property rights in and to the Programs, including any and all rights to error corrections, enhancements, new releases, and other work product that may be created in connection with technical support services that Aruba provides (collectively, “Support Enhancements”). Support Enhancements will be considered Programs for purposes of this Agreement, subject to all of the rights, obligations and restrictions set forth herein. The Programs in source code form remain a confidential trade secret of Aruba and/or its suppliers. The Programs are protected by the copyright and other intellectual property laws of the United States and international treaties. You acknowledge that, in the course of using the Programs, you may obtain or learn information relating to the Programs, which may include, without limitation, information relating to the performance, reliability or stability of the Programs, operation of the Programs, knowhow, techniques, processes, ideas, algorithms, and software design and architecture (“Proprietary Information”). As between the parties, such Proprietary Information shall belong solely to Aruba. During and after the term of this Agreement, you shall hold in confidence and protect, and shall not use

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(except as expressly authorized by this Agreement) or disclose, Proprietary Information to any third party.

**3. RESTRICTIONS ON USE AND TRANSFER**

**A.** Programs from Aruba may be used solely for the internal use and operation of an Aruba network by you or your organization. All Programs may only be run directly on Aruba’s hardware products or an Aruba-provided virtual machine, except that Programs specifically designed by Aruba to operate on third party hardware platforms may be run on such third party hardware platforms. All Programs may be copied solely for installation and back-up purposes in support of your licensed use. You may not modify the Programs in any manner without the prior written approval of Aruba. You may not perform interoperability testing on the Programs without the prior written approval of Aruba. You may physically transfer the base operating system Programs and this Agreement to another party only if (i) all related hardware products are transferred along with the Programs, (ii) the other party accepts the terms and restrictions of this Agreement, (iii) all copies of Programs and related documentation that are not transferred to the other party are destroyed or returned to Aruba, and (iv) you comply with all applicable laws including any import/export control regulations. Separately licensed Programs which have been loaded onto the hardware to add features or enable functions may not be transferred.

**B.** You shall not (and you shall not permit others to), directly or indirectly, modify, translate, decompile, disassemble, or reverse engineer the Programs (except to the extent applicable laws specifically prohibit such restriction) or any copy, in whole or in part, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Programs; copy (except for the purposes set forth above), rent, lease, distribute, or otherwise transfer rights to the Programs; or remove any proprietary notices or labels on the Programs.

**C.** You shall not disclose any Proprietary Information, including any information relating to the performance or operation of the Programs (including any benchmarking or other testing results) to any third party without the express prior written consent of Aruba. You may not engage a third party to perform security testing on the Programs unless that third party enters into a written non-disclosure agreement directly with Aruba.

**D.** You understand and agree that some of the Programs are designed to automatically communicate certain network parameters and other information about the Programs and their performance back to Aruba. Aruba uses this information (a) to monitor the performance of the Programs; (b) to alert You in the event that upgrades or updates are available; and (c) as necessary to comply with Aruba’s legal obligations and to protect Aruba’s legal rights. Aruba will not use any information gathered in this manner for any other purpose.

**4. LIMITED WARRANTY AND DISCLAIMER**

Aruba warrants to you (and only you) that any media on which the Programs are recorded will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date the Programs are delivered to you. If a defect in any such media should occur during this 90-day period, the media may be returned to Aruba (or if you received such Programs from a reseller, to such reseller) and Aruba or the reseller, as applicable,

will replace the media without charge to you. Aruba shall have no responsibility to replace media if the failure of media results from accident, abuse or misuse of the media.

**ALL THIRD PARTY PROGRAMS ARE PROVIDED AS-IS AND ARUBA EXPLICITLY DISCLAIMS ANY RESPONSIBILITY WHATSOEVER FOR THE PERFORMANCE OR NON-PERFORMANCE OF SUCH THIRD PARTY PROGRAMS.**

**ARUBA AND ITS SUPPLIERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROGRAMS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAMS WILL BE UNINTERRUPTED OR ERROR-FREE.**

**EXCEPT FOR THE EXPRESS WARRANTY ABOVE, THE PROGRAMS ARE PROVIDED TO YOU WITH NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION,**

**ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND**

**NONINFRINGEMENT. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.**

**5. LIMITATION OF LIABILITY**

**YOUR EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF ARUBA AND ITS SUPPLIERS RELATED TO THE PROGRAMS SHALL BE EXPRESSLY LIMITED TO REPLACEMENT OF MEDIA AS PROVIDED ABOVE. IN NO EVENT WILL ARUBA OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE PROGRAMS BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST DATA, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**6. TERM**

**This Agreement is effective until terminated, and shall automatically apply to any future upgrades or updates to any Programs or any additional features of any Program, except as otherwise specified by Aruba. You may terminate this Agreement at any time by destroying all copies of the Programs and related documentation. This Agreement will terminate automatically, with respect to any Program or feature of any Program, at the end of the applicable term of any limited-term license purchased by you, or if you fail to comply with any term or condition of this Agreement, including any failure to pay any associated license and related fees due by you in full and any attempt to transfer a copy of the Programs to another party except as provided in this Agreement. You agree that upon such termination, you will destroy all copies of the Programs and related documentation.**

**7. U.S. GOVERNMENT**

**RESTRICTED RIGHTS**

**If you are acquiring the Programs on behalf of the U.S. Government, the following provisions apply: (i) if the Programs are supplied to the Department of Defense or any related agency of service, the Programs are subject to "restricted rights" as that term is defined in Defense Federal Acquisition Regulations ("DFAR") in Section 252.227-7013(c)(1); and (ii) if the Programs are supplied to any other unit or agency of the United States Government, the Programs are considered "restricted computer software" and the Government's rights in the Programs are set forth in the Federal Acquisition Regulations ("FAR") in Section 52.227-19(c)(2). Use, duplication or disclosure by the Government is subject to the restrictions set forth in such sections. You represent that you are not acquiring the Programs on behalf of a government other than the U.S. Government.**

**8. GENERAL**



**You acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and restrictions. You further agree that this license is the complete and exclusive statement of your agreement with Aruba and supersedes any proposal or prior agreement, oral or written, and any other communications relating to the subject matter of this license. This Agreement may only be modified in writing. Any waivers and amendments of this Agreement or any of its terms shall be effective only if**

**made by nonpreprinted agreements clearly understood by both parties to be an amendment or waiver. This Agreement shall be governed by and construed under the laws of the state of California, USA as if made and entered into in that state by two residents thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods.**

**If you are located in the People's Republic of China, all disputes arising from or relating to the subject matter of this Agreement must be resolved in Hong Kong by the Hong Kong**

**International Arbitration Centre pursuant to its rules of arbitration then in effect, and the arbitration shall be conducted in English. If you are located outside of the People's Republic of China, all disputes arising from or relating to the subject matter of this Agreement shall be resolved by and you hereby consent to binding arbitration conducted in the English language in San Francisco, California, USA pursuant to California law and the rules of the Judicial Arbitration and Mediation Service (JAMS.) Judgment upon any award so rendered may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be.**

**Notwithstanding the foregoing, each party shall have the right at any time to seek injunctive or other forms of equitable relief from any court of competent jurisdiction. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.**

**IMPORTANT**



**Hitachi Vantara Federal Corporation**  
**11950 Democracy Drive**  
**Suite 200**  
**Reston, VA 20190**

## HITACHI VANTARA FEDERAL CORPORATION END USER LICENSE AND SERVICES AGREEMENT

### SOFTWARE LICENSE TERMS

Unless otherwise provided for in a current signed agreement between Ordering Activity and Hitachi Data Systems Federal Corporation, located at 11921 Freedom Drive, Suite 900, Reston, VA 20190 (“**HDS FED**”), these Software License Terms (“**Software License Terms**”) apply to the HDS FED products purchased by Ordering Activity (“**Software**”). Ordering Activity must read these Software License Terms under which HDS FED will license Software to Ordering Activity. Capitalized terms will have the meanings indicated in Section 15 below.

### SOFTWARE LICENSE TERMS

**1. License Grant** Except as otherwise expressly provided, HDS FED grants Ordering Activity a non-transferable, nonexclusive license:

to Use the Operating Software solely on the HDS FED Equipment with which it is shipped, to enable the Equipment to function; and

to Use the Programs solely for Ordering Activity’s internal needs subject to the restrictions specified on any Equipment used in connection with the Programs. For capacity-based Programs, Ordering Activity will Use the Programs up to the specified capacity purchased, on the relevant equipment, network, device or CPU allowed. If Ordering Activity wishes to exceed capacity, Ordering Activity must first execute a new or modified GSA Customer Purchase Order.

Ordering Activity obtains no title or ownership in any Software nor does Ordering Activity obtain any right to sublicense the Software. The Software may be used only as provided in either machine-readable object code form or machine-compressed form, and the related documentation may be used only in printed or electronic form.

**Open Source Software.** Some Software licensed to Ordering Activity includes Open Source Software, and Ordering Activity can access a complete list of these licenses for the Open Source Software provided with HDS FED’s or Hitachi Ltd.’s proprietary Software from the Open Source License Website. HDS FED is required to notify the Ordering Activity of the foregoing and it is Ordering Activity’s responsibility to review and adhere to all licenses for Open Source Software. These Software License terms do not apply to the licenses for Open Source Software. If the Software licensed by HDS FED includes certain software licensed under the GNU General Public License or other similar Open Source Software with a license that requires the licensor to make the source code publicly available (“**GPL Software**”) and the applicable source code was not included in the Software, then Ordering Activity may obtain a copy of the applicable source code for the GPL Software by either (a) requesting the open source code be mailed to Ordering Activity by HDS FED or (b) downloading the open source code by following the links on the Open Source License Website.

**Use Restrictions.** Except to the extent these restrictions are prohibited by applicable federal law or prohibited by the terms of any open source license, Ordering Activity must not, and must not allow any other person to: (a) use the Software to conduct comparative or competitive analyses, including benchmarking; (b) reverse engineer, decompile, reverse compile, reduce in human readable form or otherwise access the source code of the Software (c) sublicense, rent, lease, modify, enhance, supplement, create derivative works from the Software; (d) copy the Software other than as expressly allowed; (e) remove or otherwise tamper with any proprietary notices contained on or in the Software; or (f) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without our express written authorization.

**Authorized Copies** HDS FED will provide Ordering Activity with one copy of the media and documentation for the Software. For Software licensed under an enterprise license, HDS FED grants to Ordering Activity the right to make copies of the Software solely for Ordering Activity’s own internal use, within the scope of the enterprise license. Ordering Activity may also make one copy of back-up or archival copies of Software solely for Ordering Activity’s own internal use. Ordering Activity must reproduce on all copies made, all proprietary and copyright notices contained on or in the Software.

**Software Transfers** Except to the extent otherwise provided in any applicable open source license, Ordering Activity must not transfer the Software to any other person or entity, without HDS FED’s prior written consent. Ordering Activity may, however, transfer the Operating Software to a third party (“**transferee**”) solely with the related HDS FED Equipment, but Ordering Activity must ensure that the transferee agrees to the terms of this Agreement. The Operating Software is provided to the transferee on an “as is” basis, with no extension of any existing warranty or support arrangements. When the transfer is complete, Ordering Activity must remove and destroy all copies of the Operating Software in Ordering Activity’s possession or under Ordering Activity control. Ordering Activity must also permanently remove all Software from any media upon which it is stored prior to disposing of the media.

**Location of Software** If the Equipment upon which Ordering Activity is authorized to Use the Software becomes temporarily inoperable, Ordering Activity may load and use the Software on another of Ordering Activity’s computer systems located at the same premises, until the original Equipment becomes operable. Otherwise, Ordering Activity must always get HDS FED’s prior written consent before changing the Equipment on which the Software is to be used, or its location.

**Limited Warranty** Subject to this Section 7, HDS FED warrants to Ordering Activity that, during the Warranty Period, the Software will function in accordance with the Published Specifications. To make a valid warranty claim, Ordering Activity must submit a claim to HDS FED under the procedures set out at [http://www.hds.com/pdf/warranty\\_and\\_basic\\_maintenance\\_online\\_terms.pdf](http://www.hds.com/pdf/warranty_and_basic_maintenance_online_terms.pdf).

**EXCEPT AS SPECIFIED IN THESE SOFTWARE LICENSE TERMS, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY FEDERAL LAW. HDS FED DOES NOT WARRANT THAT ANY SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE.**

**Ownership and Licenses** HDS FED and its licensors own all copyright, trademarks, designs, patents, circuit layout rights, know-how, trade secrets, trade, business or company names, domain names and related registration rights and all other intellectual property rights in the Software, including any modifications (“**Hitachi IP**”). Hitachi IP is protected by U.S. and other copyright laws and the laws protecting trade secret, other intellectual property rights and confidential information. Ordering Activity only gets license rights in Software, expressly stated in these Software License Terms. Except as otherwise expressly provided by any open source license,

Ordering Activity must not do anything to jeopardize HDS FED's or our licensors' rights in the Hitachi IP including to (i) copy, modify, merge, or transmit Hitachi IP; (ii) register or attempt to register any competing intellectual property rights to the Hitachi IP; (iii) delete or tamper with any proprietary notices on or in the Hitachi IP, (iv) take or use any action that diminishes the value of any trademarks included in the Hitachi IP, or (v) use the Software in violation of applicable law. These restrictions are in addition to those stated in Article 3.

**Intellectual Property Claims** Subject to Section 8 and the exceptions in this Section, if a third party makes a claim against Ordering Activity that the Software infringes that party's patent rights or copyright ("**IP Claim**"), HDS FED will provide the following recourse (which, to the extent permitted by applicable law, comprises Ordering Activity's sole and exclusive remedy against Us for IP Claims):

HDS FED will indemnify Ordering Activity against liability and will pay the amount of damages, losses and costs finally awarded (or reasonably settled with our written consent), provided that Ordering Activity (i) promptly notifies HDS FED of the IP Claim and (ii) allows HDS FED to intervene in any litigation, at HDS FED's expense and with counsel of our choice ;

HDS FED will, at its option and cost, do any of the following in relation to Software which is or HDS FED considers is likely to be the subject of an IP Claim: (i) work with the Government to secure the rights for Ordering Activity to continue to use the Software without infringement or (ii) modify the Software so that it is not infringing or replace it with something that has similar functionality to the Software. If neither option is reasonably possible, HDS FED will provide Ordering Activity with a refund, provided that Ordering Activity promptly returns the Software to HDS FED.

The above remedies will not apply to any Third Party Software (including without limitation any Open Source Software) or otherwise to any Software that Ordering Activity has, or any person on Ordering Activity's behalf has: (i) modified or combined with any third party product not resold and authorized or approved by HDS FED, (ii) used outside the stated standard operating environment for the Software or for an unauthorized purpose, or (iii) failed to use a more recent version of the Software that was available to Ordering Activity and would have avoided the infringement or where the IP Claim arises due to any material or item that Ordering Activity owns or has sourced from a third party itself. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

**Liability Limitations.** HDS FED acknowledges the full extent of its liability arising from death or personal injury resulting from negligent acts or omissions; the nonexcludable statutory rights of consumers (for example, under laws providing for strict product liability), the breach of any obligation of confidence, and our breaches of these Software License Terms. Except for the immediately preceding sentence, indemnity obligations as described in Section 9 and to the extent not prohibited by applicable law:

HDS FED's and Ordering Activity's maximum

aggregate liability for all claims relating to all Software licensed to Ordering Activity under these Software License Terms, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to the amount paid for the particular Software which is the subject matter of the claim, up to a maximum of two million US dollars (U.S.

\$2,000,000); and

neither Ordering Activity nor HDS FED will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the Software License Terms (including, without limitation, loss of business, revenue, profits, goodwill, use, data, or other economic advantage), however they arise, whether in breach of contract, breach of warranty or in tort, including negligence, and even if that party has previously been advised of the possibility of such damages. The foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by HDS FED's negligence; (2) to HDS Fed violations that are finally decided by a court of competent jurisdiction as constituting a false claim pursuant to the False Claims Act at 31 U.S.C. §§ 3729 - 3733; or (3) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract (4) for any other matter for which liability cannot be excluded by law.

**Confidential Information.** Each party must keep each other's Confidential Information confidential, using the same degree of care used to protect our own Confidential Information. Each party shall not disclose the other party's Confidential Information to any third party, unless authorized in writing to do so. We can, however, disclose it to our employees and contractors who need to know the information in order to perform obligations under these Software License Terms. When the end user is an instrumentality of the U.S. Government, neither these Software License Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.

**Export Compliance.** Ordering Activity acknowledges that United States laws and regulations regulate the export of computer products and technology and may prohibit use, sale or re-export of such products or technology. If Ordering Activity sells or transfers to another person or entity or the right to use any Software, Ordering Activity will ensure that all applicable U.S. export restrictions are observed.

**Governing Law.** These Software License Terms will be governed by the Federal laws of the United States.

**Miscellaneous.** Pursuant to FAR 52.212-4(f), neither party will be responsible for any failure to meet any of our obligations due to matters beyond our reasonable control provided reasonable efforts have been made to perform them. Ordering activity must not assign, or otherwise transfer any of Ordering Activity's rights under these Software License Terms without HDS FED's prior written agreement. Assignment by HDS FED is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR subpart 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013). Notices made under these Software License Terms must be in writing to a senior executive. Notices will be deemed given: where they are hand delivered, when a duly authorized employee or representative of the recipient gives written acknowledgement of receipt; for email communication, at the time the communication enters into the information system of the recipient; for posting, three days after dispatch and for fax, on receipted transmission of the fax. If either party fails to promptly exercise any contractual right, this does not of itself mean that the right has been waived. For a waiver of a right to be valid, it must be written and signed by the waiving party. Any such waiver shall not give rise to an ongoing waiver or any expectation that the right will not be enforced, unless it is expressly stated to do so. These Software License Terms may not be modified except in writing signed by an authorized representative of each party. These Software License Terms, the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Orders constitute the entire agreement relating to its subject matter and supersede any prior written or oral communications.



**Definitions.**

**Confidential Information:** information that, at the time of disclosure, is clearly marked as confidential or in the circumstances would be considered to be confidential, and is exempt from disclosure under the Freedom of Information Act (FOIA), 5.U.S.C. §552(b), under one or more exemptions to that Act.

**Equipment:** hardware and spare parts manufactured by HDS FED or Hitachi Ltd., or that HDS FED has authorized Ordering Activity to use with the Software.

**Open Source License Website:** the licenses applicable to

Open Source Software listed at [www.hds.com/corporate/legal/index.html](http://www.hds.com/corporate/legal/index.html). [This reference is included for attribution purposes, as required by the applicable Open Source Software license(s)]. **Open Source Software:**

Third party software, which may be available without charge for use, modification or distribution. and generally licensed under the GNU GPL, Lesser General Public License, Apache or other open source software license.

**Published Specifications:** the published Software specifications existing at the time Ordering Activity ordered Software from HDS FED. These are located at [hds.com](http://hds.com) and may also be included with the products.

**Software:** the object code format of (i) programming firmware embedded in the Equipment to enable it to perform its basic functions (“**Operating Software**”) and (ii) software programs supplied by us (“**Programs**”) and (iii) any updates, related documentation and specifications. Software may include Open Source Software.

**Use:** to use Software in live production for processing data.

**Warranty Period:** means the ninety-day period following delivery of the Software.

**Ordering Activity:** end user of the Software.

Agreed and Accepted:

Hitachi Data Systems Federal Corporation

Signature:

Name:

Title:

Date:

General Services Administration

Signature:

Name:

Title:

Date:

IDaptive, LLC  
3300 Tannery Way  
Santa Clara, CA 95054

## IDAPTIVE END USER LICENSE AND SERVICES AGREEMENT

THIS END USER LICENSE AND SERVICES AGREEMENT (this "Agreement") constitutes a legal agreement between you, the undersigned Ordering Activity under GSA Schedule contracts ("Customer" or "Ordering Activity") and IDaptive, LLC, a Delaware limited liability company ("IDaptive"), with respect to the Cloud Service identified below. If Customer does not agree to the terms of this Agreement, IDaptive is unwilling to grant Customer any rights to use the Cloud Service. In such event, Customer may not use the Cloud Service, and Customer should promptly cease use of the Cloud Service and accompanying Documentation.

The terms and conditions set forth in this Agreement and in any Schedule issued under this Agreement shall control in the event that there are different, inconsistent or additional terms set forth in any other purchase order submitted by Customer or invoice issued by IDaptive. The terms and conditions of any Schedule shall incorporate the terms and conditions of this Agreement and shall have precedence over any conflicting terms and conditions contained in this Agreement. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

### 1. DEFINITIONS

- 1.1. "**Affiliate**" means any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such party. Customer shall notify IDaptive in writing of the identity of its Affiliates and shall be jointly and severally liable for such Affiliate's performance of its obligations under this Agreement.
- 1.2. "**Claim**" shall have the meaning given to such term in Section 5.1.
- 1.3. "**Cloud Service**" means any on-line software service operated by IDaptive and accessible to Customer via the internet, specified on a Schedule.
- 1.4. "**Cloud Service Addendum**" means the Cloud Service Addendum attached hereto as Exhibit A, initially as in effect on the Delivery Date and as such document may be modified from time to time thereafter in accordance with its terms.
- 1.5. "**Compute Hour**" means access to the Cloud Service for a period of one hour. Any partial hour will be rounded up to the next full hour.
- 1.6. "**Confidential Information**" shall have the meaning given to such term in Section 10.1.
- 1.7. "**Consulting Fees**" means the fees charged to Customer by IDaptive for Consulting Services.
- 1.8. "**Consulting Materials**" shall have the meaning given to such term in Section 3.1.
- 1.9. "**Consulting Services**" means installation, consulting, implementation or training services, if any, provided to Customer by IDaptive or its representative under this Agreement.
- 1.10. "**Delivery Date**" means the date on which the notification of the start of the Cloud Service ordered under a Schedule is electronically sent by IDaptive to Customer.
- 1.11. "**Distributor**" means any independent value added distributor (VAD) authorized by IDaptive to distribute IDaptive software and/or services to Resellers only, unless otherwise provided for in the applicable distribution agreement.
- 1.12. "**Documentation**" means IDaptive's end user documentation made generally available by IDaptive for use with the Cloud Service, whether published on-line or provided in hard copy. Documentation shall include any revisions, enhancements and new versions of Documentation.
- 1.13. "**IDaptive**" means IDaptive, LLC, a Delaware limited liability company, or a subsidiary of IDaptive, LLC that provides the Cloud Service or Consulting Services to Customer under this Agreement, as the context requires.
- 1.14. "**Jump Start Service**" means a set of pre-packaged services offered by IDaptive that includes training, on-site fixed deliverables and travel costs for a fixed price. The details of these offerings will be provided in a Statement of Work, if applicable.
- 1.15. "**Local Software Components**" means the downloadable software components necessary to utilize certain functionality of the Cloud Service that Customer may install on devices such as phones, tablets, PCs or Macs and any revisions, enhancements and new versions of such software components, made generally available by IDaptive for use with the Cloud Service, in each case in its machine-readable object code form.
- 1.16. "**Project Authorization**" shall have the meaning given to such term in Section 3.1.
- 1.17. "**Reseller**" means any independent value added reseller (VAR) authorized by IDaptive to distribute IDaptive software and/or services to Customer.
- 1.18. "**Schedule**" means any addendum, exhibit, quote, schedule or Statement of Work to this Agreement in a form approved by IDaptive.
- 1.19. "**Statement of Work**" shall have the meaning given to such term in Section 3.1.
- 1.20. "**Subscription Fee**" means the fee charged to Customer by IDaptive for the Cloud Service (including Technical Support) either for the Subscription Term or for the number of Compute Hours purchased. If Customer purchases the Cloud Service from a Reseller, Customer may pay the Subscription Fee to the Reseller and not to IDaptive directly.
- 1.21. "**Subscription Term**" means the period during which Customer is subscribed to the Cloud Service as set forth on an applicable Schedule.

1.22. **“Technical Support”** means the services provided by Idaptive or its representative with each subscription at the level set forth on an applicable Schedule under the Idaptive Technical Support Policy posted at <https://support.idaptive.com>, as such document may be modified from time to time.

1.23. **“Third Party Software”** means any software that is not owned by Idaptive that is identified in the Documentation or on [www.idaptive.com](http://www.idaptive.com) and related Idaptive websites and user portals.

1.24. **“User”** means an employee, contractor, client or customer of Customer to whom Customer provides access to the Cloud Service, the number or other limitations of which are set forth on an applicable Schedule.

1.25. **“User Account”** means electronic credentials a User uses to access to the Cloud Service.

## SUBSCRIPTION & LICENSE

**Cloud Service.** Subject to the terms and conditions of this Agreement and the Cloud Service Addendum and Customer’s payment of the applicable Subscription Fee, Idaptive grants Customer a worldwide, non-exclusive, non-transferable right, without the right to sublicense and (except as otherwise provided on a Schedule) solely for its own business operations to use the Cloud Service to manage the number of devices for which Customer has subscribed, and have the number of Users for which Customer has subscribed use the Cloud Service in accordance with the terms of the Documentation and this Agreement. The term of such license shall be the Subscription Term or the number of Compute Hours purchased by Customer.

**SAP Online Marketplaces.** The terms of this paragraph shall apply to the Cloud Service purchased on SAP Online Marketplaces. Idaptive and Customer acknowledge that Idaptive is solely responsible for providing the Cloud Service and Technical Support services as set forth herein and SAP has no obligation to furnish any such services to Customer. To the maximum extent permitted by applicable law, SAP will have no warranty obligation to Customer with respect to the Cloud Service and any claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to the warranties set forth in this Agreement shall be Idaptive’s sole responsibility. Idaptive and Customer acknowledge that Idaptive, not SAP, is responsible for addressing any claims of Customer or any third party relating to the Cloud Service or Customer’s possession and/or use of the Cloud Service. In the event of any third party claim that the Cloud Service infringes the third party’s intellectual property rights, Idaptive and Customer acknowledge that Idaptive, not SAP, will be solely responsible for the investigation, defense, settlement and discharge of any such infringement claim subject to Section 5 of this Agreement.

**Local Software Components.** Subject to the terms and conditions of this Agreement and payment of the applicable Subscription Fee, Idaptive grants Customer a worldwide, non-exclusive, non-transferable license, without the right to sublicense and (except as otherwise provided on a Schedule) solely for its own business operations, to install on and use the Local Software Components to manage the number of devices for which Customer has subscribed, and have the number of Users for which Customer has subscribed use the Local Software Components in accordance with the terms of the Documentation and this Agreement. The term of such license shall be the Subscription Term or the number of Compute Hours purchased by Customer. Customer may reproduce the Local Software Components and Documentation only as necessary to use the Cloud Service. Customer shall ensure that each copy contains all titles, trademarks, and copyright and restricted rights notices as in the original. Customer shall implement all commercially reasonable measures to ensure that its Users comply with the restrictions and limitations of this Agreement.

**Evaluation Use License.** In the event that the Cloud Service is licensed only for evaluation use, the terms of this paragraph shall apply. Idaptive hereby grants Customer a personal, non-exclusive, non-transferable license, without right of sublicense, to use the Cloud Service commencing upon initial use of the Cloud Service and, unless Customer and Idaptive agree to a different period, will terminate after a period of thirty (30) days (the “Evaluation Period”). Customer may use the Cloud Service for an unlimited number of Users and devices during the Evaluation Period. Cloud Service licensed for evaluation use will automatically disable itself at the end of the Evaluation Period, as it employs a restriction mechanism which restricts the program to a limited working period of time. This restriction mechanism and the manner in which it enforces the restriction is maintained in confidence by Idaptive as a trade secret, and Customer may not publish, disclose or reveal it. Customer agrees not to do anything to circumvent or defeat the restriction mechanism. Notwithstanding anything to the contrary in this Agreement, Sections 5 (Intellectual Property Indemnity), 7.1 (Cloud Service Warranty) and 7.2 (Consulting Services Warranty) shall not apply to evaluation use.

**Restrictions.** The rights granted in Section 2.1 through 2.3 are subject to the following restrictions: (i) Customer shall not reverse engineer, disassemble, decompile or otherwise attempt to derive or discover the source code of the Local Software Components or the Cloud Service, in whole or in part, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation; (ii) Customer shall not sublicense or use the Cloud Service for commercial time-sharing, rental, outsourcing, application or managed service provision, or service bureau use, or to train persons other than Users, unless previously agreed to in writing by Idaptive; (iii) Customer may not remove any patent, trademark, copyright, trade secret or other proprietary notices or labels on the Cloud Service, Local Software Components or Documentation, (iv) Customer shall not disclose the results of any performance, functional or other evaluation or benchmarking of the Cloud Service to any third party without the prior written permission of Idaptive; (v) Customer may not use the Cloud Service if Customer is a competitor of Idaptive; (vi) Customer shall not modify or create any derivative works of the Cloud Service, Local Software Components or Documentation; and (vii) Customer shall not attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Cloud Service or the data contained therein. In the event that any Third Party Software is required for Customer’s use of the Cloud Service, e.g., GoogleMaps for location services, Customer acknowledges that the terms of use applicable to such Third Party Software are different than those of this Agreement.

**Retention of Rights.** Idaptive reserves all rights not expressly granted to Customer in this Agreement. Without limiting the generality of the foregoing, Customer acknowledges and agrees (i) that Idaptive and its third party licensors retain all rights, title and interest in and to the Cloud Service, Local Software Components and Documentation and (ii) that it does not acquire any rights, express or implied, in or to the foregoing, except as specifically set forth in this Agreement. Any new features, functionality, corrections or enhancements for the Cloud Service or Local Software Components suggested by Customer shall be free from any confidentiality restrictions that might otherwise be imposed upon Idaptive pursuant to Section 10, and may be incorporated into the Cloud Service or Local Software Components by Idaptive. Customer acknowledges that the Cloud Service or Local Software Components incorporating any such new features, functionality, corrections or enhancements shall be the sole and exclusive property of Idaptive.

**Compute Hour Usage Certification.** The Cloud Service includes functionality that allows Customer to run a report to show the number of Compute Hours used by Customer during a specified period of time. If Customer has subscribed for Compute Hours, Customer will either permit the Cloud Service to automatically send a Compute Hour usage report or provide Idaptive with a Compute Hour usage report within fifteen (15) business days of the end of each calendar quarter. If the report reveals that Customer has used more Compute Hours than Customer has subscribed for, Idaptive shall invoice Customer for the excess Compute Hours used.

## CONSULTING SERVICES

**Consulting Services.** From time to time, Customer may request, through provision of an executed project authorization in the form required by Idaptive, that Idaptive, or its duly authorized representative perform Consulting Services (a Government purchase order, "Statement of Work" or "Quotation" or, each and collectively, "Project Authorization"). Idaptive shall have no obligation to perform Consulting Services until and unless it accepts a Project Authorization. Customer shall be responsible for providing Idaptive's representatives with access to qualified Customer employees and Customer-controlled software and hardware, and safe access to Customer's premises, each as required to allow Idaptive to perform the Consulting Services. Idaptive's representatives will comply with Government security requirements, including reasonable written rules and regulations of Customer with respect to Customer's premises, provided that such rules and regulations are provided to Idaptive sufficiently in advance of the scheduled start date of the Consulting Services. All materials and information used or generated by Idaptive in the performance of Consulting Services ("Consulting Materials"), and all intellectual property rights therein, shall be the sole property of Idaptive. Idaptive grants to Customer a perpetual, worldwide, non-exclusive, non-transferable license, without the right to sublicense and solely for its own business operations, to use and have Users use the Consulting Materials provided to Customer under this Agreement, subject to all of the provisions of this Agreement governing Local Software Components and Documentation, as applicable, and any applicable Schedules. The rights to any of Customer's preexisting proprietary business information, or results of any compilation thereof, which are used in or result from Consulting Services and Consulting Materials, shall remain the sole property of Customer.

**3.2. Cancellation.** In the event that Idaptive notifies Customer of Customer's failure to perform any of its obligations under a Statement of Work, which failure shall have prevented Idaptive from meeting any deadline, such deadline shall be extended by an amount of time equal to the length of such failure to perform on the part of Customer. Idaptive shall have the right to charge Customer at Idaptive's then applicable daily rates, in accordance with the GSA Schedule pricelist, to the extent that such delays cause Idaptive to provide additional services or to spend additional time on the project. In the case of extended delays as to which Customer provides reasonable advance written notice regarding the expected duration of the delay, Idaptive shall make a good faith effort to redeploy its resources to other projects to mitigate such additional charges. Idaptive shall have the right to rely upon all decisions and approvals of Customer's contracting officer.

## TERM AND TERMINATION

**Term.** The term of this Agreement shall commence on the Delivery Date and shall continue until terminated in accordance with the provisions of this Section 4. Upon expiration or termination of the then-current Subscription Term, Customer's subscription may be renewed for an additional year by issuing a new purchase order.

**Reserved.**

**Reserved.**

**Reserved.**

**Effect of Termination.** Except as otherwise set forth herein, termination of this Agreement, any subscription, any Schedule or any Project Authorization shall not limit either party from pursuing other remedies available to it, nor shall such termination relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under any Schedule. The parties' rights and obligations under Sections 2.5 (Restrictions), 2.6 (Retention of Rights), 2.7 (Compute Hour Usage Certification), 4.5 (Effect of Termination), 4.6 (Handling of Software and Confidential Information Upon Termination), 7.3 (Disclaimers), 10 (Nondisclosure) and 11 (Miscellaneous), as well as any obligation to pay fees accrued prior to termination, shall survive termination of this Agreement.

**Handling of Software and Confidential Information Upon Termination.** Upon termination of this Agreement, any subscription, any Schedule or any Project Authorization, Customer shall (i) cease using the applicable Cloud Service, Local Software Components and Documentation and related Confidential Information of Idaptive, and (ii) certify to Idaptive within thirty (30) days after termination that Customer has destroyed, or has returned to Idaptive, the Local Software Components, Documentation, related Confidential Information of Idaptive, and all copies thereof, whether or not modified or merged into other materials. Following termination of this Agreement, and subject to the Cloud Service Addendum, each party will return or destroy the other party's Confidential Information and within thirty (30) days following the other party's written request, the other party shall certify to the requesting party that it has destroyed or returned to the requesting party all Confidential Information of the requesting party, and all copies thereof, whether or not modified or merged into other materials.

## INTELLECTUAL PROPERTY INDEMNITY

**5.1. Generally.** Idaptive will defend, indemnify and hold Customer harmless against any claim brought by a third party to the extent it alleges that the Cloud Service directly infringes any United States patent, copyright or trademark, or misappropriates any trade secret, of that third party ("Claim"), and will pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Idaptive arising out of such Claim; provided that: (i) Customer gives Idaptive prompt written notice upon learning of a Claim or potential Claim; (ii) Idaptive may assume control of the defense of such Claim and all related settlement negotiations; and (iii) Customer reasonably cooperates with Idaptive, at Idaptive's request and expense, in the defense or settlement of the Claim, including the provision of all assistance, information and authority reasonably requested by Idaptive. In no event shall Idaptive enter into any settlement or agree to any disposition, without the prior written consent of Customer, that contains an admission of liability or wrongdoing on the part of Customer, or otherwise prejudices the rights of Customer. Notwithstanding the foregoing, Idaptive shall have no liability for any claim of infringement based on (a) the modification of the Cloud Service by anyone other than Idaptive or its agents, (b) the use of the Cloud Service other than in accordance with the Documentation and this Agreement, (c) the combination of the Cloud Service with other software or hardware not provided by Idaptive, where the combination causes the infringement and not the Cloud Service standing alone, or (d) subscriptions for no fee, including a trial, beta or evaluation license agreement. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

**Additional Remedies.** If the Cloud Service, or any material portion thereof, is held by a court of competent jurisdiction to infringe, or if Idaptive believes that the Cloud Service may be subject to a Claim or held to infringe, Idaptive shall in its commercially reasonable judgment and at its expense (a) replace or modify the Cloud Service so as to be non-infringing, provided that the replacement software or service contains substantially similar functionality; or (b) obtain for Customer the rights to continue using the Cloud Service; or (c) if non-infringing software or the rights to use the Cloud Service cannot be obtained upon commercially reasonable terms, terminate the then-current subscription. Upon any such termination of the then-current subscription, Idaptive shall refund any prepaid and unused amounts paid for the then-current subscription. This Section 5.2 shall not apply to subscriptions for no fee, including a trial, beta or evaluation license agreement.

**Exclusive Remedy.** This Section 5 sets forth Customer's exclusive remedy, and Idaptive's entire liability, with respect to infringement or misappropriation of intellectual property rights of any kind arising out of this Agreement.

## 6. RESERVED

## 7. WARRANTIES AND REMEDIES

**7.1. Cloud Service Warranty.** Idaptive warrants to Customer that, during the Subscription Term, the Cloud Service will perform in material conformity with the functions described in the applicable Documentation. Such warranty period shall not apply to subscriptions for no fee. Idaptive will use commercially reasonable efforts to remedy any material non-conformity with respect to the Cloud Service at no additional charge to Customer. In the event Idaptive is unable to remedy the non-conformity and such non-conformity materially affects the functionality of the Cloud Service, Customer may promptly terminate the applicable subscription. In the event Customer terminates its subscription pursuant to this Section 7.1, Customer will receive a refund of any prepaid and unused portion of the Subscription Fee. The foregoing shall constitute the exclusive remedy of Customer, and Idaptive's entire liability, with respect to any breach of this Section 7.1.

**7.2. Consulting Services Warranty.** Idaptive warrants to Customer that the Consulting Services provided by Idaptive will be performed in a professional manner and in accordance with generally prevailing industry standards. Customer must give notice of any breach of this warranty within thirty (30) days from the date that the Consulting Services are completed, as provided in the Project Authorization applicable to the Consulting Services engagement. In such event, at Idaptive's option, Idaptive shall (a) use commercially reasonable efforts to re-perform the Consulting Services in a manner that conforms to the warranty, or (b) refund to Customer the fees paid by Customer to Idaptive for the non-conforming Consulting Services. The foregoing shall constitute the exclusive remedy of Customer, and Idaptive's entire liability, with respect to any breach of this Section 7.2.



7.3. **Disclaimers.** Idaptive does not warrant that (i) the Cloud Service will meet Customer's requirements, (ii) the Cloud Service will operate in combination with other hardware, software, systems or data not provided by Idaptive (except as expressly specified in the Documentation), (iii) the operation of the Cloud Service will be secure, timely, uninterrupted or error-free, or (iv) all errors in the Cloud Service will be corrected. THE WARRANTIES STATED IN THIS SECTION 7 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND QUALITY OF SERVICE. NO WARRANTIES SHALL ARISE UNDER THIS AGREEMENT FROM COURSE OF DEALING OR USAGE OF TRADE.

## 8. RESERVED

## 9. RESERVED

## 10. NONDISCLOSURE

10.1. **Confidential Information.** Each party may have access to information of the other party that is confidential and/or proprietary ("Confidential Information"). Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential (whether disclosed in writing, orally or by inspection of tangible objects). Idaptive's Confidential Information shall include, but not be limited to, the Cloud Service, Local Software Components, Documentation, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, and the results of any comparative or other benchmarking tests with respect to the Cloud Service, in each case regardless of whether such information is identified as confidential. Confidential Information includes all information received from third parties that either party is obligated to treat as confidential and oral information that is identified by either party as confidential.

10.2. **Exceptions.** A party's Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information. In addition, Section 10 will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required to by law or valid order of a court or other governmental authority; provided, however, that the responding party shall first have given notice to the other party to enable the disclosing party to seek a protective order or take other appropriate action.

10.3. **Restrictions.** Unless otherwise required by applicable law, the parties shall not make each other's Confidential Information available in any form to any third party (except third parties who are Users) or use each other's Confidential Information for any purpose other than as authorized under this Agreement. Each party shall take all commercially reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of this Agreement. The receiving party shall notify the disclosing party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by the receiving party, and will cooperate with the disclosing party in every reasonable way to help the disclosing party regain possession of the Confidential Information and prevent its further unauthorized use. Except as expressly stated in this Agreement, no license or intellectual property right to Confidential Information is granted due to the disclosure by either party to the other party, and each party retains ownership of its Confidential Information. The parties shall hold each other's Confidential Information in confidence both during the term of this Agreement and for a period of five (5) years after any termination of this Agreement. Idaptive recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

## 11. MISCELLANEOUS

11.1. **Governing Law.** This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the Federal laws of the United States, excluding its conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are specifically excluded from application to this Agreement.

11.2. **Notices.** All notices required to be sent under this Agreement shall be in writing, signed by or on behalf of the party giving it, and shall be deemed to have been given upon (i) the date delivered by recognized overnight courier or by hand delivery or (ii) if by certified mail return receipt requested, on the date received, to the addresses set forth on a purchase order by Customer or invoice from Idaptive and to the attention of "Legal Department" and the signatories of the relevant Schedule, or to such other address or individual as the parties may specify from time to time by written notice to the other party.

11.3. **Assignment.** Neither party shall sell, lease, assign or otherwise transfer this Agreement or any rights or obligations under this Agreement in whole or in part, and any such attempted assignment shall be void and of no effect without the advance written consent of the other party, such consent not to be unreasonably withheld or delayed; Any permitted assignee will assume all obligations and rights of its assignor under this Agreement (or related to the assigned portion in case of a partial assignment).



11.4. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

11.5. **Waiver.** The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of Idaptive's proprietary rights in the Cloud Service, Local Software Components or Documentation, no action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has accrued.

11.6. **Force Majeure.** This Agreement is subject to FAR 52.212-4 (f) Excusable delays.

11.7. **Successors and Assigns; Third Party Beneficiaries.** All provisions of the Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective successors and permitted assigns of Idaptive and Customer. Except as expressly provided in this Agreement, there are no third party beneficiaries of any of the warranties, rights or benefits of this Agreement.

11.8. **Legal and Export Compliance.** Customer shall comply fully with all international and U.S. laws and regulations that apply to the Cloud Service, Local Software Components and Documentation and to Customer's use thereof, including but not limited to the U.S. Export Administration Regulations and other end-user, end-use and destination restrictions issued by U.S. and other governments. Without limiting the generality of the foregoing, Customer expressly agrees that it shall not, and its representatives shall not, directly or indirectly, export, re-export, divert, or transfer the Cloud Service, Local Software Components or Documentation or any direct product or portion thereof, including via remote access, (i) to any country or region so restricted by the U.S. economic sanctions or export controls, including but not limited to applicable regulations of the U.S. Commerce Department, the U.S. Treasury Department, and the U.S. Department of State, to any person or entity controlled by any such country or region, or to any national or resident of any such country or region, other than nationals who are lawfully admitted permanent residents of countries not subject to such restrictions, (ii) to any person or entity on the U.S. Treasury Department's Specially Designated Nationals and Blocked Persons List, (iii) to any person or entity on the U.S. Commerce Department's Denied Persons List, or (iv) to any person or entity to which sale is prohibited under the Enhanced Proliferation Control Initiative ("EPCI"). Idaptive shall be entitled to take all actions it deems necessary to ensure compliance with this Section, including but not limited to developing internal compliance practices such as performing checks and implementing use restrictions with respect to the Cloud Service, Local Software Components and Documentation. Customer agrees to the foregoing and represents that Customer is not located in, under the control of, a national or resident of any such country or region, on any such list, or subject to prohibition under EPCI.

11.9. **U.S. Government License Rights.** The Local Software Components and Documentation covered by this Subscription Agreement are "Commercial Item(s)," consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as these terms are defined in 48 C.F.R. §2.101 and used in 48 C.F.R. §12.212. Consistent with 48 C.F.R. §12.212, if such Local Software Components or Documentation are being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), such Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users for use by such government, or to any such US Government prime contractors or subcontractors for use by such prime contractors or subcontractors in the performance of work under a US Government prime contract or subcontract or for any other use, (a) only as Commercial Items and (b) with only those rights customarily provided to the public and as are granted to all other, non-government-related, end-users, as such commercial license rights are delineated in the terms and conditions of this Agreement. All rights relating to unpublished materials are hereby reserved under the copyright laws of the United States.

11.10. **Relationship Between the Parties.** Nothing in this Agreement shall be construed to create a partnership, joint venture, employment or agency relationship between the parties.

11.11. **Entire Agreement.** This Agreement, together with the attached Cloud Service Addendum, the underlying GSA Schedule Contract, GSA Schedule Pricelist and any Schedule referring to this Agreement, each of which is incorporated by reference, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement and such Cloud Service Addendum and Schedules.

### Exhibit A – Cloud Service Addendum

This Cloud Service Addendum (this "Addendum") is an addendum to the End User License and Services Agreement (the "Agreement") between Idaptive, LLC, ("Idaptive") and the Customer as defined in the Agreement. Capitalized terms used in this Addendum and not otherwise defined below shall have the meanings given to such terms in the Agreement. In the event of a conflict between the terms of this Addendum and the Agreement, the terms of this Addendum shall control. Customer and Idaptive hereby agree to the following:

#### Idaptive Obligations

**Availability of Service.** Idaptive uses an industry-leading cloud service provider that provides a monthly uptime availability of at least 99.9% to host the Cloud Service. Idaptive will provide 99.9% availability for the Cloud Service during the cloud service provider's service availability. Idaptive measures the availability of the Cloud Service, monthly. For purposes of the foregoing, "availability" means that the Cloud Service returned the correct, expected data when queried. Idaptive agrees to use its commercially reasonable efforts to make the Cloud Service generally available 99.9% of the time, 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Idaptive shall give at least two weeks online or e-mail notice to Customer and which Idaptive shall schedule to the extent reasonably practicable during the weekend hours from 11:00 p.m. PT Friday to 12:00 p.m. PT Sunday); or (b) any unavailability caused by circumstances beyond Idaptive's reasonable control, including the force majeure provisions identified in Section 11.6 of the Agreement and computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Idaptive's possession or control, and network intrusions or denial of service attacks. Service availability is documented monthly at [www.idaptive.com/trust](http://www.idaptive.com/trust).

**Security.** Idaptive shall maintain commercially reasonable administrative, physical and technical safeguards to maintain and protect Customer's data that is submitted to the Cloud Service by Customer. Idaptive shall not be responsible for loss of data transmitted on networks not owned or operated by Idaptive, including the Internet. Idaptive shall produce an SSAE 16 (SOC 2) report (or similar alternative report as reasonably selected by Idaptive) on an annual basis, and Customer may request a copy of such report and agrees that such report shall be deemed Idaptive's Confidential Information under the Agreement.

**Ownership of Customer Data.** Except for software that Idaptive licenses to Customer, as between the parties, Customer retains all right, title, and interest in and to Customer Data, as defined in Section 2.4 of this Addendum. Idaptive acquires no rights in Customer Data other than the right to host Customer Data within the Cloud Service, including the right to use and reproduce Customer Data solely as necessary to provide the Cloud Service.

**Use of Customer Data.** Idaptive will use Customer Data (other than in aggregate and anonymized form) only to provide Customer with the Cloud Service. This use may include troubleshooting to prevent, find, and fix problems with the operation of the Cloud Service. It may also include improving features for finding and protecting against threats to Users. Idaptive may share aggregated and anonymized Customer Data with business partners for use for their business purposes, but Idaptive de-identifies and aggregates such data so that the data cannot be traced to an individual, a customer, or a device. Idaptive will not use Customer Data or derive information from it for any advertising or other marketing purposes without Customer's consent.

**Third-party requests.** Idaptive will not disclose Customer Data to a third party (including law enforcement, other government entity, or civil litigant, but excluding Idaptive's subcontractors) except as Customer directs or unless required by law. Should a third party contact Idaptive with a demand for Customer Data, Idaptive will attempt to redirect the third party to request that data directly from Customer. As part of this effort, Idaptive may provide Customer's basic contact information to the third party. If compelled to disclose Customer Data to a third party, Idaptive will promptly notify Customer and provide a copy of the demand, unless legally prohibited from doing so. Customer is responsible for responding to requests by third parties regarding Customer's use of the Cloud Service, such as requests to take down content under the Digital Millennium Copyright Act.

## Customer Obligations

**Internet Access.** Customer must have a high speed Internet connection in order to use the Cloud Service. Customer shall procure and maintain the hardware, software and systems that connect Customer's network to the Cloud Service, and shall implement all reasonable communication and security protocols necessary to use the Cloud Service.

**Customer Information.** Customer shall provide and maintain with Idaptive accurate and complete information on Customer's legal business name, address, phone number, email address(es) and other information reasonably requested by Idaptive. Customer agrees that Idaptive may provide any and all communications, reports, statements and notices (other than legal notices under the Agreement) to such email address(es), and may rely on any communications, directions or statements received from such email address(es).

**Security.** Customer shall maintain commercially reasonable administrative, physical and technical safeguards to prevent unauthorized access to or use of the Cloud Service. Customer is responsible for all activity occurring under its User Accounts, including, but not limited to those that access the Cloud Service, [www.idaptive.com](http://www.idaptive.com) and related Idaptive websites and user portals, and for abiding by all applicable local, national and international laws. Customer shall promptly notify Idaptive of any unauthorized access to or use of the Cloud Service and any loss or theft of any User's username or password of which Customer becomes aware.

**Customer Data.** Customer is responsible for the legality, quality, accuracy and integrity of any data and other information that Customer submits to Idaptive in the course of using the Cloud Service ("Customer Data"). Idaptive will not be responsible for any corrections, deletions or damage to Customer Data. Customer Data may include documents, images and other digital information that Customer chooses to transmit to and store in the Cloud Service. Customer is solely responsible for ensuring that Customer Data is not offensive, obscene, inappropriate or unlawful and that it

does not contain any viruses or harmful content. Any Customer Data that Idaptive determines, in its sole discretion, may be offensive, obscene, inappropriate or unlawful or that may contain viruses or harmful content may be removed from the Cloud Service.

## Changes

**Changes to the Cloud Service.** Idaptive may make changes to the functionality, user interface, usability of the Cloud Service and related Documentation from time to time. In the event of any material change to the functionality, user interface, usability of the Cloud Service, as Customer's sole remedy in the event of such change, Customer shall have the right to terminate the Agreement and receive a pro-rata refund of fees paid by Customer for the Cloud Service for the terminated portion of the term.

**Changes to this Addendum.** Idaptive may make changes to this Addendum from time to time, but will not reduce the level of service for which Customer has paid. In the event of any material change to this Addendum, Idaptive will notify Customer by either sending an email to the email address(es) provided by Customer pursuant to this Addendum, or will post a notice in Customer's administrator's account. If Customer does not agree to such change, Customer must notify Idaptive within thirty (30) days of Customer's receipt of such change, in which case the change will not take effect until the end of the then current Subscription Term.

## Suspension and Termination

### Reserved.

**Suspension for Inappropriate Use.** Idaptive reserves the right to temporarily suspend Customer's access of the Cloud Service if Idaptive determines that Customer's use is contrary to law or causing material harm to Idaptive or others. Idaptive will provide reasonable notice of such suspension. Customer agrees that Idaptive will not be liable to Customer, any Affiliate or any third party for any temporary suspension under this Section.

**Handling of Data on Termination.** In the event of any expiration or termination of Customer's use of the Cloud Service, upon Customer's request, Idaptive will export Customer's data that is stored on the Cloud Service to a mobile storage medium and will return such data to Customer. Alternatively, Customer may request that Idaptive delete all such data. Idaptive may delete all of Customer's data that is stored on the Cloud Service thirty (30) days following any expiration or termination of Customer's use of the Cloud Service. Customer agrees that Idaptive will not be liable to Customer, any Affiliate or any third party for any data deleted under this Section 4.3.

IGEL TECHNOLOGY CORPORATION  
540 HOWARD STREET SAN FRANCISCO, CA 94105

## IGEL END USER LICENSE AGREEMENT (EULA) FOR UNITED STATES

PLEASE READ THIS END USER LICENSE AGREEMENT (“EULA”) CAREFULLY BEFORE USING IGEL SOFTWARE. BY BOTH PARTIES ACCEPTING THIS AGREEMENT IN WRITING, YOU (A) ACCEPT THIS EULA AND AGREE THAT END USER IS BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF END USER AND BIND END USER TO ITS TERMS. IF END USER DOES NOT AGREE TO THE TERMS OF THIS EULA, IGEL DOES NOT LICENSE THE IGEL SOFTWARE TO END USER, AND END USER SHALL NOT ACCESS, INSTALL OR USE THE IGEL SOFTWARE, AND END USER SHALL PROMPTLY RETURN THE UNUSED IGEL SOFTWARE TO THE RESELLER FROM WHOM IT WAS OBTAINED.

- General.** This End User License Agreement (“EULA”) is between IGEL Technology Corp., located at 594 Howard Street, Suite 200, San Francisco, California 94105 (“IGEL”) and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“End User”). This EULA applies solely to licenses to IGEL Software granted by IGEL America Sales Corp. as licensor. End User acknowledges and agrees that, as between End User and IGEL, IGEL and its licensors (including IGEL Technology GmbH) are the sole owners of all right, title and interest in and to the IGEL Software, and all Intellectual Property Rights (as defined below) adherent or in connection with the IGEL Software are and shall remain the sole property of IGEL. All rights not expressly granted to End User are retained by IGEL and its licensors. “IGEL Software” means the object code form of the IGEL proprietary software solutions, including “IGEL OS”, the “Universal Management Suite” (“IGEL UMS”) and/or the “IGEL Enterprise Management Pack” (“IGEL EMP”) licensed to End User under this EULA, together with any Updates thereto and Documentation. The full use of the IGEL Software requires the purchase of a Subscription Key as further described in Section 2 below. “Documentation” means, collectively, the official, published IGEL Software operation instructions, release notes and user manuals for the IGEL Software, in electronic or written form, that IGEL has provided or otherwise made available to End User. “Intellectual Property Rights” means all past, present, and future rights of the following types, which may exist or be created under the laws and acts of any jurisdiction in the world: (a) rights associated with utility models and designs, works of authorship, including copyrights, moral rights, and mask work rights; (b) registered and unregistered trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent, industrial property rights, and certain technical and non-technical know-how; (e) other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, continuations, combinations, divisions, and reissues of, and applications for, any of the rights referred to in parts (a) through (e) of this sentence.

2. **Obtaining and Using IGEL Software.** End User obtains IGEL Software, whether as a preinstalled release or as executable installation files, in different ways, for example via a software download or preinstalled on a “**Device**” (e.g., endpoints or virtual machines). All non-licensed releases (i.e., without any unlocked features) and executable installation files have greatly reduced usability. The fully-intended use of the IGEL Software requires a “**Subscription Key**”, a technically generated and unique letter/number- combination, to obtain a productive functionality of the IGEL Software by unlocking the features of the IGEL Software through input of the applicable license inside the IGEL Software. With the purchase of the IGEL Software and Maintenance and Support (as defined in Section 15) through a Reseller, the End User receives one or more Subscription Keys. In the IGEL License Portal (“**ILP**”), the End User can use the Subscription Keys to carry out the technical provisioning of the licenses and services on the Devices. The purchase is executed through a Reseller under a purchase order or other order document between End User and the Reseller where a corresponding order from an IGEL authorized distributor who is distributing to the Reseller has been accepted by IGEL (such purchase order, an “**Order Form**”). End User agrees to pay the amounts set forth in the relevant purchase order or other order form between End User and the applicable Reseller. Fees for Subscription Keys for licenses for IGEL Software and for Maintenance and Support shall be invoiced as agreed between End User and the Reseller. Notwithstanding the foregoing, End User understands and agrees that fees for Subscription Keys for licenses to IGEL Software and fees for Maintenance and Support shall be paid in advance of the relevant term covered. End User acknowledges that the Reseller and IGEL are independent of each other and that the Reseller does not have any authority to bind IGEL in any way, make any modifications to this EULA or to make any warranties or representations on IGEL’s behalf and that IGEL has no liability whatsoever for any acts or omissions of any Reseller.
3. **License Grant.** Subject to and conditioned upon End User’s compliance with the restrictions and other terms and conditions of this EULA and full payment of the applicable Subscription Key fees, IGEL hereby grants to End User a limited, non-exclusive, non-transferable and non-sublicensable license, without rights to sub-license, to use the IGEL Software for which End User has purchased a Subscription Key for End User’s internal business purposes and solely in accordance with the Documentation. Use of the IGEL Software shall be strictly limited to the number and type of licenses for either a specified period of time or perpetually (as further described in Section 5.1) as set forth on the applicable Order Form pursuant to which Subscription Keys are purchased from IGEL.
4. **Third Party Service Provider.** End User may permit its Third Party Service Provider (as defined below) to access and use the IGEL Software solely for End User’s and its Affiliates’ (as defined below) benefit and only in accordance with this EULA and the applicable Documentation. End User shall be responsible and liable for all acts and omissions committed by it and its Affiliates, and their respective Third Party Service Providers, as if they were the acts and omissions of End User. End User may not allow any other party to access or use the IGEL Software (except as expressly set forth in Section 6 below). IGEL shall be allowed to take technical measures to protect the IGEL Software and/or with a view to agreed restrictions regarding the license and use of the IGEL Software by End User. End User is not allowed to remove or evade such technical measures. “**Third Party Service Provider**” means an individual employed by or who provides services as an independent contractor to End User or its Affiliates (excluding Outsourcers addressed in Section 6) and who is supported with or uses the IGEL Software for the sole benefit of End User or its Affiliates. “**Affiliate**” means any person or legal entity that controls, is controlled by or is under common control with End User or IGEL (as applicable); where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of an entity through the ownership of voting

securities (more than fifty percent (50%) of an entity's voting or equity securities, contract, voting trust or otherwise).

## 5. License Models.

- 5.1. Depending on the purchased version of the IGEL Software, and Maintenance and Support, the license grant in Section 3 shall be either (a) without restriction in terms of time and territory and limited to installation and use of such IGEL Software on the number of Devices or instances corresponding to the number of licenses purchased by End User (“**Perpetual License**”). or (b) time- limited to the individually purchased duration specified on the Order Form and limited to installation and use of such IGEL Software on the number of Devices or instances corresponding to the number of licenses purchased by End User (“**Subscription License**”). Details on IGEL Software, Maintenance and Support offerings and their corresponding license structure is available at <https://www.igel.com/igel-license-overview/>. To the extent that multiple instances of IGEL Software are installed and executed on a Device, each instance shall require a separate valid license. End User may create copies of IGEL Software solely to the extent that it is necessary to enable the unlocking of functions on the number of Devices or instances, corresponding to the number of licenses purchased with the Subscription Key, and to use IGEL Software as intended. In addition, End User may create a reasonable number of backup copies of IGEL Software as reasonably necessary to support its internal business continuity and disaster recovery operations in the ordinary course of business. End User shall include on all such copies all proprietary rights legends and notices of the IGEL Software.
- 5.2. If the IGEL Software is provided to End User by way of a download, the purchased license includes the right to copy or download the IGEL Software to a Device that meets the minimum technical requirements to operate the applicable IGEL Software.
- 5.3. The simultaneous use of the purchased IGEL Software license on more than one Device is not permitted.
- 5.4. License Portability. End User is entitled to transfer its License (which is bound to a certain Device) to another Device, if and as far as it ceases to use the unlocked IGEL Software on the originally bound Device (e.g., via uninstalling the IGEL Software).
6. **Outsourcer.** End User's right of use under this EULA includes the limited right to permit outsourced services providers to access and use the IGEL Software (other than Test Software) within the framework of cloud or data center services contracted by, and solely for the benefit of, the End User (“**Outsourcer**”), provided that End User shall ensure Outsourcer's compliance with the terms and conditions of this EULA and shall be responsible and liable for all acts and omissions committed by its Outsourcer as if they were the acts and omissions of End User, and any breach by any such Outsourcer of the terms or conditions herein is a breach by End User.
7. **Pre-Release Software;** Evaluation Software. If the IGEL Software provided under this EULA is software that is designated by IGEL (i) as any pre-commercial release software (e.g. indicated by the terms Release Candidate or Technology Preview, as described at <https://kb.igel.com/licensesmore-igelos11/en/software-releases-overview/>) (“**Pre-Release Software**”), and/or (ii) for evaluation or similar purposes (“**Evaluation Software**”, and together with Pre-Release Software, “**Test Software**”), End User may exercise the license grant in Section 3 only for its own internal,



non-production evaluation of the Test Software, and End User may not use the Test Software for any other purpose, including competitive analysis, commercial, professional, or for-profit purposes. End User acknowledges and agrees that the Pre-Release Software may not operate correctly, may be substantially modified prior to first commercial shipment, or may be withdrawn completely at any time. END USER'S DOWNLOAD, INSTALLATION, ACCESS, AND USE OF THE TEST SOFTWARE IS AT END USER'S SOLE RISK AND EXPENSE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS EULA, THE DOWNLOAD, INSTALLATION, ACCESS, AND USE OF TEST SOFTWARE IS PROVIDED "AS IS", AND IGEL DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, SUPPORT OBLIGATIONS, AND OTHER LIABILITIES AND OBLIGATIONS IN CONNECTION WITH THE INSTALLATION, ACCESS, OR USE OF THE TEST SOFTWARE. The license grant Section 3 for Test Software expires 30 days after download of the Test Software unless otherwise agreed in writing by IGEL.

8. **Third Party Software.** End User acknowledges and agrees that the IGEL Software may be provided with certain open source software, as well as any other software products of third parties that are provided together with or in relation to IGEL Software (collectively, "**Third Party Software**"), as referenced in the IGEL Software itself, the Documentation, or on IGEL's website, for use in combination with the IGEL Software. This EULA shall not apply to Third Party Software, and the terms of the license documentation regarding Third Party Software shall govern End User's access to and use of the applicable Third Party Software. Such Third Party Software is distributed to End User solely under the terms set forth in the relevant Third Party Software license agreements (which are referenced in the IGEL Software itself, the Documentation, or on IGEL's website at <https://www.igel.com/terms-conditions/>), and End User acknowledges and agrees that this EULA in no way supplements or detracts from any term or condition therein. Nothing herein shall bind the Ordering Activity to any Third Party Software terms unless the terms are provided for review and agreed to in writing by all parties. ALL THIRD PARTY SOFTWARE IS PROVIDED WITHOUT ANY WARRANTY OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. If and to the extent required by the applicable Third Party Software license, IGEL will make available the required source code for the Third Party Software in response to End User's request.
9. **Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, IGEL shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon any expiration or termination of this EULA, the licenses granted herein will automatically terminate and End User must immediately remove and destroy all copies of the IGEL Software and Documentation, including all back-up copies. Any obligations to pay license, Support, and all other fees incurred prior to termination shall survive termination.
10. **Audit.** During the term of this EULA and for the longer of two (2) years after termination of the EULA or the Support term for the applicable IGEL Software, End User shall maintain accurate and complete records regarding End User's

use of the IGEL Software and End User shall (a) permit IGEL (or persons authorized by IGEL) to inspect such records and End User's computer equipment in order to verify that End User's use of the IGEL Software is in compliance with this EULA and that End User has paid the applicable license fees and Support fees for the IGEL Software; (b) if so requested by IGEL, certify through a director or officer of End User, that End User's use of the IGEL Software is, and has been at all times during the applicable license term been, in accordance with this EULA; and (c) permit IGEL (or persons authorized by IGEL) to inspect records regarding End User's use of the IGEL Software, whether through the provision of Support by IGEL using such tools and/or IGEL Software available to IGEL from time to time, or otherwise. IGEL may conduct an audit no more than once per calendar year (or more frequently if IGEL has knowledge or reasonable belief of End User's non-compliance with any material term of this EULA) and such audits shall take place subject to Government security requirements, during normal business hours and on reasonable prior notice. Without prejudice to any other rights and remedies, where such audit reveals any underpayment, End User shall immediately pay such underpayment to IGEL.

11. **Intellectual Property Indemnification.** IGEL shall (at its own expense) have the right to intervene to defend or settle any unaffiliated third party claim, suit or proceeding brought against End User alleging that the IGEL Software infringes upon any U.S. or Canadian patent or copyright of such third party ("**Infringement Claim**"), and IGEL shall pay, indemnify, and hold End User harmless from any damages finally awarded to such third party by a court of competent jurisdiction as a result of the Infringement Claim or any settlement of the Claim between IGEL and the third party. IGEL's obligations above are conditioned on End User (a) promptly notifying IGEL in writing of the Infringement Claim or threat thereof such that IGEL is not prejudiced by any delay in such notification, (b) doing nothing which may prejudice IGEL's defense of such Infringement Claim, and (c) giving IGEL the right to control the investigation, defense and settlement of the Infringement Claim and, if so requested by IGEL, End User providing reasonable assistance at IGEL's expense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If any Infringement Claim is made or in IGEL's opinion appears possible, IGEL shall, at its sole expense and option either: (i) procure the right for End User to continue to use the alleged infringing IGEL Software; (ii) replace or modify the IGEL Software to make it non-infringing; or (iii), if neither (i) nor (ii) are reasonably achievable, terminate this EULA, and provide End User with a refund of the license fees actually paid to IGEL for End User's affected IGEL Software subject to a straight line depreciation over a three (3) year period from purchase. IGEL assumes no liability for any Infringement Claim or allegations of infringement based on: (i) the combination, operation, or use of the IGEL Software with products, services, hardware, data or other materials not furnished by IGEL, if such Infringement Claim would have been avoided by the use of the IGEL Software alone; (ii) alterations or modifications to the IGEL Software by End User or its agents or at End User's direction; (iii) the failure to install any Updates made available by IGEL; (iv) End User's use of any IGEL Software after IGEL had provided End User with a subsequent non-infringing release of the IGEL Software or its replacement; (iv) use of the IGEL Software otherwise than in accordance with the Documentation and any Applicable Laws; or (v) if End User settles or makes any admissions with respect to an Infringement Claim without IGEL's prior written consent. THIS SECTION 11 STATES IGEL'S SOLE OBLIGATION AND LIABILITY, AND END USER'S EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT OF ANY KIND.

12. **Confidentiality.** Each party shall keep confidential, and not disclose to any third party (except each party's respective Affiliates, employees and consultants who have a need to know and who agree in writing to keep the information confidential on terms no less restrictive than those contained herein) any Confidential Information which may be provided in connection with this EULA. "**Confidential Information**" means any non-public information disclosed by one party to the other party, either directly or indirectly, whether communicated in writing, orally or by inspection of tangible objects (including, without limitation, pricing (Excluding GSA Schedule prices), trade secrets, product plans, products, services, customers, software including the IGEL Software (both object and source code), Documentation, designs, inventions, processes, designs, drawings, engineering, hardware configuration information, marketing or financial information), which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally will be considered to be Confidential Information if such information is identified as Confidential Information at the time of its disclosure, or if such information by its nature should reasonably be understood by the receiving party to be confidential. Confidential Information will include any and all non-public information relating to any IGEL Software and any associated training, Documentation, and other related materials, regardless of whether or not such materials are marked as "Confidential," "Proprietary" or some similar designation. Confidential Information may also include information that is disclosed to a party by one or more third parties. Notwithstanding the foregoing, Confidential Information will not include any information that: (a) was publicly known prior to the time of disclosure by the disclosing party; (b) becomes publicly known after disclosure by the disclosing party to the receiving party through no fault of the receiving party; (c) is already in the possession of the receiving party at the time of disclosure by the disclosing party (as shown by the receiving party's files and records) prior to the time of disclosure; (d) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; or (e) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information (as shown by documents and other competent evidence in the receiving party's possession). In the event Confidential Information is required by law or lawful order to be disclosed by the receiving party, the receiving party will first promptly give the disclosing party written notice of such requirement prior to any disclosure so that the disclosing party may have sufficient time to seek a protective order or other appropriate relief, and disclose only that portion of Confidential Information that the receiving party is legally required to disclose. IGEL recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.
13. **LIMITED SOFTWARE WARRANTY.** IGEL warrants that the IGEL Software will not contain defects that cause the IGEL Software to fail to substantially conform to the applicable Documentation for ninety (90) days following the date of the applicable purchase order authorizing the License Token for the IGEL Software ("Warranty Period"). This Limited Warranty does not apply if the IGEL Software, IGEL Hardware or any other equipment upon which the IGEL Software is authorized to be used: (i) has been altered, except by IGEL or its authorized representative, (ii) has not been installed, operated, repaired or maintained in accordance with instructions supplied by IGEL or its authorized representative, (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence or accident; (iv) is licensed for beta, evaluation, testing or demonstration purposes or other circumstances for which the Reseller does not receive payment of a purchase price or license fee; (v) has not been provided by a Reseller; (vi) is not covered by an active IGEL EULA. This Limited Warranty is only available to the original end user customer ("End User") authorized by the EULA.

- 13.1. **Exclusive Remedy.** IGEL shall use commercially reasonable efforts to repair or replace the non-conforming IGEL Software. This remedy is conditioned on the following: (i) End User reports the non-conformance in writing to IGEL during the Warranty Period, (ii) End User promptly provides any additional information reasonably requested by IGEL, (iii) IGEL is able to reproduce and validate the non-conformance, (iv) End User returns the IGEL Software and/or Documentation if requested as a condition of this remedy, and (v) End User complies with this Limited Warranty. End User acknowledges and agrees that this is the exclusive remedy and IGEL's sole liability under the Limited Warranty and a warranty claim may be performed and/or resolved by IGEL, IGEL's Affiliates or other third parties from within or outside of the United States.
- 13.2. **Limitations and Exclusions of Liability for the Limited Warranty.** With respect to the Limited Warranty, in no event will IGEL, its suppliers, Affiliates or their Resellers be liable for the following, regardless of the theory of liability or whether arising out of the use or inability to use the IGEL Software or otherwise, even if a party been advised of the possibility of such damages: (a) indirect, incidental, exemplary, special or consequential damages; (b) loss or corruption of data or interrupted or loss of business; (c) loss of revenue, profits, goodwill or anticipated sales or savings; (d) loss of use, and (e) costs of procurement of substitute goods. For the Limited Warranty, all liability of IGEL, its affiliates, officers, directors, employees, agents, suppliers and licensors collectively, to End User, whether based in warranty, contract, tort, or otherwise, shall not exceed the license fees paid by End User to any Reseller for the IGEL Software in the preceding twelve (12) months that gave rise to the claim. This limitation of liability for the Limited Warranty is cumulative and not per incident. Nothing in this Limited Warranty limits or excludes any liability that cannot be limited or excluded under applicable law. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.
- 13.3. **Limited Warranty Disclaimer.** With respect to the Limited Warranty and except as expressly set forth above, IGEL and its licensors/Reseller provide the IGEL Software "as is" and expressly disclaim all warranties, conditions or other terms, whether express, implied or statutory, including without limitation, warranties, conditions or other terms regarding merchantability, fitness for a particular purpose, design, condition, capacity, performance, quality, accuracy, title, and non-infringement. IGEL does not warrant that the IGEL Software will operate uninterrupted or error-free or that all errors will be corrected. In addition, IGEL does not warrant that the IGEL Software or any equipment, system or network on which the IGEL Software is used will be free of viruses, vulnerability to intrusion or attack. This Limited Warranty does not apply to any Third-Party Software. This Limited Warranty supersedes any prior agreements or representations made in IGEL's and its Affiliate's sales literature or advice given by IGEL or its Affiliates, any IGEL channel partner, Reseller, or an agent or employee thereof – that may have been made in connection with the purchase of a license to the IGEL Software. No change to this Limited Warranty is valid unless made in writing and signed by an authorized representative of IGEL.
14. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES AGREE THAT, EXCEPT FOR EXCLUDED CLAIMS (AS DEFINED BELOW), NEITHER PARTY, ITS RESPECTIVE AFFILIATES, OR ITS OR THEIR LICENSORS, RESELLERS OR DISTRIBUTORS SHALL BE LIABLE FOR ANY LOSS OF USE, LOSS OF INCOME, LOSS OF OPPORTUNITY OR PROFITS, LOSS OF GOODWILL, LOSS OF DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, OR FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING FROM USE OF THE IGEL SOFTWARE INCLUDING UPDATES, DOCUMENTATION, AND THIRD-PARTY SOFTWARE, OR OTHERWISE ARISING IN CONNECTION

WITH THIS EULA, HOWSOEVER CAUSED AND ON ANY THEORY OF LIABILITY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR EXCLUDED CLAIMS, IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY, ITS RESPECTIVE AFFILIATES, OR ITS OR THEIR LICENSORS, RESELLERS, OR DISTRIBUTORS EXCEED THE AMOUNTS PAID TO IGEL FOR END USER'S SPECIFIC IGEL SOFTWARE AT ISSUE DURING THE TWENTY-FOUR (24) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. THIS LIMITATION WILL APPLY EVEN IF A PARTY, ITS AFFILIATES, OR ITS OR THEIR LICENSORS, RESELLERS OR DISTRIBUTORS, AS APPLICABLE, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE THAT THE LICENSE FEES REFLECTS THIS ALLOCATION OF RISK. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO END USER. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 14. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**"EXCLUDED CLAIMS"** MEANS (I) A PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 12; (II) END USER'S PAYMENT OBLIGATIONS FOR IGEL SOFTWARE; AND (III) END USER'S MISUSE, VIOLATION, OR MISAPPROPRIATION OF IGEL'S INTELLECTUAL PROPERTY.

## 15. Maintenance and Support Services.

- 15.1 End User may purchase maintenance services for the IGEL Software that entitles End User to official IGEL Software product updates, upgrades, enhancements or other modifications ("**Maintenance**") Under Maintenance, the End User obtains access to software functionality releases that IGEL may, in its sole discretion, release to End User from time to time. New versions of the IGEL Software (known as "**Release Versions**") are made generally available to End Users with active Maintenance services (or applicable Subscription services that includes Maintenance) at the same level for all its active licenses of IGEL Software. IGEL may also in its sole discretion provide End User with Stable Releases and/or Private Builds for IGEL Software that has not yet reached End of Maintenance status. "Private Builds" are updates to the IGEL Software primarily aimed at fixing errors and "Stable Releases" may, in addition to that, contain new features or functions. IGEL shall not be obligated to release new versions, patches, hotfixes or other adaptations or modifications of any Third Party Software. The installation of new versions, Stable Releases, Private Builds and Third Party Software shall solely be the End User's responsibility. Official updates provided by IGEL under Maintenance, excluding any technology preview or release candidate updates, shall be considered IGEL Software under the terms of this EULA.
- 15.2 End User may also purchase support services for the IGEL Software ("**Support**"). All Support (including Support levels) provided for the IGEL Software is further described in and subject to IGEL's attached Terms for Maintenance and Support Services as displayed at <https://www.igel.com/terms-conditions/>. If End User purchases Support for the IGEL Software, End User is required to purchase and maintain Support at the same level and for the same number of all active licenses of the IGEL Software.



16. **Product Information.** All Product information (“**Product Information**”) provided by IGEL to the End User with respect to the IGEL Software and its use is provided solely on a non-legally binding and liability free basis. IGEL provides all Product Information to the best of its knowledge at the time of publication and on the basis of the information provided by the End User. IGEL does not guarantee the accuracy of its Product Information. Any Product Information provided by IGEL does not release the End User of its obligation to test system changes beforehand. New IGEL Software and Updates must always be tested by End User in advance. The End User is obligated to promptly inform IGEL of all relevant facts and information, so that IGEL can provide the Product Information appropriately.
17. **Data Backups.** The End User is responsible for performing data backups at regular intervals and for backing up this data on a separate data carrier. This is particularly recommended before installing an Update. In addition, the End User is responsible for protecting itself from the loss of data by using appropriate measures.
18. **Compliance With Applicable Laws.** End User agrees to abide by and act in accordance with all laws, regulations and rules (“**Applicable Laws**”) applicable to End User’s access to and use of the IGEL Software and to End User’s conduct in connection with this EULA, in particular relating to applicable privacy and data protection laws and anti-corruption laws in force at any time during the term of this EULA.
19. **Restrictions on Use.** Except as permitted by law or as expressly authorized by IGEL in writing, End User will not (and will not permit any Affiliate, Operator, or third-party including Outsourcers to):
- (i) Remove, obscure, or modify any copyright or patent notices, trademarks, trade names, service marks, logos, restricted rights legends, or proprietary or confidential notices from any part of the IGEL Software or Documentation;
  - (ii) attempt to ascertain the source code of the IGEL Software or any of its components by any means, decompile, deconstruct, copy or to duplicate, reverse engineer, disassemble or decode the IGEL Software or any copy, adaptation, component, transcription or merged portion of them, or attempt to do any of the foregoing;
  - (iii) use, offer, transfer, or distribute the IGEL Software in competition with IGEL including on a time-sharing or service bureau basis;
  - (iv) modify, adapt, translate or create derivative works based on the IGEL Software, or in any way cause the IGEL Software to be subject to any open source obligations;
  - (v) transfer the IGEL Software;
  - (vi) create, disclose, distribute, sublicense, license or otherwise transfer any implementation of IGEL’s application programming interfaces (APIs) except to support End User’s authorized use of the IGEL Software within End User’s internal organization;
  - (vii) use any software, device or other means designed to circumvent or remove any form of Subscription Key or



copy protection used by IGEL in connection with the IGEL Software, or use the IGEL Software together with any Subscription Key, Subscription Key or other copy protection device not supplied by IGEL or through a Reseller; or

- (viii) subject to the limited sublicense right permitted under Section 6 in respect of Outsourcers, assign, sell, resell, rent, lease, distribute, sub-license or otherwise transfer or convey the IGEL Software, any of its components or adaptations, or any Documentation relating to the foregoing.

## 20. General Provisions.

- 20.1. Privacy Policy. End User's use of the IGEL Software and Support is subject to IGEL's attached Privacy Policy available at: <https://www.igel.com/terms-conditions/>.
- 20.2. High Risk Applications. End User acknowledges and agrees that IGEL Software products have not been tested or certified for use in any high-risk applications, including the operation of nuclear facilities, aircraft navigation, air traffic control, emergency communications systems, life support devices, weapons systems, or any other application where the failure or malfunction of any IGEL Software can reasonably be expected to result in death, personal injury, severe property damage or severe environmental harm ("**High Risk Applications**"). IGEL makes no warranties or assurances that IGEL Software is suitable for any High Risk Applications and End User shall defend and indemnify IGEL Indemnitees from any claims made by third parties resulting from any such High Risk Applications.
- 20.3. U.S. Government End Users. Each of the components that constitute the IGEL Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212, all U.S. Government end users acquire the IGEL Software with only those rights set forth herein. If IGEL Software is acquired for or on behalf of the U.S. Government or any of its agencies, then it is recognized and agreed that the IGEL Software was: (i) developed at private expense; (ii) not required to be originated or developed under a U.S. Government contract; and (iii) not generated as a necessary part of performing a U.S. Government contract.
- 20.4. Assignment. Except as expressly permitted herein, the parties may not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the EULA. Any attempted assignment in violation of the foregoing shall be void and of no effect. Notwithstanding the foregoing, IGEL may assign its rights and obligations hereunder to an Affiliate and/or to its successor pursuant to a merger, consolidation or sale of substantially all of its assets related to this EULA, provided it promptly notifies the End User in writing of the assignment and assignee agrees in writing to be bound by the terms of this EULA. This EULA shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.
- 20.5. Export Restriction. End User will not, directly or indirectly export or re-export or knowingly permit the export or re-export of any IGEL Software in breach of any applicable export and import control laws and regulations, including, but not limited to, regulations of the United States Bureau of Industry and Security, the United Kingdom Department for Business, Innovation & Skills, Canada, the European Union, and other applicable countries and agencies.
- 20.6. Severance. If any provision of this EULA is held to be unenforceable, void or invalid under Applicable Law, such

provision shall be deemed omitted and the remaining provisions will remain in full force.

- 20.7. Entire EULA. Subject to Section 8, this EULA, together with all other attached documents that are incorporated by reference herein, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), represent the complete and exclusive statement between IGEL and End User with respect to the IGEL Software and supersedes all prior or contemporaneous oral or written communications and arrangements concerning the subject matter contained herein. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.
- 20.8. No Waiver. No failure or delay to exercise any right or remedy provided under this EULA or by law shall constitute a waiver of that or any other rights or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right shall preclude or restrict the further exercise of that or any other right or remedy.
- 20.9. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).
- 20.10. Third Party Rights. A person who is not a party to the EULA shall not have any rights under or in connection with it.
- 20.11. Variation. Any variation to the EULA shall only be binding when agreed in writing and signed by both parties.
- 20.12. Survival. Sections 1, 11, 12, 13, 14, 15, 19 and 20, and any other right, obligation or provision under this EULA that, by its nature, should survive termination or expiration of this EULA, shall survive the termination or expiration of this EULA.
- 20.13. This EULA and all claims and actions of End User relating to IGEL Software are governed by the Federal laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this EULA.

July 2022

Infinidat  
9 Hamenofim Street Akerstein Tower A  
Herzliya Pituach, 46725 Israel

### Infinidat End User License Agreement

**IMPORTANT – PLEASE READ CAREFULLY: THIS IS A LEGAL AGREEMENT ("AGREEMENT") BETWEEN INFINIDAT WHICH MEANS (I) INFINIDAT, INC. IF YOU ARE LOCATED IN THE UNITED STATES; (II) INFINIDAT LTD. IF YOU ARE LOCATED OUTSIDE OF THE UNITED STATES AND IN A COUNTRY IN WHICH INFINIDAT LTD. DOES NOT HAVE A SUBSIDIARY; (III) THE LOCAL INFINIDAT LTD. SUBSIDIARY IF YOU ARE LOCATED OUTSIDE OF UNITED STATES AND IN A COUNTRY IN WHICH INFINIDAT LTD. HAS A LOCAL SUBSIDIARY ("INFINIDAT", "OUR", "US" OR "WE") AND YOU, AS AN AUTHORIZED REPRESENTATIVE OF AN ENTITY ("YOU" OR "YOUR"), THAT HAS OBTAINED THE PRODUCT, AS DEFINED BELOW, DIRECTLY FROM INFINIDAT OR FROM AN AUTHORIZED INFINIDAT PARTNER . BY EXECUTING THE PURCHASE ORDER, YOU ACCEPT THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS. THIS AGREEMENT SHALL GOVERN YOUR USE OF THE PRODUCT UNLESS YOU HAVE A SEPARATE WRITTEN AGREEMENT IN EFFECT WITH INFINIDAT THAT SPECIFICALLY GOVERNS THE SUBJECT MATTER HEREOF AND IS EXPLICITLY STATED TO TAKE PRIORITY.**

**IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE RIGHT, AUTHORITY AND CAPACITY TO DO SO AND BIND SUCH ENTITY TO THIS AGREEMENT, AND IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY.**

#### **1. Definitions**

**"Affiliate"** means any corporation, company or other business entity that directly or indirectly, controls, is controlled by, or is under common control with Infinidat.

**"Documentation"** means our user manuals, instructions and similar materials that are delivered with the Product, including any updates or supplements thereto.

**"Enhancement"** means an update (such as a fix or patch), modification, improvement, addition and/or customization to a Product, including those resulting in new features and functionality.

**"Intellectual Property Rights"** means all rights, titles and interests in, to and under patents, inventions, discoveries, copyrights, trademarks, trade names, trade dress, technical information, data, know-how, show-how, trade secrets, designs, drawings, models, specifications, formulas, methods, techniques, processes, databases, software, code, algorithms, architecture, records, documentation, and other similar intellectual and industrial property, in any form and embodied in any media, whether capable of protection or not, whether registered or unregistered, and including all applications, registrations, renewals, extensions, continuations, divisions or reissues thereof.

**"Laws"** means any applicable laws, statutes, ordinances, rules and regulations of any jurisdiction (including for the avoidance of doubt any Federal, state, provincial or local laws).

**"Product"** means, collectively, the hardware and Software, and any Enhancement thereto provided by Infinidat at any time. **"Proprietary**

**Legends"** means any copyright, trademark, patent, or other proprietary legend, notice or designation.

**"Software"** means the Infinidat proprietary software product licensed and provided at any time, including firmware embedded in the, software programs provided by Infinidat and any Enhancement thereto.

2. **License.** Subject to the terms and conditions of this Agreement, Infinidat hereby grants you a limited, nonexclusive, nontransferable, non-sublicensable, revocable (solely in accordance with the termination provisions below) license, to (i) use, in object code only, the Software for your internal business purposes only; and (ii) use the Documentation solely in connection with your use of the Product (collectively, the "License").
3. **Limited License Capacity.** If the Products are subject to a specified capacity limit, you are only authorized to use the Software at or below the limit you paid for. Infinidat or its authorized partner, may invoice you, and you shall pay, for the additional capacity in the Product after your usage exceeds the specified capacity limit three times in a 30-day period, even if usage subsequently falls below that limit. You shall enable the Product's phone home feature to allow us to monitor capacity usage. We reserve the right to inspect or otherwise verify compliance with this Section.
4. **License Restrictions.** Except to the extent expressly permitted otherwise in this Agreement, or expressly mandated otherwise by applicable Law, you shall not, and shall not permit or encourage any third party (including, without limitation, your personnel) to, do any of the following without obtaining the prior express written consent of Infinidat: (i) copy or reproduce the Software; (ii) sell, assign, lease, lend, rent, distribute, sublicense, or make available the Software to any third party, or otherwise use the Software to operate in, or as, a time-sharing, outsourcing, or service bureau environment; (iii) modify, alter, adapt, arrange, translate, decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code (or the underlying structure, sequence or organization) of, the Software; (iv) reverse engineer or disassemble the Product's hardware; (v) integrate, incorporate, include, or bundle the Software into or with any other hardware or software; (vi) remove, alter, or conceal, in whole or in part, any Proprietary Legends displayed or contained on/in the Product; (vii) circumvent, disable or otherwise interfere with security-related features of the Software, or with features that are intended to prevent or restrict the use thereof; (viii) make a derivative work of the Software, or use the Software to develop any service or product that is the same as, or substantially similar to, the Software; (ix) use the Software to perform comparisons or other "benchmarking" activities, either alone or in connection with any other software or hardware, or disclose or publish the results thereof or other performance information; x) use the Software for any inappropriate purpose (as Infinidat shall determine in its sole and absolute discretion), or contrary to any Law.
5. **Ownership.** INFINIDAT DOES NOT SELL OR TRANSFER TITLE, AND SHALL NOT BE DEEMED TO HAVE SOLD OR TRANSFERRED TITLE, IN ANY SOFTWARE TO YOU. As between you and Infinidat, Infinidat is and shall remain the sole and exclusive owner of all Intellectual Property Rights in, to and under the Product and the Documentation. Infinidat reserves all rights not expressly granted hereunder, and nothing in this Agreement constitutes a waiver of Infinidat's Intellectual Property Rights under any Law.
6. **Limited Software Warranty**
  - 6.1. **Software Warranty.** Infinidat warrants that for a period of ninety (90) days, commencing on the date that the Product is delivered to you, and subject to the terms and conditions of this Section 5, the Software components included in the Product will substantially comply with the applicable specifications set out in the Documentation (the "Software Warranty").
  - 6.2. **Warranty Service.** If you notify us in writing within the applicable Software Warranty periods as specified above (the "Warranty Period"), of a warranty claim, we will make commercially reasonable efforts to provide a fix, patch or workaround, which may be included in a future Software release, at no additional charge to you. No services provided by us under this Section 5.3 shall be deemed to re-commence any Warranty Period, and any repairs, fixes or replacement parts provided as part of the foregoing warranty service are warranted for the remainder of the applicable Warranty Period, as then in effect.
  - 6.3. **Warranty Service Exclusions.** Warranty services described herein above exclude, and Infinidat shall have no responsibility hereunder to repair, replace, fix or provide any support or any other remedial services for, any and all of the following: (a) Products that have been altered, reconfigured or modified by you or any third party other than Infinidat's authorized customer support personnel; (b) Software that has been incorporated or bundled with other software or hardware not provided or approved in writing by Infinidat; (c) Products not installed by Infinidat's authorized customer support personnel, and which have not been operated, repaired or maintained in accordance with Infinidat's instructions; (d) Products which have been operated outside of the environmental specifications for the Product; (e) damage to the hardware or Software caused by your negligence, abuse or use other than as specified in the Documentation, or by natural disasters or other factors beyond the control of Infinidat; or (f) Software problems not reproducible by Infinidat.
  - 6.4. **Your Warranty Responsibilities.** As a condition to Infinidat's obligations under this Section, you agree that if Infinidat determines that in order to perform its Product Warranty services it must do so at your premises on which the Product is located and/or remotely, you must provide free, safe and sufficient access to your facilities and the Product and any associated computer equipment on which the Product is installed. For the avoidance of any doubt, the License referenced herein, together with the warranty remain valid only on the basis of Infinidat's ability to remotely control/ access and/or control the Product as may be required at any time. As part of this remote access the Product will send to Infinidat monitoring data information on a regular basis.
  - 6.5. **High Risk Activities.** You acknowledge that the Product is not specifically designed or intended for use in environments in which the failure of the Product could lead directly to death, personal injury, or severe physical or property damage, including, without limitation, any nuclear, chemical or weapons production facility or activity, aircraft control devices, aerospace equipment, or medical life support equipment (collectively, "High Risk Activities"). Without limiting the generality of the Warranty Disclaimer referenced below, Infinidat expressly disclaims any express or implied warranty of fitness for High Risk Activities, and any liability for any damage arising as a result of the use of the Product in any High Risk Activity.

- 6.6. INFINIDAT MAKES NO REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION (a) THAT THE SOFTWARE WILL OPERATE IN THE COMBINATIONS WHICH YOU MAY SELECT FOR USE; (b) THAT YOUR USE OF THE PRODUCT WILL MEET YOUR EXPECTATIONS BE ERROR-FREE AND THAT ANY ERROR CONDITIONS WILL BE CORRECTED.
- 6.7. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.
7. **Third Party Software.** The Software may contain third party, including open source, software ("Third Party Software") and you acknowledge there may be third party terms and conditions ("Third Party Terms"). In such a case, upon receipt of a written request from you, we will make available a list of any such Third Party Software and related Third Party Terms in the Documentation, and will use commercially reasonable efforts to comply with any reasonable request you submit to us for exercising your rights under such Third Party Terms. Notwithstanding anything in this Agreement to the contrary, Infinidat does not make any representation, warranty, guarantee, condition, and does not undertake any defense or indemnification, with respect to any Third Party Software.
8. **Indemnification**
- 8.1. In the event of any claim, action, proceeding or suit by a third party against you claiming that the Product infringes such third party's U.S. patent or copyright (an "Infringement Claim"), Infinidat shall defend and hold you harmless against the Infringement Claim, and will pay
- (a) the amounts awarded (and then-currently payable) against you in such Infringement Claim (to the extent of such infringement); or
- (b) the amounts agreed to settle such Infringement Claim.
- 8.2. Our obligations under this Section shall only apply if you (a) promptly notify us in writing of the Infringement Claim; (b) fully cooperate with us in, but permit us to assume control of, the defense and/or settlement of the Infringement Claim; and (c) refrain from admitting any liability, or otherwise compromising the defense of any part of the Infringement Claim, without our prior express written consent. Infinidat agrees not to settle any Infringement Claim without your prior express written consent, not to be unreasonably withheld, conditioned or delayed. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.
- 8.3. Should the Product (or any part thereof) become, or in our opinion be likely to become, the subject of any Infringement Claim, then you hereby permit us, at our option and expense, to either (a) procure for you the right to continue using the Product or such part (as the case may be); or (b) replace or modify the Product (or affected part thereof) so that it becomes non-infringing, while maintaining substantially the same functionality. If neither (a) nor (b) is commercially practicable, then we may, in our sole and absolute discretion, terminate your rights under this Agreement with respect to the Product, and: (x) refund to you on a pro rata basis the Fees paid by you to Infinidat or its authorized reseller or distributor (as the case may be) with respect to the Product, subject to a 3 year straight-line depreciation schedule; and (y) in the case of Support Services purchased directly from Infinidat, provide a refund of any periodic fees paid to Infinidat for any portion of such Support Services not yet received with respect to the affected portion of the Product.
- 8.4. Infinidat shall have no obligation or liability with respect to an Infringement Claim that is based upon or results from: (a) the combination of the Product (or part thereof) with any equipment, hardware, firmware, or software not furnished or approved in writing by Infinidat, if there would have been no infringement but for such combination; (b) any modification to/of the Product (or part thereof) not performed by Infinidat; (c) unauthorized use of the Product (or part thereof); (d) your failure to install or have installed any Enhancements to the Product provided by Infinidat, if installation of such Enhancement would have avoided the infringement; and/or (e) our compliance with your specifications, designs and/or instructions. This (Indemnification) states the entire obligation and liability of Infinidat, and your sole and exclusive remedy, with respect to an Infringement Claim.
9. **Limitation of Liability.** IN NO EVENT WILL INFINIDAT OR ITS AFFILIATES OR BE LIABLE FOR: (I) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES; (II) ANY LOSS OF PROFITS, LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF REVENUE, OR LOSS OF ANTICIPATED SAVINGS; (III) ANY LOSS OR CORRUPTION OF, OR DAMAGE TO, DATA, REPUTATION, OR GOODWILL; AND/OR (IV) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES. THE TOTAL CUMULATIVE LIABILITY OF INFINIDAT AND ITS AFFILIATES UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED (A) THE AMOUNT PAID BY YOU TO, AND ACTUALLY RECEIVED BY, INFINIDAT OR AN AUTHORIZED PARTNER FOR THE PRODUCT IN WHICH THE LIABILITY WAS INCURRED, OR (B) IF NO SINGLE QUOTE IS SO APPLICABLE, THE AMOUNT OF FEES (IF ANY) PAID BY YOU, AND ACTUALLY RECEIVED BY, INFINIDAT OR AN AUTHORIZED PARTNER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY



PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY: (x) EVEN IF INFINIDAT OR ITS AFFILIATES HAVE BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES OR DAMAGES; (y) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; and (z) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY (SUCH AS, BUT NOT LIMITED TO, BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY OR TORT). SOME JURISDICTIONS MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR THE PRODUCTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY

TO YOU WHERE, AND TO THE EXTENT THAT, APPLICABLE LAW REQUIRES SUCH LIABILITY. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-

75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

10. **Confidentiality.** During the Term, each party may have access to certain information of the other party, whether furnished before or after your entering into this Agreement, and in any form or media and regardless of the manner in which furnished (collectively, "Confidential Information"). The receiving party agrees: (x) not to disclose the disclosing party's Confidential Information to any third parties other than to its employees, consultants or Affiliates on a strict "need to know" basis only; (y) not to use or reproduce any of the disclosing party's Confidential Information for any purposes except to exercise its rights and perform its obligations under this Agreement; (z) use at least reasonable care to keep and protect the disclosing party's Confidential Information confidential. Notwithstanding the foregoing, the disclosing party may disclose Confidential Information if required by law provided that the receiving party has given the disclosing party prompt notice. Infinidat recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.
11. **Term and Termination.** This EULA shall be applicable for the entire duration of the License period granted to you under the purchase documents and as applicable, those clauses that inherently apply post termination, shall accordingly be valid for a period of seven years, following the termination of any License.
12. **Export Controls.** You shall comply with all, and shall be solely responsible for obtaining all required authorizations and licenses from applicable government authorities under, Export Control Laws, in connection with your use of the Product and Documentation.
13. **US Government Rights.** To the extent applicable it is confirmed that the Software is "commercial computer software" and the Documentation is "commercial computer software documentation," pursuant FAR Section 12.212, as applicable. If you are an agency, department, employee or other entity of the United States Government, then your access to and use of any part of the Software and/or the Documentation shall be subject solely to the terms and conditions of this Agreement.
14. **Assignment.** This License Agreement and any rights or obligations hereunder: (a) may not be assigned, sublicensed or otherwise transferred by you without the express prior written consent of Infinidat. Subject to the foregoing, this Agreement shall bind and benefit and be enforceable by each party and its respective successors and permitted assigns. Any prohibited assignment shall be null and void.
15. **Governing Law and Jurisdiction.** This Agreement shall be governed by, and construed exclusively in accordance with (i) the Federal laws of the United States. The U.N. Convention on Contracts for International Sale of Goods shall not apply to the Agreement.
16. **General**
  - 16.1. Entire Agreement. This License, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s) (i) constitutes the entire agreement between the parties with respect to the subject matter hereof; and (ii) may be modified only by a writing signed by both parties.
  - 16.2. Notice. You agree that Infinidat may send you notices by email, by regular mail, and/or via postings on or through the Infinidat Website.
  - 16.3. Waiver. No failure or delay by either party in exercising or enforcing any right, power or remedy under this Agreement (or otherwise at law or in equity) will operate as a waiver thereof. Waivers shall apply only in the specific instance in which given. Any waiver by Infinidat of any provision of this Agreement shall only be valid if in writing, duly signed, and sent to you via regular mail.



16.4. Severability. If any court of law that has jurisdiction rules that any provision of this Agreement is invalid, then such invalid provision will not affect any of the remaining provisions of this Agreement, which shall remain in full force and effect.

**HIREVUE, INC.**  
**10876 S. RIVER FRONT PARKWAY, SUITE 500**  
**SOUTH JORDAN, UTAH 84095**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached HireVue, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it

considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS  
HIREVUE, INC.**

**HIREVUE, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**MASTER SERVICE AGREEMENT**

HireVue, Inc. ("**HireVue**") a Delaware corporation located at 10876 S. River Front Parkway, Suite 600, South Jordan, UT 84095, offers Services (defined below) through its proprietary Platform (defined below). HireVue hereby agrees to provide its Services to the Buyer identified on a Service Order (defined below) executed in connection with this Master Service Agreement, who desires to subscribe to and use HireVue Services in accordance with the terms and conditions set forth in this Master Service Agreement ("**Agreement**"). Buyer and HireVue are referred to herein each individually as a "**Party**" and collectively as the "**Parties**".

**Definitions.**

"**Authorized Users**" means those individuals designated by or invited by Buyer, in accordance with this agreement, to use the Services.

"**Buyer Content**" means all content created by or provided by Buyer or its Authorized Users and submitted to the Platform.

"**Documentation**" shall mean the descriptions of the HireVue Services set forth at <http://hirevue.com/product-documentation>.

"**End User**" means a user of the Platform that responds to requests from Buyer or its Authorized Users through the Platform.

"**Platform**" means the HireVue team acceleration platform including any related mobile applications, used to deliver the Services, features and functionality described in the Documentation.

"**Responses**" means all responses to Buyer Content submitted to the Platform by End User.

"**Scheduled Downtime**" means the following Scheduled Downtime periods ("Maintenance Windows") currently reserved by HireVue, which may be changed from time to time on notice to Buyer: A maximum of four (4) hours per semi-monthly period between the hours of Midnight (12:00 A.M.) and 4:00 A.M. Mountain Time.

"**Services**" means, collectively, the Platform and related services provided hereunder, including the Subscription Services, the features and functionality described in the Documentation, and any other professional services and customer support.

"**Service Order**" means the document that specifies the Services to which the Buyer has subscribed, the applicable subscription term(s), and applicable fees. This document may also be referred to as a "Purchase Order", the form and substance of which must be approved by both Parties in writing.

"**Site Availability**" means the percentage calculated by dividing (a) the Site Uptime by (b) the difference between the total amount of clock time and the Scheduled Downtime actually used by HireVue, in a given Month.

"**Site Uptime**" shall mean the total time in a month during which all material parts of the HireVue website are operating properly and available for access and use by Authorized Users.

"**Subscription Services**" are defined as the HireVue hosted software services to which the Buyer purchases a subscription pursuant to a Service Order.

"**Unscheduled Downtime**" means the number of seconds the Services are unavailable in a particular month which are due to (i) force majeure events beyond the reasonable control of HireVue or HireVue's service providers, or (ii) a general failure of the Internet.

"**Usage Data**" means entirely anonymized data not attributable to any Authorized User, End User or Buyer which reflects data points such as volume of interviews and general patterns of use.

**Ordering, Services and Data.**

Buyer shall order Services by mutual execution of a Service Order which provides, at a minimum, the specific Subscription Services ordered and the price and term for such Subscription Services. The Service Order shall be incorporated into this Agreement by reference and in the event of a conflict between the terms of a Service Order and this Master Service Agreement, the terms of the Service Order shall prevail. Additional Services ordered in any subsequent Service Orders shall be governed by, and incorporated by reference into this Agreement.

HireVue hereby grants to Buyer permission during the applicable subscription term identified in the applicable Service Order to allow Authorized Users to access and use the features and functions of the HireVue Services for which Buyer has paid all applicable fees via a browser or the HireVue mobile application ("**Mobile App**") for Buyer's internal business use.

Buyer hereby grants HireVue permission during the Term to (i) reproduce, distribute, display and perform Buyer Content to Authorized Users and End User in connection with providing the Subscription Services on behalf of Buyer, and (ii) to access and use the Responses ("**Buyer Data**") to provide the Subscription Services to and on behalf of Buyer.

Buyer and HireVue acknowledge and agree that, as between Buyer and HireVue, Buyer Data is the property of Buyer. Buyer shall be responsible to ensure the End User has given legally sufficient consent for Buyer's collection, retention and use of their Responses. HireVue shall provide a mechanism in the Platform to collect such consent.

HireVue collects and uses Usage Data for its internal research and development purposes and may disclose Usage Data in an aggregated format that in no way identifies Buyer or any particular Authorized User or End User.

Except for the rights expressly granted herein, no other rights, are granted to Buyer under this Agreement, whether expressly, by implication, estoppel, or otherwise, and all rights not expressly granted herein are reserved by HireVue. All right, title and interest in and to the Services, any software used by HireVue in connection with the Services, and related documentation are and shall remain the exclusive property of HireVue and/or its licensors, and nothing herein grants to Buyer any right to access copies of any such software, whether in source or object code form. Buyer acknowledges and agrees that: (i) the Platform, any software used in connection with the Services and related documentation are protected under U.S. and foreign copyright and other intellectual property laws; (ii) HireVue and its licensors retain all copyrights and other intellectual property rights in the Platform, any software used in connecting with the Platform and related documentation; and (iii) Buyer acquires no ownership in or to the Platform, software, data, or related documentation.

#### **Fees and Payment.**

Fees for Subscription Services are invoiced annually in advance, net thirty, or as otherwise expressly agreed and set forth in terms of the GSA Schedule Contract and Service Order or Purchase Order, and payments are due thirty (30) days from date of invoice. If all undisputed invoices are not paid when due, HireVue reserves the right to suspend access to the Services until payment is current. Such suspension shall not extend the expiration date of Services ordered. Except as expressly provided herein all amounts paid hereunder are final and nonrefundable.

The Contract Price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. HireVue shall include applicable taxes that will be stated separately on invoices issued to the Customer. Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1.

#### **Term, Termination, and Expiration of Agreement and Renewal.**

The term of this Agreement shall commence upon execution of this Agreement ("Effective Date") and shall continue until the sooner to occur of: (i) expiration of all Service Orders; or (ii) termination per Section 4.2 ("Term").

When the licensee is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, HireVue shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Upon any expiration or termination of the Agreement, Buyer will cease all use of the Services and destroy all copies Documentation (if any) that are in Buyer's possession or under Buyer's control. Upon termination or expiration of the Agreement or a specific Service Order, Buyer shall have the following options with regard to Buyer Content and Buyer Data related to each of the terminated or expired Services: 1) if Buyer requests in writing, on or prior to the date of such termination or expiration, HireVue shall provide Buyer with a copy of the Buyer Data stored on HireVue servers, and HireVue shall then delete all such Buyer Data from HireVue servers; 2) Buyer may purchase a read-only subscription to the Platform for an annual fee equal to 15% of the last annualized subscription fee for up to three years or as otherwise mutually agreed by Parties; or 3) HireVue shall purge remaining Buyer Content and Buyer Data from the HireVue servers, and HireVue shall have no further responsibility to retain copies of Buyer Data. The parties agree and acknowledge that the foregoing requirement does not apply to Analytical Data to the extent it does not contain or embody Buyer Data in a form that can be attributed to Buyer.

Unless otherwise stated in a Service Order, the start date for Subscription Services purchased under this Agreement shall be the date Buyer is provided login credentials for the Platform.

**Restrictions on Use.** Buyer shall not, and shall prevent its Authorized Users from using the Platform to: (i) resell, rent, lend, lease, distribute, or timeshare the Platform or otherwise use the

Platform on behalf of any third party (including on a "service bureau" or similar basis), or otherwise provide third parties with access or grant third parties rights to the Platform other than as expressly permitted by HireVue, (ii) alter or remove any marks or proprietary legends contained in the Platform; (iii) circumvent or otherwise interfere with any authentication or security measures of the Platform; (iv) interfere with or disrupt the integrity or performance of the Platform; (v) send SPAM or any other form of duplicative and unsolicited messages, other than marketing and promotional messages to End Users as enabled by the intended features of the Platform; (vi) access all or any portion of the Platform by means of any crawler, scraper, bot, spider, or any other similar script or automated process; (vii) transmit through or post on the Platform unlawful, immoral, libelous, tortious, infringing, or defamatory material; or (viii) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs. Buyer shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the Platform, and shall not modify, translate, or create derivative works based on any element of the Platform.

#### **Buyer's Responsibilities.**

Buyer understands and acknowledges that HireVue is solely a technology platform provider and does not participate in the interview, selection, or hiring of candidates, which is Buyer's sole responsibility, notwithstanding use of the Service as a part of and in connection with such activities. Accordingly, it is Buyer's sole responsibility to comply with all applicable laws regarding its use of the Service and with the Buyer Content it presents to its Authorized Users and End Users, including without limitation all applicable employment and hiring laws and regulations and all record keeping and data protection regulations in connection with the collection, processing, disclosure, subject access requests, retention, and transfer of personally identifiable data under the laws of the country and any other local jurisdiction in which Buyer is operating or collecting and transferring personal data. HireVue shall have no liability related to the Buyer Content presented to Buyer's Authorized Users or End Users, or for record keeping requirements and data protection obligations applicable to Buyer unless expressly assumed by HireVue pursuant to this Agreement.

Buyer is responsible for providing and maintaining adequate facilities, computer equipment, internet connections, connectivity and firewall access required for the use of the Services. Such technical requirements can be viewed at <http://hir.vu/15S5OOH>.



Buyer agrees not to ask Respondents for, and to instruct Respondents not to provide, any PHI or SPI in any Responses. Should Buyer become aware that any PHI or SPI is provided by an End Users in any Response, Buyer agrees to promptly notify HireVue and request redaction of such information from the interview or deletion of the interview where redaction is not feasible. As used herein PHI means Protected Health Information as that term is defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). SPI means Sensitive Personal Information consisting of date of birth, social security number, driver's license or other state-issued identification number, or financial account information.

Buyer shall notify HireVue in the event of a subject access request (or equivalent request from Respondents) and provide HireVue direction with regard to correcting or deleting personal data in response to such requests made to Buyer. HireVue shall notify Buyer within five (5) business days if it receives any such subject access requests related to End Users and both parties shall cooperate to provide a response and take action in compliance with applicable legal requirements.

#### **Warranty**

HireVue shall provide the Services in a professional and workmanlike manner and in compliance with the Documentation in all material respects. During the subscription term set forth in an applicable Service Order, in the event that Buyer notifies HireVue that the Services do not materially conform to the specifications set forth in such Service Order and the product documentation provided by HireVue, HireVue shall use commercially reasonable efforts to provide Buyer with support to address such non-conformity. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS-IS" AND "WHERE-IS", AND HIREVUE MAKES NO OTHER REPRESENTATIONS, WARRANTIES, OR

CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY, TO BUYER OR ANY OTHER PERSON OR ENTITY AND EXPRESSLY DISCLAIMS TO THE FULLEST EXTENT PERMITTED BY LAW ANY AND ALL SUCH IMPLIED OR STATUTORY WARRANTIES AND CONDITIONS WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE RESPONSES, METRICS, SCORES, AND ANALYTICS, INCLUDING BUT NOT LIMITED TO THOSE AS TO THE ACCURACY, SECURITY, RELIABILITY, PERFORMANCE, RESULTS, TIMELINESS, COMPLETENESS, TITLE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SERVICES, DELIVERABLES OR ANY INFORMATION PROVIDED IN CONNECTION THEREWITH, OR ANY SELECTIONS OR HIRING DECISIONS MADE BY BUYER IN CONNECTION WITH THE USE OF THE SERVICES OR OTHERWISE. HIREVUE DOES NOT WARRANT THAT THE SERVICES WILL ALWAYS BE AVAILABLE OR ERROR-FREE, AND MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY RESULTS OBTAINED FROM USE OF THE SERVICES. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

7.2. HireVue shall provide Buyer and the Authorized Users access to the Subscription Services at all times outside of Scheduled Downtime periods. Excluding Scheduled Downtime, HireVue guarantees a minimum Site Availability of ninety-nine percent (99.0%) during each month. Excluded from this Site Availability calculation shall be Unscheduled Downtime. However, HireVue and its service providers will use commercially reasonable efforts to provide and maintain the Services in accordance with the terms of the Agreement during such Unscheduled Downtime.

7.3. Buyer understands and agrees that Buyer's download and/or use of any third party software or services (e.g. web browser or video plug ins) made available or required in conjunction with or through the Services is at Buyer's own discretion and risk and that Buyer will be solely responsible for any damages to Buyer's computer system or loss of data that results from the download or use of such third party software and services.

7.4. HireVue shall not be liable to Buyer under any circumstances in which a third party mobile application host (i.e. Apple, Google, RIM, etc.) or a third party service provider (i.e. Verizon, ATT, Sprint, etc.) fails to provide continuous connectivity or other service required for download, communication, or other functionality of the Platform.

7.5. Some states or other jurisdictions do not allow the exclusion of implied warranties, so the above exclusions may not apply to Buyer. Buyer may also have other rights that vary from state to state and jurisdiction to jurisdiction.

**Optional Features.** The following terms apply if Buyer enters a subscription for, uses or enables the following HireVue products, features or functionality.

If Buyer subscribes to use Coordinate (formerly known as Reschedge), Buyer hereby grants to HireVue the right to collect and store credentials for and to access Buyer's email and calendar application solely for the purpose of enabling functionality of Coordinate. Such information shall be considered Buyer's Confidential Information pursuant to section 14 below.

**Public Share Links.** If Buyer uses HireVue's Public Share Links feature to publish links to Buyer Content or Buyer Data on social media or other public mediums, Buyer agrees: a) Buyer has all the rights and licenses necessary to publicly share any content made accessible through the Public Share Links (including consent from the End User as applicable); b) Buyer shall not publicly share any content through the Public Share Links which is inappropriate, defamatory, profane, libelous, tortuous or in any way illegal; and c) HireVue shall have the right to remove any Public Share Links to content that violate (a) or (b) as solely determined by HireVue.

**Direct Access Links.** Buyer shall not be permitted to activate Direct Access Links functionality.

**Integrations.** HireVue and/or Buyer may partner with certain third party applicant tracking and other service providers (each, an "Integration Partner") to provide for integration of certain features of the Subscription Services (each, an "Integration"). If Buyer accesses HireVue's Services through the use of an Integration HireVue hereby authorizes Buyer to access and use the Subscription Services that Buyer has purchased hereunder through such Integrations. Buyer understands that Integration Partners may apply separate terms and charge



separately for use of such Integrations, and that Buyer shall be solely responsible for compliance with any such terms and payment of any such fees charged by Integration Partners for Buyer's implementation and use of such Integrations. HIREVUE SHALL HAVE NO LIABILITY TO BUYER IF SUCH INTEGRATION IS UNAVAILABLE DUE TO ACTS OR OMISSIONS OF THE INTEGRATION PARTNER OR OUTAGES OF THE INTEGRATION PARTNER SOLUTION. SHOULD HIREVUE'S RIGHT TO INTEGRATE WITH SUCH INTEGRATION PARTNER SOLUTION TERMINATE, BUYER'S RIGHT TO USE THE INTEGRATION TO ACCESS THE HIREVUE SERVICES HEREUNDER SHALL ALSO TERMINATE AND BUYER MAY ACCESS THE HIREVUE SERVICES DIRECTLY THROUGH THE HIREVUE PLATFORM.

Insights (otherwise known as "IRIS"). Buyer hereby grants to HireVue permission during the Term to perform (or have a third-party service provider perform) certain processing, transcription, transformation, and analytics on the non-personally identifiable information included in Buyer Data and associated meta data and derivatives thereof (such as text transcripts of audio and audiovisual components, subsequent actions and results, etc.), alone and together with Usage Data, to derive certain mathematical, derivative, index, scoring, metric, associative, predictive, comparative, statistical, algorithmic, and contextual data therefrom (the "Analytical Data"). Unless otherwise stated in the Service Order, HireVue may use Analytical Data in connection with developing, enhancing, maintaining, supporting, and providing the HireVue Service to Buyer and HireVue's other customers, provided that HireVue may not disclose Buyer Data to any third party in raw form, or disclose any personal information regarding Authorized Users or End Users, or identify Buyer, Authorized Users or End Users on an individual basis as the source of such Analytical Data. In the event that the applicable Service Order excludes the foregoing rights and the Service Order includes the Insights Service, (a) Analytical Data will only be used to provide the Insights Service to Buyer, and (b) the Insights Service will NOT provide any analytical data derived from any other HireVue customers' use of the HireVue Service.

**Publicity.** During the term of this Agreement, Buyer hereby agrees that HireVue shall have the right, but not the obligation, to list Buyer as a customer who uses the Services on the HireVue website and/or in presentations and link to Buyer landing pages. HireVue will remove Buyer's name from any such list within thirty (30) days after any termination of this Agreement or upon Buyer's request. Neither party may issue any press release concerning this Agreement without the other party's consent. HireVue acknowledges that advertising is limited by GSAR 552.203-71.

**Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.

**Assignment.** This Agreement may not be assigned by either party without the other party's prior written approval, except that either party may assign this Agreement in connection with any merger, or reorganization or any sale or transfer of all or substantially all of its assets or stock. If the assigning party is Buyer and the merger or acquisition results in the size of the surviving or successor entity being materially larger than the size of Buyer prior to the merger or acquisition, Buyer and HireVue will meet in good faith to determine a commensurate increase in price for the remaining subscription period for any unlimited use subscriptions which will be executed in a new written Service Order and/or Purchase Order. Subject to the foregoing, this Agreement shall be binding upon the parties, and upon their heirs, acquirers, executors, personal representatives, administrators, and assignees.

#### **Indemnification and Limitation of Liability**

HireVue shall indemnify, defend and hold harmless Buyer and its affiliates and their respective officers, directors, employees, agents and contractors, from and against, and pay any costs, expenses and amounts finally awarded or agreed to in settlement of, any and all third party claims to the extent such claims are based upon (i) the negligence and/or willful misconduct of HireVue in performing this Agreement, (ii) any allegation that the software underlying the Platform, when used as provided and in accordance with the terms and conditions of this Agreement, infringes such third party's intellectual property rights, or (iii) HireVue's violation of applicable laws.

Reserved.

In all requests for indemnification under Section 12.1 above (i) Buyer shall promptly provide HireVue with written notice thereof and, at HireVue's request and expense, reasonable cooperation, information, and assistance in connection therewith; and (ii) HireVue shall have control and authority with respect to the defense, settlement, or compromise thereof, provided that it shall not settle any such claim without prior written consent of the indemnified party, which consent shall not be unreasonably withheld, conditioned, or delayed. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL

OR INCIDENTAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS OR INCOME, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, EXCEPT FOR INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12.1 ABOVE, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE GREATER OF (1) AN AMOUNT EQUAL TO THE FEES PAID OR PAYABLE BY BUYER FOR THE SERVICE ORDER(S) THE CLAIMS ARE BASED ON OR (2) \$50,000. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN DAMAGES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO BUYER. BUYER MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION.

12.5. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM HIREVUE'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**Independent Contractors.** HireVue and Buyer are independent contractors, and nothing in this Agreement shall be deemed to create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the Parties. Neither Party is an

agent or representative of the other nor is either Party authorized to, and shall not, make any warranties or representations or assume or create any other obligations on behalf of the other.

**Confidentiality.** 14.1. Each party (each a “Discloser”) agrees that, in the course of performing its obligations hereunder, either might provide to the other (the “Recipient”) or develop information identified as confidential or that reasonably could be construed as confidential (“Confidential Information”). HireVue’s Confidential Information shall include, but shall not be limited to, HireVue’s trade secrets, know-how, user manuals and screens, service development plans, service specifications, computer programs, marketing plans, financial data, and Buyer’s Confidential Information shall include, but shall not be limited to raw Buyer Data (excluding Analytical Data to the extent not embodying raw Buyer data), billing information, software, and systems. During the Term of this Agreement and at all times thereafter, the Recipient and its employees and agents shall maintain the confidentiality of the Confidential Information and not sell, license, publish, display, distribute, disclose or otherwise make available the Confidential Information to any third party nor use such Confidential Information except, in either case, as authorized by this Agreement or in connection with the performance or enforcement of this Agreement. The Recipient shall not disclose any such Confidential Information to persons not an employee or agent of Recipient nor to its Affiliates without the prior written consent of the Discloser. Any misuse or breach hereof must be reported promptly. Nevertheless and notwithstanding the foregoing statement, each party will attempt to comply with legally executed subpoena served upon such party.

The non-use and non-disclosure obligations of this Section 14 shall not apply to any information that (a) was already known to the Recipient at the time of disclosure, (b) was already in the public domain at the time of disclosure, or (c) was received or developed by the Recipient independent of any information received from the Discloser. Recipient may disclose information pursuant to a request under applicable law. Unless prohibited by law, if the information requested is Discloser Confidential information, Recipient shall notify Discloser of the request and give Discloser a reasonable opportunity to establish that the Discloser Confidential Information is exempt from disclosure under one or more exemptions under applicable law.

HireVue recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor. Notwithstanding the foregoing, the Parties will utilize best efforts to obtain the maximum protection available for HireVue Confidential Information.

**Compliance with Laws.** The parties shall, in the performance of all obligations hereunder, fully comply with all applicable international, Federal, State and local laws, ordinances, treaties, rules, regulations, orders and policies applicable to or binding upon them.

**E-Business Activities.** Either party may use a third party service provider in connection with ebusiness activities (e.g., to route or translate EDI or XML messages, or to host web based services). The party contracting with a service provider must require that such service provider (a) use information disclosed to or learned by such service provider in connection with providing services solely for the purpose of providing the applicable services, and (b) not disclose such information to any third party. Each party will be liable for the acts or omissions of its service provider in connection with activities contemplated by this Agreement.

**Survival.** The provisions of this Agreement that are intended to survive termination or expiration of this Agreement in order to achieve the fundamental purposes of this Agreement will survive termination or expiration.

**Entirety of Agreement.** The parties agree that this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist Service Order and/or Purchase Order(s), is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to the subject matter of this Agreement. In no event will contractual terms inserted in a Buyer’s purchase order be incorporated into or made a part of this Agreement.

**Force Majeure.** Except for any obligation to pay amounts due, either Party hereto will be temporarily excused from performance hereunder, in whole or in part, for any period of time that the Party is prevented from performing its obligations as a result of an act of God, governmental regulation or act, war, natural catastrophe, civil disobedience, court order, or other cause beyond the Party’s reasonable control. Such non-performance will not constitute grounds for default.

**Governing Law.** This Agreement is made in accordance with and is governed and construed under The Federal Laws of The United States, without reference to conflicts of laws principles.

**Legal Advice.** Buyer acknowledges and agrees that HireVue has not and will not provide Buyer with any legal advice and specifically HireVue has not given legal advice regarding compliance with employment, data privacy, or other relevant laws, rules, or regulations in the jurisdictions in which Buyer uses the Services nor will Buyer construe any HireVue communications as legal advice. Buyer agrees that it is solely responsible for drafting and approving its own Buyer Content, including legal review as necessary.

**Reserved.**

**Acknowledgement.** Each party acknowledges that it has read and understands this Agreement, expressly agrees the signatory hereto has full power and authority to execute this Agreement, and agrees to be bound by its terms and conditions. Further, it represents that it has consulted, or has had the opportunity to consult with its legal, tax, and financial advisors in connection with the execution and performance of the Agreement. Buyer understands and agrees that except as expressly set forth in Section 4.2 HireVue offers no buy-backs, money back guarantees, or refunds. Buyer acknowledges and agrees that Buyer is not relying upon any verbal or written representations whatsoever, except as expressly set forth in this Agreement. This Agreement can only be modified in writing, signed by the parties, or their duly authorized representatives. Buyer acknowledges and agrees that HireVue does not guarantee or represent that any software or services conveyed or provided hereunder, when or where accessed, used, provided, or installed, will guarantee any results.

**By signing below, the signatory expressly acknowledges and agrees he/she has all requisite power and authority to bind HireVue or Buyer, as applicable, to the terms of this Agreement.**

**HireVue, Inc.**

**Buyer:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

INFOCYTE, INC.  
3801 N. CAPITAL OF TX HWY  
SUITE D-120  
AUSTIN, TX 78746

ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

INFOCYTE

InfocYTE HUNT™ End User License Agreement

This End User License Agreement (“EULA”) is between InfocYTE and the Ordering Activity that has placed an order for the InfocYTE HUNT Platform (the “Ordering Activity”). **Ordering Activity may not use the Platform unless and until Ordering Activity have consented to be bound by all of the terms, conditions and restrictions of, and have become a party to, this EULA, by signing this EULA if InfocYTE or its authorized reseller has presented the EULA for signature.** The Platform license stated below extends only to the entity that is a party to this EULA and not to that entity’s affiliates.

Capitalized terms used in this EULA are defined in the Section where they are first used or are defined in Section 21 (Definitions) below.

**Platform.** The “Platform” is InfocYTE’s generally available commercial release of InfocYTE HUNT comprised of: (i) the on-premises HUNT and survey module software to be deployed on the Ordering Activity’s network, (ii) the InfocYTE-hosted Incyte Cloud Service, and (iii) Documentation, collectively, as it may be updated by InfocYTE. Ordering Activity may use the Platform for the Subscription Term defined in Ordering Activity’s Order, subject to the terms, conditions, and restrictions stated in this EULA. Ordering Activity’s “Subscription” includes the rights (i) to use the Platform for the Subscription Term and (ii) to receive Support.

**Subscription Term.** Ordering Activity may use the Platform for the Subscription Term. The initial Subscription Term is stated in the Order. The Subscription Term begins on the day that InfocYTE makes the Platform accessible to Ordering Activity by providing Ordering Activity with access codes and other information that enables Ordering Activity to download the HUNT software and remotely access the Incyte Cloud service. Orders do not automatically renew. If Ordering Activity has not purchased a Subscription renewal before the expiration of a Subscription Term, the Order expires and InfocYTE has no further obligation to provide the Subscription. If Ordering Activity adds Endpoints to Ordering Activity’s Subscription during a Subscription Term, the Subscription Term for the additional Endpoints is coterminous with the then-current initial or renewal Subscription Term of the original Subscription Order.

**Payment.** In consideration for the rights granted under Ordering Activity Subscription, Ordering Activity agree to pay all fees specified in Ordering Activity’s Order within 30 days of invoice, or as otherwise specified in the applicable Purchase Order.

**Support.** Support includes assistance to Ordering Activity in connection with Ordering Activity’s use of the Platform, and updates to the Platform software to fix bugs, correct errors, or enhance functionality that InfocYTE releases on a generally available commercial basis to all subscribers of a Platform product without additional charge. InfocYTE Support plans are limited to correcting errors, bugs or other issues with the Platform and do not extend to any Third Party Products or technologies Ordering Activity use with the Platform, any issues arising from modifications to the Platform not made or authorized by InfocYTE, or the use of the Platform other than as authorized by this EULA. If Ordering Activity requests Support that is not covered by Ordering Activity’s Support plan, InfocYTE may invoice Ordering Activity at its then-current GSA Schedule time and materials rates in connection with the request, provided that InfocYTE informs Ordering Activity that Ordering Activity will incur charges promptly on learning that the request is not covered by Ordering Activity’s Support plan.

**Incyte Cloud Service.** The Incyte Cloud Service element of the Platform will generally be available to Ordering Activity 24 hours per day, 7 days per week, except that InfocYTE may disable access to the Incyte Cloud Service as necessary to perform maintenance. InfocYTE will use commercially reasonable efforts to perform maintenance after 5:00 p.m. and before 6:00 a.m. or after 5:00 p.m. Friday and before 6:00 a.m. Monday, United States Central time (GMT-6). InfocYTE will provide Ordering Activity with notice of maintenance start and completion via the customer portal or an email.

**Contact Person.** Ordering Activity must designate an employee or agent to act as the contact person for receiving and managing all communications between us related to Ordering Activity’s use of the Platform. Ordering Activity may change Ordering Activity’s contact person upon written notice to InfocYTE.

**Security.** InfocYTE will provide Ordering Activity with information necessary to access and use the Platform. Ordering Activity must use reasonable care to protect the confidentiality of Ordering Activity’s access information, and Ordering Activity is solely responsible for any use

of the Platform that is enabled by means of Ordering Activity's access information, even if the use is unauthorized. Ordering Activity must notify Infocyte immediately if Ordering Activity believes the confidentiality of Ordering Activity's access information has been compromised. Infocyte will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Platform. On Ordering Activity's request, Infocyte will provide Ordering Activity with a description of its security measures for the Platform (the "**Security Documentation**"). Ordering Activity acknowledges that the Security Documentation is sensitive confidential information of Infocyte and agrees that Ordering Activity will not disclose the Security Documentation to any third party or use the Security Documentation for any purpose other than evaluating the security of the Platform. Ordering Activity, and not Infocyte, is responsible for deciding if Infocyte's security measures meet Ordering Activity's requirements in light of Ordering Activity's business goals and any laws or regulations applicable to Ordering Activity's business. Ordering Activity agrees that Infocyte is not responsible for any harm Ordering Activity may suffer as a result of a security incident arising from Ordering Activity's use of the Platform unless the incident resulted from Infocyte's failure to properly implement and maintain the security measures described in its Security Documentation.

**Platform License and Restrictions.** Ordering Activity may use the Platform to assess the number of Endpoints for which Ordering Activity has purchased a Subscription. Ordering Activity may use the Platform only for Ordering Activity's internal business purposes and not as part of a services offering to any third parties. Ordering Activity may use software provided to Ordering Activity as part of the Platform only in its executable form. Ordering Activity may not transfer or sublicense the Platform to, or make the Platform available for use by, any person except Ordering Activity's employees and Ordering Activity's permitted contractors as described in Section 17 (Assignment, Contractors). Ordering Activity may deploy as many survey modules as reasonably incident to Ordering Activity's licensed use, and Ordering Activity may make a reasonable number of backup or archival copies of the analytics engine, but Ordering Activity may not otherwise copy the Platform. The survey modules are designed to be self-deleting, but in the event a survey module does not self-delete, Ordering Activity must delete the module on completion of the assessment for which the module was deployed. Ordering Activity may not use the Platform in connection with any activity where the failure of the Platform might result in death, personal injury or severe physical or environmental damage, such as controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, and weaponry systems. Ordering Activity's license is worldwide, subject to applicable export laws. Ordering Activity's license is nonexclusive. Ordering Activity may not modify the Platform or create any derivative works of the Platform. Ordering Activity may not reverse engineer, disassemble or decompile the Platform except as permitted by applicable law notwithstanding this restriction, and then on advance written notice to Infocyte of at least 30 days. Ordering Activity may not publish any benchmark or other performance test results regarding the Platform. Ordering Activity may not remove any copyright, trademark, or other proprietary notices that appear on or with the Platform. The Platform may include software that is licensed under open source licenses. License terms, notices, attributions and other information about the open source elements of the Platform are available in the licensing file distributed with the Platform. If there is a conflict between this EULA and any open source license for software included in the Platform, the open source license will control.

**Third Party Products.** Any Third Party Products provided by Infocyte are subject to the terms of the license and other agreement terms of the third party provided to Ordering Activity by Infocyte or accompanying the Third Party Product. Specifically, but without limitation, all operating system, virtualization and other general systems software is a Third Party Product subject to separate licensing terms, conditions and restrictions of the third party providers. For example, Ordering Activity's use of Windows Server software or other Microsoft software is subject to the Microsoft Corporation's license terms. Ordering Activity may be required to accept the end user license and other terms of the third party providers as a condition to Ordering Activity's use of the Third Party Products.

**Records and Verification.** Ordering Activity must keep complete and accurate records regarding Ordering Activity's use of the Platform, and Ordering Activity may not delete or obscure any information regarding the use of the Platform that is generated by the Platform. On Infocyte's request, Ordering Activity will provide reasonable information to evidence Ordering Activity's use of the Services in compliance with this EULA and each Order, certified as "true, complete and correct" by Ordering Activity's chief financial officer. In addition, Infocyte may perform an audit of Ordering Activity's records, either onsite, or by means of remote access, on ten days advance written notice, provided that the audit must be conducted during normal business hours and may not unreasonably interfere with Ordering Activity's normal business operations. Such audit shall also be in accordance with the applicable Government security requirements.

**Reserved.**

**Malware Risk.** Ordering Activity's use of the Platform may reveal Malware on Ordering Activity's systems, and the Platform may recover and retain a copy in an inert state for evidence retention. **The removal or transfer of Malware may introduce additional risks to Ordering Activity's network.** Ordering Activity assumes all risk and responsibility for the possession, handling and use of Malware identified by, or exported from, the Platform.

**Termination.** On termination of the EULA, Ordering Activity must uninstall all Platform elements from Ordering Activity systems and destroy or render them unusable. On Infocyte's request, Ordering Activity will certify in writing that Ordering Activity has complied with this Section. Those terms of this EULA that are intended by their nature to survive expiration or termination of this EULA shall survive expiration or termination.



## Warranty and Warranty Disclaimers.

**Warranties.** Infocyte warrants that (i) the Incyte Cloud Service elements of the Platform will be available to Ordering Activity without material interruption, except for scheduled or emergency maintenance; (ii) it will use commercially reasonable efforts to update the Incyte Cloud Service with new threat information as it becomes available; and (iii) its support personnel will use commercially reasonable efforts to resolve any Support issue within the target resolution times stated in the Support plan. If the Platform or Services fail to conform to the applicable warranty, Infocyte's sole obligation, and Ordering Activity's **sole and exclusive remedy**, is: (i) if the failure is curable, Infocyte's cure of the failure in a commercially prompt manner, or (ii) if the failure is not curable, Infocyte's refund of the fees paid for the non-conforming part of the Services, or for Ordering Activity's use of the Platform during the period of nonconformance.

**Warranty Exclusions.** Infocyte's warranty is void as to Ordering Activity's use of the Platform other than as permitted by this EULA or in a manner not contemplated by the Documentation. The warranty is void as to any version of the Platform if Ordering Activity has not implemented each Infocyte maintenance release for the analytics engine within 45 days of the date that the release is made available to Ordering Activity. Ordering Activity acknowledges that Infocyte is not responsible for the security of Ordering Activity's network generally, and that Infocyte does not represent or warrant that the Platform meets Ordering Activity's particular security requirements or the requirements of any laws or regulations governing Ordering Activity's operations.

**Warranty Disclaimer.** Except as expressly stated in this Section, Infocyte makes no representation or warranty whatsoever regarding the Platform, and the Platform is provided AS IS. Infocyte makes no representation or warranty whatsoever regarding any Third Party Products, and as between Ordering Activity and Infocyte any Third Party Products are provided AS IS. Infocyte does not warrant that the Platform will be error free or uninterrupted, or that the Platform will identify all threats present on Ordering Activity's network. Infocyte disclaims any implied or statutory warranties, such as a warranty of merchantability, fitness for a particular purpose, and noninfringement, and disclaims any warranty that may arise from a course of dealing. Any warranty that cannot be excluded under applicable law is limited in duration to 30 days from the event giving rise to the warranty.

**Reserved.**

**Indemnification.** Infocyte shall defend and hold Ordering Activity harmless from any claim by a third party that the Platform infringes any United States patent, trade secret or copyright of that third party, provided that Ordering Activity (i) notify Infocyte promptly in writing of any such allegation or claim, (ii) reasonably cooperate with Infocyte to settle or defend such allegation or claim, and (iii) grant Infocyte authority and control of the defense or settlement of such allegation or claim to the extent permitted under 28 U.S.C. 516. Notwithstanding the foregoing, Infocyte shall have no obligations under this Section to the extent any infringement allegation or claim is based upon or arises out of (i) any modification or alteration to the Platform not approved in writing by Infocyte, (ii) any combination or use of the Platform with products or services not supplied by Infocyte or approved in writing by Infocyte in advance of such combination, or (iii) use of the Platform not in accordance with applicable Documentation provided by Infocyte or outside the scope of the rights granted under this EULA.

**Assignment, Contractors.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld). Ordering Activity may not allow any person to use the Platform other than: (i) Ordering Activity's employees and individual contractors acting under Ordering Activity's direct supervision, and (ii) the personnel of outsourcers who are performing an internal business function for Ordering Activity and on the condition that the outsourcer has expressly agreed that its use of the Platform is subject to this EULA. Ordering Activity remains responsible for Ordering Activity's contractors and outsourcers' use of the Platform in violation of the terms of this EULA. Infocyte may use subcontractors to perform its obligations under this EULA.

**Rights in Data.** Ordering Activity retains all right, title and interest in and to Ordering Activity's Data. Infocyte will use Ordering Activity's Data solely for the purpose of providing the Services. Ordering Activity acknowledges that the Platform collects a broad range of system information. The Platform does not target the collection of data stored on or processed by means of the systems assessed, but may unavoidably capture this type of data. Infocyte will not use this data for any purpose and will use reasonable means to protect the security of this data. If Infocyte discovers that it has captured more than an incidental amount of this type of data, Infocyte will inform Ordering Activity and will destroy the data.

**Rights in Intellectual Property.** Except for the license rights expressly stated in this EULA, Infocyte and its licensors retain all right, title and interest in and to the Platform and all related intellectual property, including all Infocyte trademarks. Ordering Activity's license confers no title or ownership in the Platform and is not a sale of any rights in the Platform. If you provide any feedback, comments, or suggestions for the improvement of the Platform or any other Infocyte products or services ("**Suggestions**"), you hereby license the Suggestions and all related intellectual property to Infocyte on a non-exclusive, worldwide, fully paid, perpetual, irrevocable basis for Infocyte to use, disclose, modify, reproduce, license, distribute, commercialize and otherwise freely exploit without restriction of any kind, without right of accounting except for as limited in advertising under GSAR 552.203-71. Ordering Activity acknowledges that data generated by Ordering Activity's use of the Services is not Ordering Activity's Data, and that Infocyte may use this data for the purpose of improving its Platform and operations



generally and as indicated in Section 18, so long as such use does not entail the disclosure of any information that would identify Ordering Activity or any individual in relation to the data.

**Export Compliance.** The Platform may be subject to export laws and regulations of the United States and other jurisdictions. Ordering Activity may not permit users to access or use the Platform in a U.S. embargoed country or in violation of any U.S. export law or regulation, or in a manner that causes InfocYTE to be in violation of U.S. export laws, even if the use is permitted under the laws applicable to Ordering Activity or the user. Each party represents that it is not on any restricted persons list maintained by the U.S., Canada, or any member of the European Union. "Export laws" include the U.S. Export Administration Regulations (Title 15 of the U.S. Code of Federal Regulations Part 730 et seq.), International Traffic in Arms Regulations (Title 22 of the U.S. Code of Federal Regulations Parts 120-130), the economic sanctions rules and regulations implemented under statutory authority and/or President's Executive Orders and administered by the U.S. Treasury Department's Office of Foreign Assets Control (Title 31 of the U.S. Code of Federal Regulations Part 500 et seq.), the EU's restrictive measures as published on the website of the European External Action Service, and the applicable export laws of any other jurisdiction.

**Definitions.** **InfocYTE** means InfocYTE, Inc., a Delaware corporation; **Documentation** means the commercially available, general release version of materials describing the Platform or its use, whether in print or digital form. Examples of Documentation are user manuals, administration guides, installation guides, training manuals, white papers, specifications, designs, test plans and test results, configuration guides, reference architectures, FAQs, and issues documentation. Documentation does not include any advertising or marketing materials; **Endpoint** means a network endpoint, such as a workstation or server. Virtual servers, virtual desktops and other logically distinct endpoints are each an "Endpoint;" **Malware** means any virus, malware, spyware, ransomware, adware, or other code or information that is designed to interrupt the normal use of an information system, or destroy or corrupt any data, or covertly transmit information; **Order** means the written order signed and submitted by Ordering Activity to the InfocYTE authorized reseller (or to InfocYTE as applicable) and accepted by the reseller (or InfocYTE as applicable) that lists the Platform subscription products and Support plan, fees, use limitations, and other transaction terms (which, in the event of any conflict with any term of this EULA, shall prevail over this EULA); **Results** means information or output that results from the use of the Platform, such as scan results, reports, and raw data, in any form, and on any media that they may be captured, recorded or communicated; **Services** means any services that InfocYTE has agreed to provide under this EULA; **Support** has the meaning given in **Section 4 (Support)**; **Third**

**Party Product(s)** means any software, services, goods or other products or technology that are provided to Ordering Activity by a third party, or that are provided by InfocYTE but are: (i) covered by an open source license, or (ii) identified by InfocYTE with a brand name or logo that is not an InfocYTE brand name or logo, or (iii) provided subject to Ordering Activity's agreement to the third party's legal terms and conditions; **Ordering Activity's Data** means the data stored on or processed by or through Ordering Activity's information technology systems that are assessed by InfocYTE as part of the Services, including (i) personally identifiable information, health information, financial data or other information regarding Ordering Activity's customers, suppliers, insureds, and end users, (ii) Ordering Activity's financial data, and (ii) Ordering Activity's other business use data.

**Government Customers.** If Ordering Activity is a government agency, Ordering Activity acknowledges that the Platform and related software has been developed at private expense and is provided with **RESTRICTED RIGHTS**.

**Law.** This agreement shall be governed by the Federal laws of the United States.

**This EULA, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s) is the complete and exclusive agreement between Ordering Activity and InfocYTE and supersedes and replaces in its entirety any prior or contemporaneous agreement or understanding, written or oral.**

**INTERCEDE GROUP**  
**LUTTERWORTH HALL, ST. MARY'S ROAD**  
**LUTTERWORTH, LEICESTERSHIRE, UNITED KINGDOM LE17 4PS**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Intercede Group** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**INTERCEDE GROUP**

**INTERCEDE GROUP LICENSE, WARRANTY AND SUPPORT TERMS**

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1. Definitions.

(A) Reserved.

(B) "Documentation" means the manuals, handbooks and other written materials related to the use of the MyID Products, whether in hard copy or soft copy form, that Intercede provides and that customarily accompany the MyID Products.

(C) "MyID Products" mean the MyID Software and Documentation provided to Customer under this Agreement.

(D) "MyID Software" means the software licensed by Customer under this Agreement, consisting of a series of instructions or statements in machine-readable, object code form only.

2. License.

(A) License for MyID Software. Intercede hereby grants, and Customer hereby accepts, a non-exclusive, non-transferable license to use the MyID Software in accordance with the instructions contained in the Documentation. Customer may make a reasonable number of copies of (1) the MyID Software for backup, testing, disaster recovery or archival purposes only and (2) the Documentation for its internal use only, so long as Customer also reproduces on such copies any copyright, trademark or other proprietary markings and notices contained on the MyID Software and Documentation and does not remove any such marks from the original.

(B) Restrictions on License for MyID Software.

(1) Incorporation of Restrictions in Invoice and Other Documents. Customer's purchase order, sales quotation or invoice, or user license certificate for the MyID Products may contain limitations with respect to the number of users, servers, asserting and relying parties, functionality options and/or other restrictions. In such a case, such limitations and restrictions are incorporated herein by reference.

(2) Restrictions on Access, Copying and Sublicensing. Customer shall not cause or permit (a) access (except to its employees, agents and consultants with a "need to know" who are bound in writing by non-disclosure obligations suitable to protect Intercede's interests in the MyID Software but no less restrictive than Customer's obligations herein), (b) copying (except as set forth in Section 2(A) above), (c) disclosure to any third party of the results of any benchmarking or competitive analysis of the MyID Software that Customer may perform, or (d) sublicensing or other dissemination of the MyID Software, in whole or in part, to any third party without Intercede's prior written consent.

(3) Third Party Software. If the MyID Software contains or is bundled with third party software, then Customer may use such third party software solely (a) for the purpose such software is included with the MyID Software and (b) for use with the particular MyID Software that Customer has licensed from Intercede as set forth in the Documentation. Customer shall not use any third-party software embedded in or bundled with the MyID Software as a standalone program or in any way independently from the MyID Software.

(4) No Modification of MyID Software. Customer shall not modify, enhance, translate, supplement, create derivative works from, reverse engineer, reverse compile or otherwise reduce the MyID Software to human readable form without Intercede's prior written consent.

3. Ownership and Intellectual Property Rights.

(A) Ownership of MyID Products. Intercede is the exclusive owner of the MyID Software and Documentation (including revisions, modifications and enhancements thereto) and any other specifications, documentation, ideas, know-how, techniques, processes, inventions or other intellectual property that Intercede may develop, conceive or deliver under this Agreement, including all patents, copyrights and other intellectual property rights thereto.

(B) Ownership of Trademarks. By this Agreement, Customer acquires no rights of any kind in or to any Intercede trademark, service mark, trade name, logo or product designation and shall not make any use of the same for any reason except as expressly authorized by this Agreement or otherwise authorized in writing by Intercede. Customer shall cease to use in any manner such markings or any similar markings upon the expiration or termination of this Agreement.

4. Reserved.

5. Warranty.

(A) **MyID Software Warranty.** Intercede warrants that the MyID Software will operate in material conformance to the Documentation for such MyID Software during the first 90 days after Customer's initial receipt of the MyID Software (the "Warranty Period"). Intercede does not warrant, however, that the MyID Software or any portion thereof is error-free. If Customer discovers a non-conformity in the MyID Software during the Warranty Period, then Customer shall submit to Intercede a written report describing the non-conformity in sufficient detail to permit Intercede to reproduce such non-conformity. If Intercede successfully reproduces the reported non-conformity and confirms that it is a non-conformity, then Intercede shall use reasonable efforts, at its option, to (1) correct the non-conformity, (2) provide a work around or software patch (a "Fix"), or (3) replace the MyID Software. If Intercede determines that none of these alternatives is reasonably available, then, upon Customer's request, Intercede shall refund any payments that Customer has made for the affected MyID Software and accept its return. This warranty applies only to the initial delivery of the MyID Software. All Fixes provided by Intercede constitute MyID Software hereunder and are governed by the terms hereof. Intercede warrants that each Fix will operate in material conformance to the Documentation for the applicable MyID Software during the first 30 days after Customer's initial receipt of such Fix or during the remainder of the initial Warranty Period, whichever is greater.

(B) **Limitations of Warranty.** The foregoing warranties do not apply if (1) repair or replacement is required as a result of causes other than normal use, including, without limitation, repair, maintenance or modification of the MyID Products by persons other than Intercede authorized personnel; Customer's accident, fault or negligence; operator error; Customer's failure to incorporate any Fixes that Intercede makes available to Customer; use of the MyID Products other than as set forth in the Documentation; or causes external to the MyID Products such as, but not limited to, failure of electrical power or fire or water damage; or (2) the MyID Products are used with software or equipment other than that for which they were designed as set forth in the Documentation.

(C) **WARRANTY DISCLAIMER.** OTHER THAN INTERCEDE'S EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, INTERCEDE AND ITS LICENSORS DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER'S SOLE REMEDY FOR BREACH OF SUCH EXPRESS LIMITED WARRANTIES IS A CORRECTION, FIX OR REFUND AS SET FORTH IN THIS SECTION 5.

6. Reserved.

7. Reserved.

8. Reserved.

9. Reserved.

1 INTRODUCTION

1.1 Purpose of the Service Level Agreement

This Service Level Agreement (SLA) provides an understanding of the service level expectation and defines a benchmark for measuring the performance of the service.

1.2 Service Level Agreement Period

This SLA will remain valid for a period specified on an ordering document.

2 Incident Reporting

All incidents must be reported through to the Help/Support Desk. Support will only be available between 9.00 am and 5.00 pm EST during normal US working hours, excluding US public holidays. Support will only be given using the English language.

Any support required outside this agreement must be agreed separately and Intercede reserve the right to make a time and materials based charge for this support.

The help desk can be contacted via support@intercede.com. All requests for support must be made by agreed nominated contacts (NC) from within the ordering activity. There will be 2 valid nominated contacts that have appropriate knowledge of the Intercede product set. Ordering Activity can purchase the right to nominate more than 2 nominated contacts on a separate ordering document.

Prior to any call to the help desk, it is the nominated contacts responsibility to check all basic system pre-requisites as defined in the manual, including troubleshooting. Intercede reserve the right to make a charge for support calls that fall into this category, by not being fully pre-checked.

All requests for support must provide details of the Company Name, Product Name and version, System details and a description of the issue, and where appropriate system and product log files.

All support calls will be registered in a call logging system, assigned a severity code, and allocated a unique reference number. Nominated contacts will be advised of the unique reference number on receipt of the support call. This severity code would be determined by agreement between Intercede Ltd and the nominated contact. The call would then be managed to resolution by Intercede

Any activities relating to each incident will be logged in the call logging system for monitoring and management reporting.

Once reported, all incidents will remain active, until ordering activity agrees to the successful resolution of the issue. At this stage the incident will be closed.

In the unlikely event that an on-site visit is required to resolve the support issue, Intercede reserve the right to make a charge for support and/or expenses dependent on the source of the issue.

2.1 Severity Codes

Severity - High

Critical part of system unavailable or major (or potentially major) impact on business.

Target response: 4hrs (and regular updates every hour) unless the call is placed after 4pm EST during the working day, in which case during the next working morning.

Severity - Medium

Part of system unavailable but non critical as the users can adapt business practices to get around the problem in the short term.

Target response: Same day unless call is placed after 10am EST, in which case next day.

Severity - Low

No immediate impact on business, inconvenient errors.

Target response: Next working day or as agreed with the caller requesting support

2.2 Incident Progressing

Each incident will remain with the support department who will update the status of the incident as each action is taken. Responsibility for the incident will remain with the Intercede Ltd support department to manage through to resolution to sign off by ordering activity.

Should further information be required the Intercede support department will contact the originator of the incident. If the originator contacts the Help/Support Desk with regard to a specific incident, the incident reference number must be quoted.

2.3 Escalation Procedures

Best endeavours will be made to answer calls effectively and it is expected that the customer will provide all such details as are requested by Intercede to help to resolve the given issue. Intercede will process each call log to a completion agreed with the customer.

If the incident is not responded to within the agreed times specified against severity (as in 2.1), ordering activity may initiate the relevant escalation procedure.

The levels of escalation would be agreed and will typically be:

	Intercede	Ordering Activity
Level 1	Help/Support Desk	Nominated Contact
Level 2	Support Manager	IT / Project Manager
Level 3	Product Manager	Director

The levels assigned to the functions above are used in the escalation procedures shown below:



Severity - High	Level 2	When incident reported
	Level 3	Within 4 hours
Severity - Medium	Level 2	Within 1 day
	Level 3	Within 5 days
Severity - Low	Level 2	Within 5 days or As agreed

NOTE: Both Intercede and ordering activity will be responsible for communicating to the appropriate personnel within their respective organisations should escalation be necessary.

3 Problem Management

The Intercede Help/Support Desk would monitor incidents using response and resolution targets.

Response means the support team acknowledging receipt of the incident to the ordering activity nominated contact, agreeing the severity of the call, requesting further information as necessary, and conducting an initial investigation into the incident.

Resolution means providing an agreed solution to the problem. This could take the form of a short-term work around to meet the immediate need, or an agreement that the problem will be resolved in the next product release.

Intercede can 'stop the clock' while awaiting action or information (such as log file) from ordering activity.

4 Reserved.

**iStorage Limited**  
**13 Alperton Lane, Perivale, Middlesex, UB6 8DH,**  
**United Kingdom**

**EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)**

**Scope.** This Rider and the attached iStorage Limited (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing

equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer

unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**These Terms were last updated on: 10th March 2020**

## **GENERAL TERMS AND CONDITIONS**

This page tells you information about us and the legal terms and conditions (“Terms”) which govern the use of our site and on which we sell any of the products (“Products”) listed on our website (“our site”) to Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“you” or “Ordering Activity”).

### **WHO ARE WE?**

We operate the website [www.istorage-uk.com](http://www.istorage-uk.com). We are iStorage Limited, a company registered in England under company no. 6951286, and with our registered office at C/O Arnold Hill & Co, Craven House, 16 Northumberland Avenue, London, WC2N 5AP. Our VAT registration number is GB978989214.

If you have any questions, comments or complaints about these Terms, please get in touch with us by email at: [info@istorage-uk.com](mailto:info@istorage-uk.com), by post to: iStorage Limited, iStorage House, 13 Alperton Lane, Perivale, Middlesex, UB6 8DH, or by calling: +44(0)20 8991 6260.

These Conditions shall apply to every agreement between us under which we supply Products to you (“**Contract**”).

We may amend the non-material terms and conditions of these Terms from time to time. Every time you wish to use our site or order Products, please check these Terms to ensure you understand the terms which will apply at that time. Any material updates to this agreement shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms.

These Conditions shall take precedence over any conditions which you supply to us.

Please read these terms carefully and make sure that you understand them before ordering Products from us.

If you refuse to accept these Terms, you are not permitted to order any Products from our site.

### **GENERAL**

All quotations are made and all orders are accepted by us subject to these Terms. The placing of an order following any quotation or other (e.g. website) indication of price and delivery shall not be binding on us unless and until accepted by us in writing. We reserve the right to accept or refuse orders without ascribing any reason.

### **HOW WE USE YOUR PERSONAL INFORMATION**

We only use your personal information in accordance our Privacy Policy. For details, please see our attached [Privacy Policy](#). Please take the time to read these, as they include important terms which apply to you.

#### IF YOU ARE A CONSUMER

**This clause 4 only applies if you are a consumer.**

If you are a consumer, you may only purchase Products from our site if you are at least 18 years old.

As a consumer, you have legal rights in relation to Products that are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

#### IF YOU ARE A BUSINESS CUSTOMER

**This clause 5 only applies if you are a business.**

If you are not a consumer, you confirm that you have authority to bind any business on whose behalf you use our site to purchase Products.

These Terms and any document expressly referred to in them constitute the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in these Terms or any document expressly referred to in them.

#### HOW THE CONTRACT IS FORMED BETWEEN YOU AND US

Our order process allows you to check and amend any errors before submitting your order to us. Please take the time to read and check your order at each page of the order process.

After you place an order, you will receive an e-mail from us acknowledging that we have received your order. However, please note that this does not mean that your order has been accepted. Our acceptance of your order will take place as described below.

We will confirm our acceptance to you by sending you an e-mail that confirms that your order has been accepted and which will include our estimated date of delivery (Order Confirmation). The Contract between us will only be formed when we send you the Order Confirmation.

If we are unable to supply you with a Product, for example because of export control restrictions (see clause 10.1) or



because that Product is not in stock or no longer available or because of an error in the price on our site, we will inform you of this by e-mail and we will not process your order. If you have already paid for the Products, we will refund you the full amount as soon as possible.

## OUR RIGHT TO VARY THESE TERMS

Every time you order Products from us, the Terms in force at that time will apply to the Contract between you and us.

We may revise the nonmaterial Terms of this Agreement from time to time. Changes made to these Terms in accordance with this clause 7.2 will not affect any previous orders made under earlier versions of the Terms. Any material changes will not go into affect until both parties agree to them in writing.

Whenever we revise these Terms in accordance with this clause 7, we will update the date stated at the top of these Terms and we will explain on our site any material changes which have been made to the Terms.

## YOUR CONSUMER RIGHT OF RETURN AND REFUND

**This clause 8 only applies if you are a consumer.**

If you are a consumer, you have a legal right to cancel a Contract under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 during the period set out below in clause 8.3. This means that during the relevant period if you change your mind or for any other reason you decide you do not want to keep a Product, you can notify us of your decision to cancel the Contract and receive a refund. Advice about your legal right to cancel the Contract under these regulations is available from your local Citizens' Advice Bureau or Trading Standards office.

However, this cancellation right does not apply in the case of:

any made-to-measure or custom-made products;

software, DVDs or CDs which have a security seal which you have opened or unsealed.

Your legal right to cancel a Contract starts from the date of the Order Confirmation. If the Products have already been delivered to you, you have a period of 14 (fourteen) days in which you may cancel, starting from the day you receive the Products.

To cancel a Contract, please contact us in writing to tell us by sending an e-mail to: [info@istorage-uk.com](mailto:info@istorage-uk.com), or by sending a letter to: iStorage Limited, iStorage House, 13 Alperton Lane, Perivale, Middlesex, UB6 8DH, or by calling +44(0)20 8991 6260 to tell us. You may wish to keep a copy of your cancellation notification for your own records. If you send us your cancellation notice by e-mail or by post, then your cancellation is effective from the date you sent us

the e-mail or posted the letter to us. If you call us to notify us of your cancellation, then your cancellation is effective from the date you telephone us.

Providing you return the goods to us in a good and saleable condition, you will receive a full refund of the price you paid for the Products and any applicable delivery charges you paid for. However, if the goods have been damaged by you or are returned in an unsaleable state, we will be entitled to deduct from your refund such reasonable amount to account for the loss or damage. We will process any refund due to you as soon as possible and, in any case, within 14 days of the day we receive the Products back from you. If you returned the Products to us because they were faulty or mis-described, please see clause 8.6.

If you have returned the Products to us under this clause 8 because they are faulty or mis-described, we will refund the price of a defective Product in full together with any reasonable delivery charges incurred by you in returning the items to us.

We refund you on the credit card or debit card used by you to pay.

If the Products were delivered to you:

you must return the Products to us as soon as reasonably practicable.

unless the Products are faulty or not as described (in this case, see clause 8.6), you will be responsible for the cost of returning the Products to us;

you have a legal obligation to keep the Products in your possession and to take reasonable care of the Products while they are in your possession.

Details of your legal right to cancel and an explanation of how to exercise it are provided in the Order Confirmation.

As a consumer, you will always have legal rights in relation to Products that are faulty or not as described. These legal rights are not affected by the returns policy in this clause 8 or these Terms. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

#### YOUR RIGHT OF RETURN AND REFUND FOR BUSINESS CUSTOMERS

**This clause 9 applies if you are a business customer.**

If you receive Products which are faulty or mis-described, we will refund the price of a defective Product in full together with any reasonable delivery charges incurred by you in returning the items to us.

We refund you on the credit card or debit card used by you to pay.

If the Products were delivered to you:

you must return the Products to us as soon as reasonably practicable.

you have a legal obligation to keep the Products in your possession and to take reasonable care of the Products while they are in your possession.

Details of your legal right to cancel and an explanation of how to exercise it are provided in the Order Confirmation.

We are unable to accept the cancellation of any orders or the return of any Products other than as set out in this clause 9.

**DELIVERY**

We will use our reasonable endeavours to fulfil your order by the estimated delivery date set out in the Order Confirmation, unless there is an Event Outside Our Control. If we are unable to meet the estimated delivery date because of an Event Outside Our Control, we will contact you with a revised estimated delivery date.

If we are unable to fulfil your order by the estimated delivery date in accordance with clause 10.1, we shall notify you of a revised delivery date. If the revised delivery date is not acceptable to you, we shall at your request cancel your order and refund to you the price of the Product(s) which you have ordered.

Delivery of the Products to your address or any other place stipulated by you shall constitute delivery.

The Products will be your responsibility from the completion of delivery.

We shall be entitled to make partial deliveries by instalments and these Terms shall apply to each partial delivery.

Title in the Products will pass to you once we have received payment in full, including all applicable delivery charges.

**INTERNATIONAL DELIVERY**

We deliver to various countries around the world and we have distributors as listed on this page [where to buy](#) (International Delivery Destinations). However, we reserve the right not to supply any Product if its delivery to

the requested International Delivery Destination may breach any export control restrictions, or where the costs of us having to comply with applicable export laws or regulations have not already been factored into our prices or delivery charges. If this happens, we will inform you by email that your order has been cancelled and, if you have already paid for the Product, we will refund you the full amount as soon as possible.

You and we shall comply fully with applicable laws and regulations governing the export of technical data, encryption technologies and other export laws and regulations of the US, EU and other states. You shall cooperate with us in our efforts to ensure that the Products comply with all applicable export laws and regulations. However, this clause does not affect our ability to cancel an order as described in clause 11.1.

If you order Products from our site for delivery to one of the International Delivery Destinations, your order may be subject to import duties and taxes which are applied when the delivery reaches that destination. Please note that we have no control over these charges and we cannot predict their amount.

Vendor shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

You must comply with all applicable laws and regulations of the country for which the Products are destined. We will not be liable or responsible if you break any such law.

#### PRICE OF PRODUCTS AND DELIVERY CHARGES

The prices of the Products will be as quoted on our site in accordance with the GSA Schedule Pricelist from time to time. We take all reasonable care to ensure that the prices of Products are correct at the time when the relevant information was entered onto the system. However if we discover an error in the price of Product(s) you ordered, please see clause 12.5 for what happens in this event.

Prices for our Products may change from time to time in accordance with the GSA Schedule Contract and Pricelist, but changes will not affect any order which we have confirmed with an Order Confirmation.

Reserved.

Reserved

Our site contains a variety of Products. It is always possible that, despite our best efforts, some of the Products on our site may be incorrectly priced. If we discover an error in the price of the Products you have ordered we will inform you of this error and we will give you the option of continuing to purchase the Product at the correct price or cancelling your order. We will not process your order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing. Please note that if the pricing error is obvious and unmistakable and could have reasonably been recognised by you as a mispricing, we do not have to provide the Products to you at the incorrect (lower) price.

#### HOW TO PAY

You can only pay for Products using a debit or credit card or Pay Pal, or other method allowed pursuant to the GSA Schedule Contract. We accept all major debit or credit cards

We will not charge your debit card or credit card until we dispatch your order.

## PRESENTATION OF PRODUCTS

The images of the Products on our site are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that your computer's display of the colours accurately reflect the colour of the Products. Your Products may vary slightly from those images.

Although we have made every effort to be as accurate as possible, all sizes, weights, capacities, dimensions and measurements indicated on our site have a 2% tolerance.

The packaging of the Products may vary from that shown on images on our site.

All Products shown on our site are subject to availability. We will inform you by e-mail as soon as possible if the Product you have ordered is not available and we will not process your order if made.

We shall not be responsible for adapting or modifying any Products to conform to statutory requirements not current at the time of our acceptance of your order.

We reserve the right without prior approval from or notice to you to make changes to the Products which do not affect physical or functional interchangeability or performance or are required for purposes of safety or to meet the Products' specification.

**You must not rely on the Products we supply to you under these Terms as your primary method of storing any data, you must back-up any data which you store on the Products on another device.**

## WARRANTY

We warrant that on delivery and for a period of 36 months from delivery, the products shall be free from material defects. However, this warranty does not apply in the circumstances described in clause 15.3.

We warrant that the Products comply with the standards listed in the relevant data sheet on our website at the time you place your order.

The warranty in clause 15.1 does not apply to any defect in the Products arising from:

fair wear and tear;

wilful damage, abnormal storage or working conditions, accident, negligence by you or by any third party;

if you or a third party fail(s) to operate or use the Products in accordance with the user instructions;

any alteration or repair by you or by a third party who is not one of our authorised repairers; or

any specification provided by you.

Under these warranties we will, at our option, either repair, replace, or refund you for, any Products found to have material defects provided that upon delivery:

you inspect the Products to check whether they have any material defects; and

you test the encryption mechanism in the Products.

We shall not be liable for any material defects or defects in the encryption mechanism of the Products ascertainable upon inspection on delivery unless you notify such defects to us within 30 days of delivery. We shall not be liable for any material defects or defects in the encryption mechanism of the Products which are not ascertainable upon inspection on delivery unless you notify such defects to us within 7 days of the time when you discover or ought to have become aware of such defects.

We shall not be liable for a breach of any of the warranties in this clause 15 if you make or anyone else makes any further use of the Products after discovering a defect.

Upon notification of any defect, you should return the defective product to us. If you are a business, we will be responsible for the transportation costs incurred by you in sending any Products or parts of the Products to us under the warranty, and we will be responsible for any transportation costs we incur in sending you a repaired or replacement Product. If you are a consumer, please see clause 8.

Products returned must be in the original packaging and in clean condition. Products returned otherwise will, at the Company's discretion, either be refused or a further additional fee charged to cover the additional costs involved. Products returned for repair under warranty must be accompanied by a copy of the original invoice, or must quote the original invoice number and date of purchase.

If you are a consumer, this warranty is in addition to your legal rights in relation to Products that are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

The warranties set out in this clause apply only to the original purchaser of a Product from iStorage or an iStorage authorized reseller or distributor. These warranties are non-transferable.

#### OUR LIABILITY

**So far as legally possible, we are not liable if there are any defects in the Products you purchase from us. For example, if you lose any data or if someone hacks into your Product, if we are liable, it is only up to the price you paid for the Product. You should therefore always make sure you have a back-up of your content. You must not rely on the products we supply to you under these Terms as your primary method of storing your data. We are not liable to you for any data loss whatsoever.**

Nothing in these Terms limit or exclude our liability for:



death or personal injury caused by our negligence;

fraud or fraudulent misrepresentation;

breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

defective products under the Consumer Protection Act 1987.

Subject to clause 16.3, we will under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

any loss of profits, sales, business, or revenue;

loss or corruption of data, information or software, including by malicious hacking;

loss of business opportunity;

loss of anticipated savings;

loss of goodwill; or

any indirect or consequential loss.

Subject to clause 16.3 and clause 16.4, our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort, breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Products.

Except as expressly stated in these Terms, we do not give any representation, warranties or undertakings in relation to the Products. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, we will not be responsible for ensuring that the Products are suitable for your purposes.

#### COPYRIGHT, PATENTS, TRADE MARKS AND INTELLECTUAL PROPERTY

This website contains material which is owned by or licensed to us. This material includes, but is not limited to, the content, design, layout, look, appearance and graphics.

You are granted a licence to use the material contained in this website subject to the restrictions described in these Terms.

You are granted a licence to download, store, view, edit, use, reproduce, copy, print, any material contained in this website for your own personal use.

You are not permitted to:

republish material from this Website (including republication on another Website, except in the case of publishing extracts from the Website on social media, such as Facebook or Twitter, for the purpose of directing users to the Website);  
sell, rent, license, sublicense, lease, distribute, copy, duplicate, publish or reproduce material from the Website and any material or any part thereof for use by any third party;  
exploit material on our Website for a commercial purpose;  
use any material in any way that is unlawful or in breach of any person's legal rights under any applicable law, or in any way that is offensive, indecent, discriminatory or otherwise objectionable.

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, we shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

All material contained in this website is and shall remain at all times the copyright of the Company or its licensors. You acknowledge that rights in respect of trademarks, trade names, copyrights, patents and other intellectual property rights connected with the Products do not pass to you. You shall not acquire any intellectual property rights in the Products. You are not permitted to use our trademarks or trade or product names without our prior written permission.

You must retain, and must not delete or remove all copyright notices and other proprietary notices placed by us on any material.

#### EVENTS OUTSIDE OUR CONTROL

We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in clause 18.2.

Excusable delays shall be governed by FAR 52.212-4(f).

If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract:

we will contact you as soon as reasonably possible to notify you; and

our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Products to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.

#### OTHER IMPORTANT TERMS

The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204. We reserve the right to subcontract any part of any work or supply of any Products. We shall remain liable for the actions and services provided by such subcontractors at all times.

You may only transfer your rights or your obligations under these Terms to another person if we agree in writing. However if you are a consumer and you have purchased a Product as a gift, you may transfer the benefit of our warranty in clause 15 to the recipient of the gift without needing to ask our consent.

This contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties Act) 1999 or otherwise. However, if you are a consumer, the recipient of your gift of a Product will have the benefit of our warranty at clause 15, but we and you will not need their consent to cancel or make any changes to these Terms.

Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

These Terms are governed by the Federal law of the United States .

IXIA, A KEYSIGHT BUSINESS  
900 S TAFT AVE  
LOVELAND, CO 80537

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Keysight Technologies, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**KEYSIGHT TECHNOLOGIES, INC.  
KEYSIGHT TECHNOLOGIES, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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**IXIA BRANDED SOFTWARE END USER LICENSE AGREEMENT**

This KEYSIGHT SOFTWARE END USER LICENSE AGREEMENT (this "Agreement") is a legal agreement between the undersigned Ordering Activity under GSA Schedule contracts ("Licensee" or "Ordering Activity") and Keysight Technologies, Inc. ("Keysight") for Keysight's Ixia branded software product(s) identified in the related purchase order, including all associated media (collectively, the "SOFTWARE," as further defined below). By both parties executing this Agreement in writing, you are binding the business entity that you represent (i.e., Licensee) to the terms and conditions of this Agreement. If Licensee does not agree to be bound by the terms of this Agreement, Licensee may not use the SOFTWARE in any way, and must promptly return the SOFTWARE (including, without limitation, any software media), unused, to Keysight.

**1. KEYSIGHT PRODUCT**

The "Keysight Product" may contain any combination of the following six categories of software:

- (a) "Server Software" is software that is intended for use on a Keysight Ixia branded Hardware Chassis or other Keysight Ixia branded hardware product, and that provides certain services on that product.
- (b) "Client Software" is software that is intended for use on a computer workstation, and that allows an end user to access and utilize the services of Server Software.
- (c) "Console Software" refers to that portion of the IxChariot Software that is intended for use on a computer workstation, and that allows an end user to control Endpoint Software. For the avoidance of doubt, in no event shall Console Software be deemed to be Server Software or Client Software.
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Gnomovision version 69, Copyright (C) year name of author  
Gnomovision comes with ABSOLUTELY NO WARRANTY; for details type `show w`.

This is free software, and you are welcome to redistribute it under certain conditions; type `show c` for details.

The hypothetical commands `show w` and `show c` should show the appropriate parts of the General Public License. Of course, the commands you use may be called something other than `show w` and `show c`; they could even be mouse-clicks or menu items-- whatever suits your program.

You should also get your employer (if you work as a programmer) or your school, if any, to sign a "copyright disclaimer" for the program, if necessary. Here is a sample; alter the names:

Yoyodyne, Inc., hereby disclaims all copyright interest in the program 'Gnomovision' (which makes passes at compilers) written by James Hacker.



<signature of Ty Coon>, 1 April 1989 Ty Coon, President of Vice

This General Public License does not permit incorporating your program into proprietary programs. If your program is a subroutine library, you may consider it more useful to permit linking proprietary applications with the library. If this is what you want to do, use the GNU Library General Public License instead of this License.

## **NETWORK VISIBILITY SOFTWARE END USER LICENSE AGREEMENT**

This KEYSIGHT SOFTWARE END USER LICENSE AGREEMENT (this "Agreement") is a legal agreement between the undersigned Ordering Activity under GSA Schedule contracts ("Licensee" or "Ordering Activity") and Keysight regarding Keysight's Ixia-branded software product(s) identified in the related purchase order, including all associated media (collectively, the "SOFTWARE," as further defined below). By both parties executing this Agreement in writing, you are binding the business entity that you represent (i.e., Licensee) to the terms and conditions of this Agreement.

If Licensee does not agree to be bound by the terms of this Agreement, Licensee may not use the SOFTWARE in any way, and must promptly return the SOFTWARE (including, without limitation, any software media), unused, to Keysight.

### **1. CERTAIN DEFINITIONS**

(a) "Server Software" is software that is intended for use on an Keysight Ixia-branded Hardware Chassis or other Keysight-approved hardware product, and that provides certain services on that product.

(b) "Client Software" is software that is intended for use on a computer workstation, and that allows an end user to access and utilize the services of Server Software.

(c) "License Management Software" is software that provides certain software license management services on a computer server.

(d) "Open Source Software" is any software or software component, module, or package that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software, or under similar licensing or distribution models, including, without limitation, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (i) GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); (ii) the Artistic License (e.g., PERL); (iii) the Mozilla Public License; (iv) the Netscape Public License; (v) the Sun Community Source License (SCSL); (vi) the Sun Industry Standards License (SISL); (vii) the BSD License; and (viii) the Apache License.

### **2. GRANT OF LICENSE**

Subject to the terms, conditions, and restrictions in this Agreement, Keysight grants to Licensee a limited, non-exclusive, non-transferable, and non-sublicensable license to (i) install and use the Server Software, the Client Software the License Management Software, and the Open Source Software (collectively, and together with any copies thereof made in accordance with this Agreement, the "SOFTWARE") for which Licensee has paid or will pay to Keysight any required license fees, in object code form only, and (ii) use the provided end user documentation, whether printed or electronic (together with any copies thereof made in accordance with this Agreement, the "Documentation"), in support of Licensee's use of the SOFTWARE. The license(s) granted above are subject to the following terms and conditions, as well as all other terms and conditions in this Agreement:

(a) Server Software. Any Server Software included in the SOFTWARE may be installed and/or used only on the particular Keysight Ixia-branded Hardware Chassis or other Keysight-approved hardware product for which such Server Software is designated.

(b) Client Software. Except as otherwise provided in the applicable purchase order, any Client Software included in the SOFTWARE may be installed and/or used on an unlimited number of computer workstations. Such use is subject to any further restrictions in the applicable purchase order, including but not limited to any restrictions limiting the number of Client Software copies that can concurrently access and utilize the services of a particular copy of Server Software.

(c) License Management Software. Any License Management Software included in the SOFTWARE may be installed and/or used only on the number of designated servers corresponding with the total number of licenses specified in the applicable Keysight quote.

(d) Open Source Software. Licensee hereby acknowledges that the SOFTWARE may utilize or include Open Source Software that may have specific license terms applicable to that Open Source Software ("Open Source License") different from the terms of this Agreement. Open Source License terms are available at <https://support.ixiacom.com/support-services/warranty-license-agreements> or in other materials provided by Keysight. Any Open Source License associated with Open Source Software applies only to that Open Source Software and not the other software included in the SOFTWARE.

(e) Updates and Releases. To the extent that, the Limited Warranty and Technical Support Agreement (the "Limited Warranty Agreement"), Keysight or an affiliate provides Licensee with any revised, modified, or replacement SOFTWARE, or additional or supplemental SOFTWARE, or any updates, releases, error corrections, or bug fixes related to the SOFTWARE, the same shall become part of the "SOFTWARE" licensed hereunder when delivered to Licensee and shall be subject to all of the terms and conditions contained herein. With respect to any technical information Licensee provides to Keysight or an affiliate in connection with the license(s) granted to Licensee hereunder, Keysight may use such information for any purpose without restriction, including, without limitation, for product support and development. Keysight will not use such technical information in a form that identifies Licensee.

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### 3. TITLE; COPYRIGHT; PATENTS; NO SALE

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(b) No Reverse Engineering: No Modification. Licensee may not, under any circumstances, reverse engineer, decompile, disassemble, or otherwise attempt to discover, reconstruct, or identify the source code for the SOFTWARE or any user interface techniques, algorithms, logic, protocols, or specifications included, incorporated, or implemented therein. Furthermore, Licensee may not, under any circumstances and except as expressly authorized by Keysight in the Documentation, modify, port, translate, or create derivative works of the SOFTWARE or the Documentation. The forgoing restrictions will not apply to the extent any such restriction is prohibited by applicable mandatory law or by licensing terms governing the use of open source components that may be included with the SOFTWARE.

(c) Rental: Leasing. Licensee may not, and agrees that it will not, transfer, assign, rent, lease, lend, resell, or in any way distribute or transfer any rights in this Agreement, the SOFTWARE, or the Documentation to third parties, including by operation of law, without Keysight's prior written approval and subject to written agreement by the recipient to the terms of this Agreement.

(d) Export Restrictions: Compliance with Laws. Licensee agrees that Licensee will not, directly or indirectly, export or transmit the SOFTWARE or the Documentation to any country to which such export or transmission is restricted by any applicable U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce or such other governmental entity as may have jurisdiction over such export or transmission. Licensee agrees to comply with and conform to all applicable laws, regulations, ordinances, and executive orders relating to Licensee's use of the SOFTWARE and the Documentation.

### 5. USE AUDIT

Keysight shall have the right, upon reasonable notice and not more than once in a 12 month period, to conduct and/or have an independent accounting firm to conduct, during normal business hours on Licensee's premises under Licensee's reasonable supervision, an audit to verify Licensee's compliance with the terms of this Agreement. Keysight or an independent accounting firm shall comply with all of Licensee's security requirements prior to entering the premises or accessing Licensee's systems.

### 6. TERM AND TERMINATION

(a) General. Except as provided below with respect to evaluation and limited term licenses, this Agreement and the license(s) granted herein will remain effective until terminated. Licensee may terminate this Agreement and the license(s) granted herein by ceasing all use of the SOFTWARE and the Documentation, and returning all copies of the SOFTWARE and the Documentation to Keysight. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Keysight shall proceed

diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

(b) Evaluation and Term Licenses. If the SOFTWARE has been licensed to Licensee for evaluation purposes, then the term of this Agreement will continue only until the end of the designated evaluation period. If the SOFTWARE has been licensed to Licensee for a limited period as specified in the applicable purchase order, then the term of this Agreement will continue only until the end of that period. SOFTWARE that is subject to any evaluation or limited term license may contain code that can disable most or all of the features of such SOFTWARE upon expiration of such evaluation or limited term license, and unless Licensee has purchased from Keysight the applicable license fee for any additional licenses, Licensee shall have no rights to use the SOFTWARE or the Documentation upon expiration of any such license.

(c) Licensee Obligations Upon Termination or Expiration. Licensee agrees, upon any termination or expiration of this Agreement, to cease use of, and to destroy or return to Keysight, all copies of the SOFTWARE and any related Documentation. Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of this Agreement shall survive any expiration or termination of this Agreement for any reason and continue in full force and effect.

## 7. LIMITED WARRANTY; DISCLAIMER; LIMITATION OF LIABILITY

(a) LIMITED WARRANTY Keysight warrants that the SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN THE LIMITED WARRANTY AGREEMENT ATTACHED HERETO, THE SOFTWARE AND THE DOCUMENTATION IS PROVIDED "AS IS", AND KEYSIGHT AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE AND SPECIFICALLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO THE SOFTWARE, THE DOCUMENTATION, AND/OR USE OF THE SOFTWARE OR THE DOCUMENTATION (INCLUDING, WITHOUT LIMITATION, ACTUAL AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT), AS WELL AS ANY WARRANTIES THAT THE SOFTWARE, THE DOCUMENTATION, OR ANY ELEMENTS THEREOF WILL ACHIEVE A PARTICULAR RESULT, OR WILL BE UNINTERRUPTED OR ERROR-FREE.

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(c) KEYSIGHT LIMITED AND EXTENDED WARRANTIES. THE SOFTWARE IS LICENSED HEREUNDER SUBJECT TO ALL OF THE "OTHER LIMITATIONS" SET FORTH IN THE LIMITED WARRANTY AGREEMENT.

Responsibilities of Licensee. As a licensee of the SOFTWARE, Licensee is solely responsible for the proper installation and operation of the SOFTWARE in accordance with the instructions and specifications set forth in the Documentation. Keysight shall have no responsibility or liability to Licensee, under the Limited Warranty Agreement or otherwise, for improper installation or operation of the SOFTWARE. Any output or execution errors resulting from improper installation or operation of the SOFTWARE shall not be deemed "defects" for purposes of the Limited Warranty Agreement

## 8. NON-DISCLOSURE

Licensee shall take all reasonable steps necessary to ensure that the SOFTWARE, the Documentation, and any related Keysight information, or any portion thereof, is not made available or disclosed by Licensee (or by any of its employees, representatives, or agents) to any person other than as may be necessary to Licensee's employees, representatives, and agents to use the same as expressly permitted herein. Licensee agrees that all of its employees, representatives, and agents having access to the SOFTWARE and/or the Documentation shall observe and perform the terms of this Section. Keysight recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552.

## 9. U.S. GOVERNMENT RESTRICTED RIGHTS

(a) Commercial Software. The SOFTWARE and its accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, for purposes of Federal Acquisition Regulations ("FAR") 12.212, and the restrictions set forth in such regulations, and this Agreement shall be deemed to be the license described in such regulations. Any use, modification, reproduction, release, performance, display, or disclosure of the SOFTWARE or its accompanying Documentation by any

agency, department, or entity of the United States Government (the "Government") shall be governed solely by the terms of this Agreement and is prohibited except to the extent expressly permitted by the terms of this Agreement. The SOFTWARE and its accompanying Documentation are also deemed to be "restricted computer software" for purposes of FAR 52.227-14(g)(3) (*Alternate III (June 1987)*), which clause is incorporated herein by reference subject to the express restrictions and prohibitions set forth above.

(b) Certain Technical Data. Any technical data provided that is not covered by the above provisions is deemed to be "technical information related to commercial computer software or commercial computer software documentation" for purposes of FAR 12.212 and the restrictions set forth therein, and is deemed to be "technical data or information related or pertaining to commercial items or processes" developed at private expense and this Agreement shall be deemed to be the license described in such regulations. Any use, modification, reproduction, release, performance, display, or disclosure of such technical data by the Government shall be governed solely by the terms of this Agreement and is prohibited except to the extent expressly permitted by the terms of this Agreement. Such technical data is also deemed to be "limited rights data" as defined in FAR 52.227-14(a) (*Alternate I (June 1987)*) and for purposes of FAR 52.227-14(g)(2) (*Alternate II (June 1987)*), which clauses are incorporated herein by reference subject to the express restrictions and prohibitions set forth above.

(c) Third Party Acceptance of Restrictions. Licensee shall not provide the SOFTWARE, its accompanying Documentation, or the technical data to any party, including the Government, unless such third party accepts the same restrictions as are set forth in this Section 10. Licensee is responsible for ensuring that the proper notice is given to all such third parties and that the SOFTWARE, its accompanying Documentation, and the technical data are properly marked with the required legends. Nothing in this Section 10(c) shall be deemed to modify the restrictions on transfer or disclosure set forth elsewhere in this Agreement.

## 10. GOVERNING LAW; ENFORCEMENT

(a) Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by the Federal laws of the United States. IN ADDITION, THIS AGREEMENT WILL NOT BE GOVERNED OR INTERPRETED IN ANY WAY BY REFERRING TO ANY LAW BASED ON THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA), AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS HEREBY EXCLUDED.

## 11. INVALIDITY OF PROVISIONS

If any provision in this Agreement is invalid or unenforceable, such provision shall be construed, limited, or altered, as necessary, to eliminate the invalidity or unenforceability and all other provisions of this Agreement shall remain in effect.

## 12. MISCELLANEOUS

(a) This Agreement and the Limited Warranty Agreement together with the underlying GSA Schedule Contract, Schedule pricelist and applicable purchase order(s) set forth the entire agreement between Keysight and Licensee with respect to the SOFTWARE, the Documentation, and Licensee's use thereof. No provision of this Agreement or of the Limited Warranty Agreement may be waived, modified, or superseded except by a written instrument signed by each of Keysight and Licensee. No failure or delay in exercising any right or remedy shall operate as a waiver of any such (or any other) right or remedy. The language of this Agreement shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against either party, regardless of who drafted or was principally responsible for drafting this Agreement or any specific term or conditions hereof. This Agreement shall bind and inure to the benefit of the parties and their successors and permitted assigns. Both parties are acting as independent contractors with respect to the activities hereunder.

## LIMITED WARRANTY AND TECHNICAL SUPPORT AGREEMENT FOR IXIA BRANDED KEYSIGHT PRODUCTS

Ixia is a business of Keysight Technologies.

Congratulations on your purchase of one or more Ixia branded products. References herein to Ixia branded products include Ixia branded products and professional services sold by Keysight Technologies, Inc. and its affiliates ("Keysight"). Only those Ixia branded products listed on the quote that you received from Keysight or its authorized reseller are covered under this Limited Warranty and Technical Support Agreement (this "Warranty Agreement"). By using any of the products or services that are covered by this Warranty Agreement, you agree to be bound by the terms and conditions set forth herein.

### Limited Hardware Warranty

Subject to the exceptions in Section VII below, Keysight provides a limited warranty that covers the hardware and software media (e.g., USB drives) that Keysight ships as part of its Ixia branded products (the "Hardware Warranty"). For the avoidance of doubt, the Hardware Warranty does not cover third party products that are separate and distinct from Keysight products and merely resold by Keysight.

**What Is Covered:** The Hardware Warranty covers only material defects in the hardware and software media shipped as part of Ixia branded products (each, a "Defect").

**For How Long:** The Hardware Warranty is effective for twelve (12) months from the date on which Keysight first ships the corresponding product or any part or portion thereof (such time period is referred to herein as the "Initial Hardware Warranty Term"). Further, for each item that is repaired or replaced by Keysight pursuant to the Hardware Warranty, the Hardware Warranty will remain effective for the longer of (i) the remainder of the Initial Hardware Warranty Term and (ii) three (3) months following the date on which Keysight first ships the repaired or replaced item. If you purchase additional hardware functionality during the Hardware Warranty Term, including but not limited to adding or changing the configuration of ports, such purchase shall not extend the Hardware Warranty Term for the underlying hardware base unit.

**What Keysight Will Do:** Except as otherwise expressly set forth in the paragraph below titled "Advanced Replacement," Keysight's sole obligation under the Hardware Warranty is, at Keysight's option, to either repair or replace the hardware or software media that contains the

Defect, or refund (or cause the authorized reseller to refund) the purchase price of the corresponding Ixia branded product in exchange for your return of that product. Keysight may use refurbished items and/or substantially similar items to satisfy its obligations hereunder.

**What You Must Do:** If, during the applicable Hardware Warranty Term, you believe you have discovered a Defect, please contact Customer Support using one of the methods listed online at support.ixiacom.com. Customer Support may require some or all of the following information in order to assist in resolving your problem:

Model number of the hardware.

Serial number of the hardware.

Software version.

Software license key number or registration information.

Detailed problem description.

Customer name and telephone number, and an address to where any repaired or replaced hardware is requested to be shipped.

If Customer Support believes that there is a Defect in the hardware or software media that is covered by the Hardware Warranty and Customer Support cannot resolve that Defect remotely, then Customer Support will issue you a Return of Material Authorization ("RMA") number. Any item that is returned without an RMA number may be refused by Keysight and returned to you at your sole cost and expense.

All defective hardware and software media that is returned to Keysight must be shipped in its original packaging (including any antistatic bags) to the shipping address specified by Customer Support. Hardware packaged incorrectly may be damaged in shipping, which will invalidate the Hardware Warranty with respect to that item and may cause you to incur a repair or replacement charge. **THE ASSIGNED RMA NUMBER MUST BE CLEARLY POSTED ON THE OUTSIDE OF THE BOX.** Keysight is responsible for all packing, shipping, insurance costs, taxes, tariffs, and duties (collectively, "Shipping Costs") due in connection with your return of any item, and you assume the risk of loss and damage for all such items in transit to the shipping address specified by Customer Support. Except as otherwise provided below, Keysight is solely responsible for all Shipping Costs due in connection with Keysight's return of any repaired or replacement item under the Hardware Warranty, and Keysight assumes the risk of loss and damage for all such items in transit to your return address. If Keysight must return any repaired or replacement item to a location outside of the United States of America, then the foregoing sentence will not apply and, instead, the transportation terms will be the same as those of the initial product sale. Title to any replacement items will transfer to you when risk of loss transfers from Keysight to you pursuant to the foregoing. If Keysight is requested to return any repaired or replacement item to a country that is different from the country in which the item was originally purchased, then Keysight may, at its sole option, either return the item to the country in which it was originally purchased or charge you for any additional costs incurred by Keysight as a result of that change. If a returned item is determined by Keysight to not contain a Defect or otherwise not be covered by the Hardware Warranty, then Keysight may, at its sole option, charge you for any related costs incurred by Keysight, and you will be responsible for the return of that item to you and for all related Shipping Costs.

**IMPORTANT:** Before shipping any hardware in accordance with the instructions above, you must (1) back up the data on any hard drive(s) or on any other storage device(s) in that hardware, (2) remove any confidential, proprietary, or personal information (collectively, "Confidential Information"), (3) remove any removable media, such as DVDs, and (4) de-register all Ixia branded software licenses that are registered to that hardware. Keysight will not be responsible for any loss of or damage to your data or your removable media. Further, except as expressly set forth in a written agreement that has been signed by Keysight, and to the extent permitted by applicable law, Keysight will have no liability for any use or disclosure of your Confidential Information.

**Advanced Replacement:** Ixia branded hardware covered by the Hardware Warranty will be entitled to Advanced Replacement if (i) within the ninety (90) day period immediately following the date on which Keysight first ships such hardware, you notify Customer Support in the manner specified above that such hardware contains a potential Defect, and (ii) Customer Support issues an RMA number for such hardware. "Advanced Replacement" means that, at your request, Keysight will use commercially reasonable efforts to initiate shipment of replacement hardware within two (2) business days following Keysight's issuance of such RMA. If you make use of Advanced Replacement, you must return the hardware that contains the potential Defect (the "Defective Hardware") to Keysight as instructed above within fifteen (15) days following your receipt of the replacement hardware, or you will be charged Keysight's then-current, applicable list price for the replacement hardware. Ownership of the Defective Hardware will transfer to Keysight upon Keysight's receipt thereof. You acknowledge that the replacement hardware may be refurbished hardware and/or may be a different model than the Defective Hardware (so long as it is a substantially similar model).

## 2. Limited Software Warranty

Subject to the exceptions in Section VII below, Keysight provides a limited warranty with respect to its Software (the "Software Warranty"). The term "Software" refers to Ixia branded software and firmware programs that are provided by Keysight, but excludes any Third Party Software. The term "Third Party Software" refers to third party software programs that are provided by Keysight but that are separate and distinct from Keysight's proprietary software (e.g., a third party operating system or antivirus program).

**What Is Covered:** The Software Warranty only covers the most current General Availability (GA) version of the Software and the most current Early Adopter (EA) version of the Software. Further, the Software Warranty only covers programming defects and errors in the Software that materially and adversely affect the operation of the Software in accordance with its documentation (each, an "Error"). The Software Warranty does not cover Third Party Software.

**For How Long:** The Software Warranty is effective for twelve (12) months from the Delivery Date (such time period is referred to herein as the "Initial Software Warranty Term"). The term "Delivery Date," as used herein, means the first date on which Keysight (i) has shipped the media containing the corresponding Software or has made it available for electronic download and (ii) has provided you with any required license key needed to download, install, and/or activate such Software.

**What Keysight Will Do:** Keysight's sole obligation under the Software Warranty is to use commercially reasonable efforts to correct or provide a work around for each Error.



**What You Must Do:** If, during the applicable Software Warranty term, you believe you have discovered an Error, please contact Customer Support using one of the methods listed online at support.ixiacom.com. Customer Support may require some or all of the following information in order to assist in resolving your problem:

Software version.  
Software license key number or registration information.  
Model number of corresponding hardware.  
Serial number of corresponding hardware.  
Detailed problem description.  
Customer name, address, and telephone number.

**Third Party Software:** All Third Party Software is provided by Keysight "AS IS" and with no warranty. However, Third Party Software may be covered by a separate warranty provided by the third party licensor of that software. Further, if any Ixia branded hardware or Software product fails to operate substantially in accordance with its documentation as the result of any defect in any Third Party Software, then Keysight will use commercially reasonable efforts to obtain a remedy for that defect, provided that such Ixia branded hardware or Software product (i) is covered under the Hardware Warranty or Software Warranty (as applicable), and (ii) is designated by Keysight as compatible with that Third Party Software. For assistance with any such defect, please contact Customer Support using one of the methods listed at support.ixiacom.com.

### 3. Professional Services Warranty

Keysight warrants that all Professional Services will be performed in a good and workmanlike manner, consistent with applicable industry standards (the "Professional Services Warranty"). As used herein, the term "Professional Services" refers to services provided by Keysight for a fee that are separate and distinct from the warranty, maintenance, and support services described elsewhere in this Warranty Agreement. The Professional Services Warranty will be in effect for thirty (30) days following completion of the corresponding services (the "Warranty Period"). Customer's sole and exclusive remedy for any breach of the Professional Services Warranty will be for Keysight, at its option, to either re-perform the non-conforming services or refund the corresponding fees paid by Customer hereunder, and Keysight will have no obligation with respect to any such breach that is first reported to Keysight after the Warranty Period.

### 4. Technical Support

Subject to the product-specific exceptions in Section VII below, Keysight will provide you with technical support services to assist you with the installation, operation, and/or configuration of each Ixia branded product that you have purchased or licensed, and to assist you with any Defects or Errors that you believe you have identified ("Technical Support"). Technical Support will only be provided for so long as that product is covered under the Hardware Warranty or Software Warranty (as applicable), and you must be registered with Keysight as the original owner/licensee of that product to receive Technical Support. Except as otherwise determined by Keysight in its sole discretion, all Technical Support will be provided remotely (e.g., via telephone and/or email, or through ixiacom.com). Further, except as expressly set forth in Section VI below or as otherwise determined by Keysight in its sole discretion, Technical Support will only be provided during the hours specified on our website at support.ixiacom.com ("Business Hours") for the region in which the applicable Support Center is located. To locate the applicable contact information for Customer Support, or to access any online Technical Support resources available with respect to the Ixia branded product that you have purchased or licensed, please visit that website.

### 5. Software Updates

Subject to the exceptions in Section VII below, Keysight will make available to you all Updates for Software that you have licensed for so long as that Software is covered under the Software Warranty. The term "Updates" refers to modifications, enhancements, and upgrades to Software that Keysight makes generally available, at no additional fee, to its other customers who are covered by the same Software Warranty. For the avoidance of doubt, the term "Updates" does not include any modifications, enhancements, or upgrades to Software that are licensed separately for an additional fee. All Updates and Error corrections provided for Software pursuant to this Warranty Agreement will constitute part of that Software and are provided to you under the terms of the applicable software end user license agreement for that Software.

### 6. Additional Services

You may purchase, for an additional fee, the services described below in this Section VI (individually and collectively, the "Additional Services") to supplement the warranties, support, and services described above. Keysight may, in its sole discretion, not offer or cease offering any of the Additional Services for any products. Notwithstanding anything in this Warranty Agreement to the contrary, for so long as a product is covered by the Additional Services, that product shall also be covered by, as applicable, the Hardware Warranty, the Software Warranty, Technical Support, and Updates.

**Essential Support.** For each Ixia branded product covered by Essential Support, Keysight will use commercially reasonable efforts to respond to each of your requests for Technical Support regarding that product within two (2) Business Hours following Keysight's initial receipt of that request. For so long as an Ixia branded hardware product is covered by Essential Support, that product will be eligible for Advanced Replacement. Use of Advanced Replacement is conditioned upon the issuance of an RMA number for that product by Customer Support.

**Enterprise 24x7 Support:** For each Ixia branded product covered by Enterprise 24x7 Support, (i) Keysight will use commercially reasonable efforts to respond to each of your requests for Technical Support regarding that product within two (2) hours following Keysight's initial receipt of that request, and (ii) a senior Support Advocate (either Director level or above and designated by Keysight) will, at your request and up to once per calendar quarter, meet with you at the time and location agreed upon by you and Keysight (a "Support Advocate Meeting") to discuss your existing and closed Technical Support cases with respect to that product, any proposals you may have for Keysight to improve its support services, and any recent or anticipated improvements to Keysight's support services that may benefit you. Support Advocate Meeting rights for a particular calendar quarter expire at the end of that calendar quarter and may not be accrued or rolled over to subsequent quarters. For so long as an Ixia branded hardware product is covered by Enterprise 24x7 Support, that product



will be eligible for Advanced Replacement. Use of Advanced Replacement is conditioned upon the issuance of an RMA number for that product by Customer Support.

## 7. Exceptions

**BreakingPoint Software Products:** You will only be entitled to Technical Support and Updates for the BreakingPoint Software that you have licensed if, and for so long as, that Software is covered by an Application Threat Intelligence (“ATI”) subscription. An ATI subscription also entitles you to StrikePack Updates. StrikePack Updates contain new security attacks and application protocols for BreakingPoint Software. You must pay an additional fee for an ATI subscription.

**BreakingPoint Hardware Products:** For so long as your BreakingPoint hardware product is covered by the Hardware Warranty, that product will be eligible for Advanced Replacement. Use of Advanced Replacement is conditioned upon the issuance of an RMA number for that hardware by Customer Support.

**IxCatapult Products:** For all IxCatapult products that are delivered to you outside of Japan, both the Initial Hardware Warranty Term and the Initial Software Warranty Term shall be three (3) months in length.

**ThreatARMOR Products:** ThreatARMOR products are not covered by either the Hardware Warranty or the Software Warranty unless such products are also covered by either Essential Support or Enterprise 24x7 Support. Further, Essential Support and Enterprise 24x7 Support for a ThreatARMOR product must be purchased together with an ATI subscription. You must pay additional fees for Essential Support, Enterprise 24x7 Support, and the bundled ATI subscriptions.

**TradeView Products:** You will not receive any Updates to the Market Data Feeds Decoder for any TradeView products that you have purchased unless you have an active Feed Decoder subscription. You must pay an additional fee for a Feed Decoder subscription.

**Mobile Applications:** From time to time, Keysight may make one or more mobile software applications (“Apps”) available for use in conjunction with one or more of the Ixia branded products. Apps may be made available through the Apple App Store, the Google Play Store, or otherwise. All Apps are provided “AS IS,” and you shall not be entitled to any warranty, support, or software updates of any kind with respect thereto.

**Professional Services:** You will not be entitled to the Hardware Warranty, the Software Warranty, or Technical Support in connection with any goods or services provided to you as part of the Professional Services.

## 8. Coverage Limitations

**WHAT IS NOT COVERED:** NOTWITHSTANDING ANYTHING IN THIS WARRANTY AGREEMENT TO THE CONTRARY and in addition to all other limitations set forth in this Warranty Agreement, the Hardware Warranty, Software Warranty, the Professional Services Warranty, Technical Support, Updates, any Additional Services that you have purchased, and any other services identified herein that you have purchased (collectively, the “Services”) do not cover:

Products with missing or altered serial numbers.

Hardware products that have been opened, or for which any of the security screws have been removed without Keysight’s prior authorization.

Products for which Keysight (or Keysight’s authorized reseller, if applicable) has not received full payment in accordance with the applicable payment terms.

Lost or stolen products.

Non-serialized accessories, such as cables, baffles, and mounting brackets (unless the corresponding Ixia branded hardware base unit for such item is covered under the Hardware Warranty, in which case Keysight’s sole obligation shall be to use commercially reasonable efforts to provide the Services for such item).

Problems that result from:

external causes such as accident, abuse, misuse, or problems with electrical power;

servicing not authorized by Keysight;

installation or usage that is not in accordance with the corresponding documentation provided by Keysight;

failure to perform commercially reasonable preventative maintenance; or

use of accessories, parts, components, or software not supplied by Keysight.

Problems that are first reported after the effective period of the applicable Services.

The physical installation or physical deployment of any products (except if and to the extent that such services were to be provided as part of the corresponding Professional Services).

**Repairs Do Not Extend Warranty Periods:** Except as otherwise expressly provided above with respect to hardware products, the effective periods of the Services will not be extended as the result of any repairs, replacements, Error corrections, or Software updates provided hereunder.

**Not Transferable:** Only the original end user authorized by Keysight to use the Ixia branded product(s) may receive the corresponding Services. None of the Services may be assigned or transferred, directly or indirectly, by operation of law or otherwise. Any such termination will not affect any amounts due from you hereunder, and you will not be entitled to any refund of any pre-paid amounts as a result of any such termination.

**Services Provided in English:** Except as otherwise determined by Keysight in its sole discretion, all Services shall be provided in the English language only.

**Force Majeure:** Keysight shall not be liable for failing to perform any of its obligations under this Warranty Agreement if such failure is due to a cause beyond Keysight's reasonable control.

## 9. Other Limitations

**DISCLAIMER OF WARRANTIES:** Keysight warrants that ALL HARDWARE, SOFTWARE, SOFTWARE MEDIA, THIRD PARTY HARDWARE INTEGRATED INTO A KEYSIGHT SOLUTION, AND THIRD PARTY SOFTWARE INTEGRATED INTO A KEYSIGHT SOLUTION PROVIDED BY KEYSIGHT OR ITS AUTHORIZED RESELLERS AS PART OF OR IN CONNECTION WITH ANY IXIA BRANDED PRODUCT, OR IN CONNECTION WITH THIS WARRANTY AGREEMENT (Collectively, THE "KEYSIGHT DELIVERABLES") will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Keysight's published specifications for the KEYSIGHT DELIVERABLES. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE "KEYSIGHT DELIVERABLES, THIRD PARTY HARDWARE OR THIRD PARTY SOFTWARE THAT IS NOT INTEGRATED INTO A KEYSIGHT SOLUTION, PROFESSIONAL SERVICES, AND OTHER SERVICES ARE PROVIDED "AS IS", AND KEYSIGHT AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE AND SPECIFICALLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO THE KEYSIGHT DELIVERABLES AND/OR USE OF THE KEYSIGHT DELIVERABLES (INCLUDING, WITHOUT LIMITATION, ACTUAL AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT), AS WELL AS ANY WARRANTIES THAT THE KEYSIGHT DELIVERABLES (OR ANY ELEMENTS THEREOF) WILL ACHIEVE A PARTICULAR RESULT OR WILL BE UNINTERRUPTED OR ERROR-FREE.

**LIMITATIONS ON LIABILITY:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL KEYSIGHT BE LIABLE UNDER ANY THEORY OF LIABILITY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOSS OF PROFITS, REVENUE, DATA, OR USE, OR FROM INTERRUPTED COMMUNICATIONS OR DAMAGED DATA, OR IN CONNECTION WITH CUSTOMER'S ACQUISITION OF SUBSTITUTE GOODS OR SERVICES, OR ANY SUCH DAMAGES ARISING FROM BREACH OF CONTRACT OR WARRANTY OR STRICT LIABILITY, EVEN IF KEYSIGHT OR ANY OTHER PERSON HAS BEEN ADVISED OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, KEYSIGHT'S MAXIMUM AGGREGATE LIABILITY IN CONNECTION WITH THIS WARRANTY AGREEMENT AND/OR IN CONNECTION WITH ANY DELIVERABLES (OR YOUR LICENSING, PURCHASE, OR USE THEREOF) WILL NOT EXCEED THE CONTRACT PRICE. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM KEYSIGHT'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**Unauthorized Persons Cannot Change Terms:** Additional statements by agents, employees, or resellers of Keysight do not constitute warranties by Keysight, do not bind Keysight, and may not be relied upon. This Warranty Agreement may only be amended by a written agreement signed by both parties.

**Export Restrictions:** You expressly agree that you assume full responsibility for obtaining any and all required export authorizations from all applicable government authorities prior to exporting, re-exporting or transferring any items, technology or technical data and for complying with all applicable laws and regulations relating to any such transfer or transaction. You shall not sell or transfer any items, technology or technical data to any entity designated or identified by the U.S. Government as a restricted person or included on any U.S. Government-maintained restricted person list, including, but not limited to, (i) the Specially Designated Nationals and Blocked Persons List, (ii) the Foreign Sanctions Evaders List, (iii) the Sectoral Sanctions Identification List, (iv) the Entity List, (v) the Denied Persons List, and (vi) the Unverified List (collectively, "US Restricted Lists"). Further information on these and other applicable lists can be found at [www.treasury.gov](http://www.treasury.gov) or [www.bis.doc.gov](http://www.bis.doc.gov). Keysight may, in its sole discretion, suspend performance or cancel all or part of the order if you are designated on US Restricted Lists or you do not comply with the provisions of this section and may, in its sole discretion, refuse to perform any post-sale services with respect to the items (including, but not limited to, any repair or replacement under warranty) if such activities would involve in any way, an entity on any US Restricted Lists. Keysight may, in its sole discretion, require you to provide an end user certificate and/or an export license prior to Keysight's delivery of any item to you.

**Governing Law and Jurisdiction:** This Warranty Agreement and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the Federal laws of the United States without giving effect to principles of conflicts of law. THIS WARRANTY AGREEMENT WILL NOT BE GOVERNED OR INTERPRETED IN ANY WAY BY REFERRING TO ANY LAW BASED ON THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA), AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS HEREBY EXCLUDED.

**Termination:** Any such termination will not affect any amounts due from you hereunder. For subscription licenses, this Warranty Agreement will terminate when your subscription expires or is terminated.

**Severability:** If any provision of this Warranty Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Warranty Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by applicable law.

**Survival:** This Section IX of this Warranty Agreement will survive any expiration or termination of this Warranty Agreement for any reason and continue in full force and effect in perpetuity.

## 10. Renewals

You may renew the Services for one or more additional, successive terms, subject to your issuance of a purchase order and subject to the following conditions and limitations:

The renewal agreement be in writing and signed by both parties.

Renewal fees and renewal term lengths will be as determined by Keysight in accordance with the GSA pricelist and as set forth in the applicable purchase order.

Renewal terms must be continuous with no gaps in coverage. Any reinstatement of coverage after a gap in coverage is to Keysight's approval.

Except as otherwise set forth in a written agreement signed by Keysight, all of the terms, conditions, and limitations set forth in this Warranty Agreement will apply with respect to each such renewal order.

Certain Services may only be renewed together with certain other Services. Please contact the Support Renewals team at [renewals@ixiacom.com](mailto:renewals@ixiacom.com) or your account representative for an explanation of these dependencies.

Notwithstanding anything in this Warranty Agreement to the contrary, on and after the End-of-Development Date for an Ixia branded product, Keysight may refuse to provide code changes to correct Errors in that product. Such End-of-Development Dates are set forth in Keysight's End of Life Policy for Ixia branded products, which is posted at [support.ixiacom.com](http://support.ixiacom.com).

Keysight may, at any time and in its sole discretion, cease offering renewal terms for any of the Services, refuse to renew any of the Services, or condition any such renewal upon your acceptance of terms and conditions that are in addition to, or different than, the terms and conditions set forth in this Warranty Agreement which must be agreed to in writing by both parties.

**KBZ COMMUNICATIONS, INC.**  
**2003 SOUTH EASTON ROAD, SUITE 308**  
**DOYLESTOWN, PA 18901**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **KBZ Communications, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**



**KBZ COMMUNICATIONS, INC.**

**KBZ COMMUNICATIONS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**Warranty Disclaimer.** EXCEPT AS EXPRESSLY STATED IN THIS ATTACHMENT A, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER WHATSOEVER WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW AND SPECIFICALLY DISCLAIMS LIABILITY IN CONNECTION WITH SUCH WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM A COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.

**SERVICE SUMMARY**

This document describes the services offerings of the KBZ ZCare Technical Support Program (“ZCare”). It outlines the deliverables by Contractor through KBZ ZCare Technical Support Services to an Ordering Activity of Contractor (“Ordering Activity”). An “Ordering Activity” is defined as either an End User customer who has purchased ZCare from Contractor for Cisco TelePresence equipment and/or systems.

Service definitions herein will focus on three core deliverables by Contractor through ZCare Technical Support Services:

- SoftCare Software Support
- Advanced Replacement Service
- RMA Process in Support of Advance Equipment Replacement
- Delivery and Collection RMA
- End of Life Statement
- Help Desk Telephone Technical Support
- Help Desk Call Flow
- ZCare Service Level Commitment
- Escalation Procedure

This document additionally addresses Call Flow and Escalation Management for critical situations.

**1. SOFTCARE SOFTWARE SUPPORT**

SoftCare support is a maintenance component of the ZCare Technical Support program that makes available to the Ordering Activity, all applicable software releases. To ensure better communication and awareness of this software notification program, ZCare Technical Support Services will automatically alert the Ordering Activity when new releases are available.

The SoftCare it e-mail notification will contain, at minimum, the following key information:

- Feature list (a brief explanation of the contents and benefits of the software release)
- Download instructions
- Release Key information
- WEB Release Key Generator

**2. ADVANCED REPLACEMENT SERVICE**

The ZCare Advanced Replacement Service provides for replacement equipment, return paperwork, and arrangement for collection of faulty equipment.

Next-day support for advanced parts exchange is available until 5:00 EST within the United States. It is the responsibility of the Ordering Activity to (1) ensure that faulty equipment is returned in original packaging provided with delivery of the replacement parts, and (2) to return and ship faulty equipment within 15 working days of receipt of the replacement equipment (unless special conditions are agreed to in advance; reviewed on a case-by-case basis).

Disclaimer: ZCare technical Support Service endeavors to deliver replacement equipment within 24 hours in the United States. However, neither Contractor nor ZCare Technical Support Services can be held liable for delays caused by events outside of our direct control.

**RMA Process in Support of Advanced Parts Replacement**

ZCare Technical Support Services will open a Work Order on an existing trouble ticket. ZCare will complete an RMA with Ordering Activity shipping information, product information (serial number, part number, software version, installed options) and a fault description.

ZCare will forward the RMA to Cisco for processing and product shipment.

Replacement equipment will be dispatched from Cisco’s warehouse the next business day after receipt of a correctly completed RMA. \*

Once replacement equipment has been shipped, the warehouse will forward tracking information to ZCare Technical Support Services.

Contractor through a KBZ representative will then forward this information to the Ordering Activity.

This policy applies Monday through Friday, local holidays excluded; regional delivery lead times apply; shipped the same day, up to 5:00 local time, for next day delivery.

Larger equipment shipped as freight may take 3 to 5 days for delivery.

Note: Due to the weight and dimensions of plasmas and monitors delivery time may vary for these items.

**Delivery & Collection RMA**

Contractor through Cisco will send replacement parts together with return paperwork. \* In this case, The Ordering Activity must:



Return all faulty units in the factory –supplied packaging delivered and containing the replacement parts  
 Sign and return shipping invoice and shipping documents  
 Schedule pick-up/collection of failed/replaced equipment  
 Cisco will pay shipping costs in both directions \*

It is the responsibility of the Ordering Activity to ensure that faulty parts (1) returned in original packaging provided with delivery of the replacement parts, and (2) return shipped within 15 working days of receipt of the replacement parts (unless special conditions are agreed to in advance. This will be reviewed on a case-by-case basis).

**END OF LIFE STATEMENT**

The ZCare Technical Support Services commits to providing technical support and development on all components manufactured by Cisco for a period of five years beyond the announced en-of-sale-date. This support will include the following items:  
**Spare or replacement parts** in accordance with the KBZ Return Materials Authorization (RMA) process.  
**Access to ZCare Help Desk** availability 20 hours a day, 7 days a week.  
**SoftCare email notifications** of related Cisco software maintenance releases.

**TELEPHONE TECHNICAL SUPPORT**

The Ordering Activity may report product problems and failures to Contractor through ZCare Technical Support Services via the designated toll free number: 1-888-492-2734. All calls are entered into the call tracking system.

**Help Desk Call Flow and Escalation Process**

When a call or email comes into the Help Desk, the problem tracking and resolution process proceeds as follows:  
 Technical support representative assigns a unique Trouble Ticket Number.  
 Technical support representative requests the system serial number from the Ordering Activity. If the serial number is not available, representative will still open a ticket, but shipping and troubleshooting delays may result.  
 Technical support representative assess problem, and then assigns a Case Priority Level based on criteria explained in Table 1: Case Priority Levels and Response Time Targets.  
 Technical support representative dispatches technician in accordance with priority level response time.  
 As deployments or milestones occur within the troubleshooting process, the ZCare Online Ticketing System is updated.  
 ZCare Service level offering is based on the criteria explained in Table 1: Case Priority Levels and Response Time Targets. If escalation is required outside of this regular process, the Ordering Activity should use the escalation procedure defined under “ZCare Service Level Commitment” on page 4.

Table 1: Case Priority Levels and Response Time Targets

Priority Level	Definition of Need	Response Time Target
1. Urgent	An event or combination of events causing 100% loss of system availability	30 Minutes
2. Critical	An event or multiple events causing a continuous or chronic impact to operation	1 Hour
3. High	An event or multiple events with the potential to cause an impact to operation	4 Hours
4. Normal	A condition having no immediate impact on operation but requiring maintenance action	8 Hours/ Next Business Day aid

**ZCARE SERVICE LEVEL COMMITMENT**

In addition to problem solving related to Cisco TelePresence equipment, Contractor through ZCare Technical Support Services will work with the Ordering Activity to collaborate in solving network issues impacting equipment used and deployment. Table 2 describes the ZCare Service level commitment by the priority level assigned to the case.

Table 2: ZCare Service Level Commitment by Priority Level

Priority Level	Service Level
1. Urgent	An existing network is down or there is a critical impact to the Ordering Activity’s business operation. Cisco, Partner and End User will commit full-time resources to resolve the situation.
2. Critical	Operation of an existing network is severely degraded, or significant aspects of the Ordering Activity’s business operation are being negatively impacted by unacceptable product performance. Cisco, KBZ, and Contractor will commit full-time resources during Standard Business Hours to resolve the situation.
3. High	Operational performance of the network is impaired while most business operations remain functional. Cisco, Partner, and Ordering Activity are willing to commit resources during Standard Business Hours to restore services to satisfactory levels.
4. Normal	Information or assistance is required on Cisco product capabilities, installation, or configuration. There is clearly little or no impact to the Ordering Activity’s business operation. Cisco, Partner, and Ordering Activity are willing to provide resources during Standard Business Hours to provide information or assistance as requested.

**ESCALATION OVERVIEW**

The ZCare Technical Support Services 24/7 Help Desk provides services escalation resulting from support that is not meeting the actual service levels outlined herein, or in a service emergency where support requirements dictate a response outside of the scope outlined herein. In this event, all escalations are to be directed to Shamus Doyle, KBZ Technical Services Manager by any of the following means:

Office: 215/348-9481 x 106 | Cell: 484/888-8034 | email: shamus.doyle@KBZ .com

**KONY, INC.**  
**7380 W. SAND LAKE RD**  
**SUITE 390**  
**ORLANDO, FL 32819**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Kony, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

#### ATTACHMENT A

## CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

### KONY, INC.

#### KONY, INC. LICENSE, WARRANTY AND SUPPORT TERMS

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##### 1. Definitions:

1.1 "Ordering Activity Application" means a Platform-enabled mobile application developed by or for Ordering Activity or the pre-configured mobile application included in the Kony Pre-Packaged Application that is configured for its use.

1.2 "Hosting Services" means the Program hosting services provided by Kony, if applicable, pursuant to an executed hosting agreement ("Hosting Agreement").

1.3 "Kony Studio" or "IDE" means the Kony Studio software, which is an integrated development environment that enables the development modification and deployment of a Ordering Activity Application or configuration of a Kony Pre-Packaged Application by or on behalf of Ordering Activity.

1.4 "Kony Development Cloud" or "Platform" means Kony's standard (non-Ordering Activity-specific) unified application platform for the design, development & deployment of native on-device and web based applications, comprising of Kony's integrated development environment and Kony's middleware server software, all of which support the operation and use of the Ordering Activity Application.

1.5 "Kony Pre-Packaged Applications" means a specific pre-configured mobile application that is designed and developed as a single code base with common and selectable features and functionality that will be configured using Kony Studio to provide for unique branding presentation, selectable integration capabilities, and flexibility to generate native on-device, mobile web, and/or SMS/MSS clients. A Pre-Packaged Application is bundled with an application specific run-time license to a single User of the Kony Studio and Kony's middleware server software.

1.6 "Maintenance / Support Services" means the support services provided by Contractor as described in Section 4 hereunder.

1.7 "Order" means an ordering document between Contractor and Ordering Activity that specifically references this Agreement and describes the Programs(s) licensed, pricing, license term and other terms associated with a transaction.

1.8 "Program(s)" means the executable code of the commercially released version of the Kony Studio, Kony Pre-Packaged Applications and Kony Development Cloud computer software program(s) or portion thereof made available to Ordering Activity by Kony hereunder, as specified on an Order. Programs also include releases, updates and upgrades to the Programs and documentation as may be made available to Ordering Activity by Contractor as part of Support Services.

##### 2. Licensing.

2.1 Delivery. Upon execution of this Agreement, Contractor will provide a copy of the applicable Program(s) to Ordering Activity.

2.2 Grant of License. Contractor hereby grants to Ordering Activity a perpetual, limited, non-exclusive and non-transferable license, for the Programs specified on the applicable Order, to do the following but only to the extent that Programs are licensed by Ordering Activity on an Order (each such situation a permitted "Use"):

(a) Kony Studio. To install, execute and configure the documented development features of the Kony Studio, solely to create customized applications (including the right to embed and distribute Contractor's redistributable .exe libraries therein provided Ordering Activity maintains a fully paid production license to the Platform), improvements, extensions or interfaces to a Ordering Activity Application or Pre-Packaged Application. Kony Studio is licensed on a per "User" basis which is a single individual designated by Ordering Activity, which may include employees, agents, independent contractors or consultants located at Ordering Activity's facility.

(b) Kony Platform. To (i) as specified on an Order, install and execute a single User license of Kony Studio at Ordering Activity's site and execute a single or multiple production implementation of Kony's middleware server software by means of the Hosting Services, if hosted by Kony pursuant to an executed Hosting Agreement; or (ii) if not so hosted by Kony, as specified on an Order to install and execute a single User license of Kony Studio at Ordering Activity's site and a single or multiple production implementation of Kony's middleware server software on Ordering Activity's server(s), each of which to (a) access and use the administrative and other functions and features of the Platform by Ordering Activity internally; and (b) allow Ordering Activity's authorized end users to access and use the end user features and functions of the Platform through supported channels; in accordance with the Order, documentation and this Agreement.

(c) Kony Pre-Packaged Applications. To (i) as specified on an Order execute a single or multiple production implementation of the Pre-Packaged Application enabled by the Platform by means of the Hosting Services, if hosted by Kony pursuant to an executed Hosting Agreement; or (ii) if not so hosted by Kony, as specified on an Order to install and execute a single or multiple production implementation of the Pre-Packaged Application enabled by the Platform on Ordering Activity's server(s); and (iii) unlimited rights to distribute the client portion of the Pre-Packaged Application to Ordering Activity authorized end users for their personal use; both of which to allow (a) Ordering Activity to access and use the administrative and other functions and features of the Pre-Packaged Application internally; and (b) Ordering Activity's authorized users to access and use the end user features and functions of the Pre-Packaged Application through supported channels all in accordance with the Order, documentation and this Agreement.

(d) Documentation. To use the documentation provided by Contractor in support of Ordering Activity's permitted Use of the Programs, and to reproduce the documentation (or excerpts thereof) as are reasonably necessary to support Ordering Activity's end users.

(e) Back-Up. To reproduce and install Programs(s) on a back-up server, and execute such Programs(s) on that back-up server only for back-up, back-up testing, disaster recovery and Programs fail-over purposes when Ordering Activity's production servers are inoperative. Ordering Activity agrees to maintain accurate and current records of all locations of backup copies.

3. **Restrictions.** Ordering Activity acknowledges that the Programs and their structure, organization, source code and related documentation constitute valuable trade secrets of Kony and its suppliers. Accordingly, except as expressly permitted in Section 2.2, Ordering Activity agrees not to:

- allow Use of the Programs other than as specified on an applicable Order for which Ordering Activity has paid; or
- distribute, sell, rent, transfer, lease, lend, sublicense, loan, assign, pledge, grant a security interest in, or otherwise make available the Programs or any part or copies thereof to any third party; or
- use the Programs in any service-bureau, timesharing, outsourcing or fee-for-service arrangement; or
- combine or merge a Program with or into another software or incorporate any Program or portion thereof into any compilation; or
- disassemble, decompile, reverse engineer or otherwise attempt to derive the structure, sequence or organization of source code, except as permitted by applicable law to achieve interoperability with other software if Kony does not offer the means to do so; or
- remove or alter product identification, copyright, trademark or other proprietary markings contained in or on the Programs or documentation; or
- modify, adapt, recast, transform or otherwise prepare a derivative work of a Program or portion thereof; or
- otherwise use or copy the Programs or permit any third party to do any of the foregoing.

4. **Maintenance / Support Services.**

During the term, Contractor will provide Ordering Activity with Maintenance / Support Services for the Programs in accordance with its Support Services policy as follows:

KonyOne™ Platform  
SUPPORT SERVICE POLICY

**Kony Support Services Overview**

Support Services for the KonyOne Platform Programs (hereinafter "Programs") will include the following:

- Standard Web support on weekdays, excluding India holidays
- Telephone support for Severity 1 incidents on a 24x7x365 basis
- Error resolution and escalation support
- 24x7x365 access to Kony's Support Portal for trained and certified users
- Access to technical support bulletins
- Patches, corrections, updates and releases to the Program(s) as made available by Kony under Support Services.

Contractor through Kony will provide Ordering Activity's designated employee(s) access to its technical support team ("Kony Help Desk"), for technical support. Ordering Activity may contact the Kony Help Desk for Support Services through the following means:

Web: <http://support.kony.com> - For Kony trained and certified individuals (log error reports)

Web: <https://developer.kony.com> – For Ordering Activities who have valid Program licenses (downloads, documentations, developers forum)

Phone: 1-877-777-7684 (for Severity 1 Incidents)

**Definition of Support Severity and Response Times**

Contractor through Kony will provide Support Services based on Error Reports logged by Ordering Activity in Kony's support portal (following Ordering Activity's initial investigation and confirmation the Error is related to the Programs). With respect to the Kony Studio "IDE" (Developer's Toolkit) and Kony Client Platforms, to ensure the validity of Error request, the submission of Error Reports must be reviewed and submitted by those employees or agents of Ordering Activity who have received Kony's IDE Developer Certification. Error Reports will be logged by Ordering Activity in accordance with the severity level definitions below. Contractor and Ordering Activity will work together to achieve consensus, should there be any disagreement in assigned severities. Severities assigned to Error Reports may change with time if mutually agreed to by both parties. For example, an issue may be initially categorized as Severity Low and upon further investigation; it may be mutually concluded by Contractor and Ordering Activity that the issue should be reclassified as Severity Medium. Response and Target Resolution times for Errors will be measured from the time the Error Report is logged by Ordering Activity into Kony's support portal. Error Report activity will subsequently be managed and tracked through the portal.

"Error" means a Program function which does not operate in substantial conformance to Program documentation. Any feature request initiated by the Ordering Activity which is not documented in the Program documentation for the given release will be considered an enhancement feature request.

A "Critical" or "Severity 1" Error renders the Program completely unusable or nearly unusable or introduces a high degree of operational risk in Production environment. No Workaround is available. Until this Error is resolved, the Program's use is essentially halted. A large number of users and/or core Program functionality is severely impacted.

A "High" or "Severity 2" Error renders essential functionality of the Program to be consistently unavailable or obstructed, and causes a moderate level of hindrance or risk. Workarounds may be available, but use of the Program is acutely degraded and causes continuing operational risk. A moderate number of users are significantly impacted, but overall the Program continues to function.

A "Medium" or "Severity 3" Error is an inconvenience or causes inconsistent behavior, which does not impede the normal functioning of the Program. It could be an Error that occurs inconsistently and affects nonessential functions or is an inconvenience which impacts a small



number of users or small number of devices. It may also contain visual errors where the graphical display of the Program is not ideal, but still functioning correctly.

A "Low" or "Severity 4" Error has a small degree of significance, or is a minor cosmetic issue, or is a "one off" case. A "one off" case occurs when the Error occurs infrequently and cannot be reproduced easily. These are Errors that do not impact the daily use of the Program. A Low Error is something that does not affect normal use, and can be accepted for a period of time, but user would eventually want changed.

## 5. Ordering Activity Acknowledgement and Obligations.

5.1 Ordering Activity acknowledges and agrees that Contractor nor Kony does not monitor communications or data transmitted through the Programs or Ordering Activity Applications, nor does Contractor nor Kony have access to such communications or data, and that Contractor nor Kony shall not be responsible for the content of any such communications or transmissions. Ordering Activity shall use the Programs and Ordering Activity Applications for authorized and legal purposes. Ordering Activity is solely responsible for the activity of its users and shall ensure that they abide by all applicable laws (including but not limited to international copyright and US Export laws) in connection with Ordering Activity's and its users' use of the Programs and Ordering Activity Applications including, without limitation, those related to data privacy, international communications and the transmission of technical or personal data.

5.2 Ordering Activity acknowledges and agrees that Ordering Activity's and its users' use of the Programs and Ordering Activity Applications are dependent upon access to telecommunications and Internet services. Ordering Activity and its users shall be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use the Programs and Ordering Activity Applications, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. Contractor nor Kony shall not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services.

## 6. Reports.

6.1 Reserved.

6.2 Reserved.

6.3 Reserved.

6.3 Reserved.

6.4 Verification and Audit. Within reasonable agency regulations, and at Contractor's written request, Ordering Activity will furnish Contractor with a certification signed by an officer of Ordering Activity verifying that the Programs are being used pursuant to the terms of this Agreement and any applicable Order. Upon at least thirty (30) days prior written notice, Contractor may audit Ordering Activity's use of the Programs to ensure that Ordering Activity is in compliance with the terms of this Agreement and the applicable Order. Any such audit will be conducted during regular business hours at Ordering Activity's facilities and will not unreasonably interfere with Ordering Activity's business activities. Ordering Activity will provide Contractor with access to the relevant Ordering Activity records and facilities. If an audit reveals that Ordering Activity has underpaid license fees to Kony during the period audited, then Ordering Activity and Contractor will work diligently to true-up the account.

7. Ownership. The Programs are licensed to Ordering Activity subject to the terms of this Agreement. Contractor reserves all rights not expressly granted to Ordering Activity. Contractor retains ownership of all copies of the Programs. Ordering Activity acknowledges that the Programs contain and embed valuable, unpublished information that is proprietary and confidential to Contractor and its suppliers; Ordering Activity agrees to keep all such information confidential.

## 8. Reserved:

## 9. Confidentiality.

9.1 Definition. By virtue of this Agreement, the parties may have access to each other's Confidential Information. "Confidential Information," as used in this Agreement, means any written, machine-reproducible and/or visual materials that are clearly labeled as proprietary, confidential, or with words of similar meaning, and all information that is orally or visually disclosed, if not so marked, if it is identified as proprietary or confidential at the time of its disclosure or in a writing provided within thirty (30) days after disclosure, and any information of any nature described in this Agreement as confidential. Contractor Confidential Information includes, without limitation, the nonpublic aspects of the Programs and any software whether in source or executable code, documentation, nonpublic financial information, pricing, business plans, techniques, methods, processes, and the results of any performance tests of the Programs. The terms and conditions of this Agreement shall be deemed the Confidential Information of both parties and neither party shall disclose such information except to such party's employees and advisors, that have a reasonable need to know such information, provided that any such third parties shall, before they may access such information, either (a) execute a binding agreement to keep such information confidential or (b) be subject to a professional obligation to maintain the confidentiality of such information.

9.2 Exclusions. Confidential Information shall not include information that: (a) is or becomes publicly known through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure without restriction on use or disclosure; (c) is rightfully disclosed to the receiving party by a third party without restriction on use or disclosure; or (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

9.3 Use and Nondisclosure. Neither party shall make the other's Confidential Information available to any third party or use the other's Confidential Information for any purposes other than exercising its rights and performing its obligations under this Agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement, but in no event will either party use less effort to protect the Confidential Information of the other party than it uses to protect its own Confidential Information of like importance. Each party will ensure that any agents or subcontractors that are permitted to access any of the other's Confidential Information are legally bound to comply with the obligations set

forth herein. Notwithstanding the foregoing, Confidential Information may be disclosed as required by any governmental agency or court, provided that before disclosing such information the disclosing party must provide the non-disclosing party with sufficient advance notice of the request for the information to enable the non-disclosing party to exercise any rights it may have to challenge or limit the disclosure.

10. **Warranty and Disclaimer.**

10.1 **Limited Warranty.** Contractor warrants to Ordering Activity that for a period of ninety (90) days from the date of delivery ("Performance Warranty Period"), the Programs, when used as permitted hereunder and in accordance with its documentation, will operate substantially as described in the documentation. If during the Performance Warranty Period, Ordering Activity notifies Contractor of a non-conformity in breach of the foregoing warranty through the applicable technical support Programs in writing, Contractor will, use commercially reasonable efforts to correct the non-conformity or provide a work-around within a reasonable period of time, or, if Contractor determines that it is unable to do so, Contractor will refund to Ordering Activity, any license fees paid for the non-conforming Program prorated from the date the non-conformity was reported to the end of the annual license term. In the event of a refund remedy, Ordering Activity's license to use the affected Program will be terminated. This provision states Contractor's entire liability and Ordering Activity's sole remedy for any non-conformity in a Program.

10.2 **Disclaimer.** Ordering Activity assumes sole responsibility and liability for results obtained from the use of the Programs and Ordering Activity Applications and for conclusions drawn from such use. Ordering Activity acknowledges and agrees that Contractor makes no guarantee that the Programs or the use thereof by Ordering Activity or its users will satisfy Ordering Activity's obligation to comply with industry standards or legal or other regulatory requirements, including without limitation those pertaining to data privacy and security or internal controls. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1, CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT OR THE PROGRAMS OR SERVICES. WITHOUT LIMITING THE FOREGOING, KONY DISCLAIMS ANY WARRANTY THAT THE PROGRAMS WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. CONTRACTOR FURTHER DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PROGRAMS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. **Infringement Indemnification.**

11.1 **By Contractor.** Subject to the limitations set forth below, and within the parameters of federal regulations, Contractor shall indemnify and defend Ordering Activity against any damages awarded against Ordering Activity in, or payable by Ordering Activity in settlement of, any suit or action brought against Ordering Activity to the extent that it is based upon a claim that the Programs, provided by Contractor hereunder, infringes or misappropriates the intellectual property rights of any third party. Contractor shall at Contractor's expense, defend any such claim for which indemnity is sought. Ordering Activity shall provide reasonable cooperation to Contractor in Contractor's defense of any such claim. Contractor's obligations under this Section are contingent upon: (a) Ordering Activity providing Contractor with prompt written notice of such claim; (b) Ordering Activity granting to Contractor sole authority and control over the defense and settlement of such claim, provided that Contractor shall not agree to any settlement unless Ordering Activity has expressly approved of the settlement in advance, which consent will not be unreasonably withheld, conditioned or delayed; and (c) Ordering Activity keeping Contractor informed of all material developments related to such claim and (where applicable) providing reasonable cooperation to Contractor, at Contractor's expense, in Contractor's defense and settlement of such claim. In the event that Contractor's right to provide the license, or the use of the Programs, is enjoined or in Contractor's reasonable opinion is likely to be enjoined, Contractor may elect to obtain the necessary rights, or replace or modify the relevant portions thereof, so that they become non-infringing, or, if the foregoing cannot be achieved on a commercially reasonable basis, terminate this Agreement without liability to Ordering Activity and provide Ordering Activity a pro-rated refund of any pre-paid fees. EXCLUDING THE COST OF DEFENSE, THE FOREGOING STATES THE ENTIRE OBLIGATION OF CONTRACTOR AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE PROGRAMS.

Contractor shall have no liability or obligation under this Section 11.1 to the extent that any third-party claims described herein are based on (a) use of the Programs in a manner that violates this Agreement; (b) any combination of the Programs with any software, programs, product, service, component, method, and/or other element that is not supplied by Contractor, to the extent the claim would have been avoided but for such combination; (c) any modification to the Programs is made by any person other than Contractor; (d) Contractor's compliance with particular specifications, instructions, or requirements furnished by Ordering Activity; or (e) any claim for which Ordering Activity is responsible.

11.2 **Reserved.**

12. **Reserved**

13. **General.**

13.1 **Reserved.**

13.2 **Waiver.** The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.

13.3 **Severability.** If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force. The parties agree that neither party shall be deemed the drafter of this Agreement and, in the event any provision in this Agreement is alleged to be ambiguous, such provision will not be construed in favor of one party on the ground that the provision was drafted by the other party.

13.4 Reserved.

13.5 U.S. Government End Users. The Programs and documentation are “commercial items” as that term is defined in FAR 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. If the Programs and documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government’s rights in the Programs and documentation will be only those specified in this Agreement.

13.6 Assignment/Successors. The parties may not assign or transfer this Agreement, in whole or in part, without the other Party’s prior written consent. Any attempted assignment or transfer in violation of this Section will be null and void. Notwithstanding the foregoing, either party may assign or transfer this Agreement to its successor as part of a corporate reorganization, consolidation, merger or sale of substantially all assets of such party, provided the assignee assumes all obligations in this Agreement. Subject to the foregoing restrictions, this Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns.

13.7 Non-Exclusive Remedies. Except as set forth in this Agreement, the exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise, subject to the limitations set forth in this Agreement.

13.8 No Third-Party Beneficiaries. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

13.9 Reserved.

Lastline, Inc.  
6950 Hollister Ave #101  
Goleta, CA. 93117  
Phone 805-456-7075

## EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

**Scope.** This Rider and the attached Lastline, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in eitherits

sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.



**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



## ATTACHMENT A

**END USER LICENSE AGREEMENT**  
**(Commercial Terms and Conditions)**

The GSA Schedule Contractor acting by and through its supplier, Lastline, Inc., (“**Lastline**”) and the user of the Licensed Product(s) purchasing under the GSA Schedule Contract (“**Customer**” or “Ordering Activity”), enter into this agreement including any schedules, exhibits or other attachments (collectively, this “**Agreement**”) effective as of the date set forth on the Order Form.

**RECITAL**

Lastline has developed several anti-malware software application solutions for use in protecting computers and computer network systems. Customer desires to license certain of such solutions pursuant to the terms and conditions of this Agreement.

In consideration of their respective rights and obligations as set forth in this Agreement, the parties agree as follows;

**AGREEMENT**

**Definitions:**

**API** A set of web-based services providing programmatic access to Lastline systems and data, together with all updates, revisions, any associated tools and Documentation that Lastline may make available.

**Artifact** Means any potentially malicious file, URL, email content, or other material submitted by the Customer to the Licensed Product for analysis.

**Business Purpose** Use of the Licensed Products and Documentation for the protection of Customer’s networks in accordance with the terms of this Agreement.

**Comparative Information** The criteria measured as part of a competitive analysis, including, but not limited to, performance, latency, usability, efficacy, effectiveness, identification, and detection capability, or comparison of a product’s capability to another product.

**Documentation** User manuals regarding the Licensed Product and made available to Customer.

**Fees** The Fees identified in the Order Form and any other Fees that may become due pursuant to this Agreement.

**Installation Environment** The location of the data center at which the Licensed Products are hosted and accessed and as indicated on any Order Form as either Air Gap, Hosted, or On-Premises Data Share or On- Premises Private.

**Licensed Product** As specifically indicated on any Order Form, the Licensed Product that is able to identify malicious content within Artifacts, as well as any Updates, Upgrades and new Versions that Lastline develops and makes available to Customer during the License Term.

**Malicious Artifact** A file made available to Customer by Lastline for downloading individual Malicious Artifacts collected from the internet

**Order Form** Customer’s purchase order identifying the Licensed Products by SKU, complete product description and associated Fees (derived from the GSA Schedule pricelist) and incorporating the terms and conditions of this Agreement by reference.

**Term License** The period of time that Customer is authorized to Use the Licensed Product, as set forth in the Agreement, and Fees are paid pursuant to the Order Form.

**Update** Enhancements, modifications, or improvements of the Licensed Product that contains bug fixes and/or minor enhancements or improvements that are made generally available by Lastline to its Customers for no additional license Fee. For clarification, Updates do not contain significant new features or functions that materially impact the performance and/or the nature of services rendered.

**Update Server** Lastline's site on the internet from which Customer may download updates for Licensed Products including blacklists.

**Upgrades** A Version or upgraded Version of the Licensed Product that contains significant new features and is made generally available by Lastline to its Customers. Upgrades are only for items that do not require an additional license.

**Use** Authorized access to and Use of (without the right to modify) only the Licensed Products and Documentation as set forth in the Order Form and pursuant to the Agreement and solely for Business Purposes.

**User** The number of employees, contractors or individuals within an organization who Use or have the access to Use the Customer systems and networks on which Customer intends to Use the Licensed Product. A User who uses or has access to Customer systems and networks across multiple devices is nonetheless counted as a single User.

**Version** An update or upgrade of the Licensed Product that adds new functionality to the software.

## **TERMS AND CONDITIONS**

### **License Grant; Restrictions; Malware Artifact Access**

**License** Subject to the terms hereof, payment of all Fees, and in accordance with applicable User/Use limitations, Lastline hereby grants Customer a non-exclusive, non-transferable, limited Term License, without the right to sublicense, for Customer to Use the Licensed Products, in executable object code format only and the Documentation for Business Purposes. The Term License is limited to the term, number of Users and Installation Environment indicated on the Order Form. Customer agrees to notify Lastline at the time of renewal of any changes in the number of Users being protected or any changes to the Installation Environment.

**Restrictions** Customer may not rent, lease, sell, transfer (by sublicense, assignment or otherwise), time share, modify, adapt, alter, translate, reproduce, copy, make derivative works from, distribute, publish, use to provide rental or service bureau services, or publicly display the Licensed Products or Comparative Information. Customer may only Use the Licensed Products and Documentation for Business Purposes. Customer may not reverse engineer, decompile, disassemble or otherwise attempt to discover or reconstruct the source code, underlying ideas, algorithms, programming interfaces or configuration files for the Licensed Products, except as may be allowed under applicable law and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, and then only with prior written notice to the respective owners. Customer may not use the Licensed Products or Documentation to build similar or competitive products. Customer may not publish or disclose to any third party any performance or benchmark tests, analyses, or any Comparative Information relating to the Licensed Products or the use thereof. Customer may not permit any person or entity to breach the restrictions in this Subsection 2b (Restrictions). Any future release, Update, Upgrade or Version to the Licensed Products or Documentation shall be subject to the terms of this Agreement, unless Lastline expressly states otherwise.

**Reservation of Rights** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly granted herein, Lastline and its suppliers and any Third Party Licensors have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Licensed Product, to include the underlying software, the APIs, the Malware Artifacts and Documentation, and all copies, modifications and derivative works thereof. Customer acknowledges that it is obtaining only a limited Term License right to Use the Licensed Products and that irrespective of any use of the words "purchase", "sale" or like terms hereunder, no ownership rights are being conveyed to Customer under this Agreement or otherwise.

**Third Party Code** The Licensed Products contain certain items of independent, third party code for which Lastline is required to provide attribution to the third party ("**Third Party Code**"). The Third Party Code is provided with certain third party data, information and feeds (collectively "Feeds") that are owned by the applicable third party. The restrictions in Subsection 2b (Restrictions) apply to all such Feeds. A list of this Third Party Code is available at <https://update.lastline.com/updates/distros/open-source-licenses.txt>. Lastline represents that these Third Party Code providers will not diminish the license rights provided herein or limit Customer's ability to Use the Licensed Product in accordance with the applicable Documentation, and neither the inclusion of Third Party Code in any Licensed Product or use of Third Party Materials will create any obligation on Customer's part to license Third Party's Code under any open source or similar license.

**Malware Artifacts Access** Customer has access to download individual Malicious Artifacts from the Licensed Product during the Term, Customer may download and Use the Malicious Artifacts solely for the purposes of testing the Licensed Products or research of the Malicious Artifact. Customer acknowledges and agrees that Customer shall only use the Malicious Artifacts in a secure and isolated lab environment. Customer assumes all risk and liability for using the Malicious Artifacts and Customer shall not distribute the Malicious Artifacts to any third parties or use the Malicious Artifacts for any purposes other than those identified herein.

### **TERM**

**Term** Unless otherwise set forth on the Order Form, this Agreement will commence on the Effective Date and shall remain in full force unless earlier terminated (the "**Agreement Term**").

**Licensed Product Term** The Licensed Product Term commences with the issuance of a license key and the license start date stated on the Order Form and expires on the end date set forth in the Order Form (“**Initial Term**”). Customer agrees to install the Licensed Product within 30 days of the license start date. Upon expiration of the Initial Term, the license for the Licensed Product may be renewed by Customer for successive 1-year terms by both parties executing a new Purchase Order, or option to an existing Purchase Order in writing, or a different period if so indicated on the Order Form for renewal (each a “**Renewal Term**”). The Initial Term and Renewal Term(s) shall be collectively referred to as the “**License Product Term**.”

**Confidentiality** The Licensed Product in source code form remains a confidential trade secret of Lastline and/or its suppliers. The Licensed Product is protected by the copyright and other intellectual property laws of the United States. Customer acknowledges that, in the course of using the Licensed Product, including the Software, Customer may obtain or learn information relating to the Licensed Product, which may include, without limitation, information relating to the performance, reliability or stability of the Licensed Product, operation of the Licensed Product, knowhow, techniques, processes, ideas, algorithms, and software design and architecture (“**Proprietary Information**”). As between the parties, such Proprietary Information shall belong solely to Lastline. Subject to the Freedom of Information Act, 5 U.S.C. § 552, during and after the term of this Agreement, Customer shall hold in confidence and protect, and shall not use (except as expressly authorized by this Agreement) or disclose, Proprietary Information to any third party.

**RESERVED.**

**Installation Environment/Third Party Software** When the Licensed Product is deployed in an On-Premises Installation Environment, Customer will be responsible for the cost of any third party software required to Use and enable deployments of the Licensed Product’s Sandbox functionality (e.g., Microsoft Windows, Microsoft Office.). Information related to the third party software requirements is provided in the Documentation. If Customer accesses Lastline’s Malicious Artifacts, Customer is solely responsible for providing all equipment necessary for testing and researching the Artifact, including but not limited to, the secure and isolated lab environment.

**Additional Licenses** Subject to reasonable prior notice and upon Customer’s issuance of an Order Form for additional licenses, Lastline may increase the scope of Customer’s license to the Licensed Products.

**Provide Accurate Information** In consideration of Customer’s Use of the Licensed Products, Customer agrees to (i) provide true, accurate, current, and complete information about the number of Users as prompted by Lastline and (ii) maintain and promptly update the registration data to keep it truthful, accurate, current, and complete. Customer may receive account information (such as a username, password, API key or token) to use to access Customer’s account for the Licensed Product.

**RESERVED.**

**Support and Upgrades**

**Support Service** Lastline will provide support to assist Customer in installing the License Products and achieving operational status for the Licensed Products in accordance with the Documentation. Additional application support services shall be made by mutual written agreement on: (i) the schedule for the performance of the additional services, (ii) Lastline’s Fees, if any, for the additional services, and (iii) any additional service terms and conditions that may be required and added by mutual consent as an Exhibit to this Agreement.

**Software Upgrades** Lastline will periodically make available to Customer through the Lastline Update Server, Updates, Upgrades and current Versions of the Licensed Products which will include corrections, and/or enhancements, and/or improvements. These will be made available at no additional Fee to Customer with an active and fully paid Licensed Product in effect during their License Term. Release of these Updates, Upgrades, and current Versions may impact the on-going support and upgrades to previous Versions of the Licensed Product as outlined in the Lastline Software Lifecycle Policy available from the Lastline Customer Support Portal at <https://support.lastline.com>, and as updated by Lastline from time to time, Customer is responsible for maintaining a currently supported Version for any On-Premises deployments of the Licensed Product(s), to include Hybrid, On- Premises and Air Gap Configurations.

**Access to the Lastline Update Server** Lastline will use commercially reasonable efforts to make the Lastline Update Server accessible, but Lastline does not warrant or guarantee continuous availability.

**Standard Term** Application support services and access to the Lastline Update Server are subject to this Agreement’s terms and timely payment of all Fees.

**RESERVED.**



**Warranty**

**Performance Warranty** For the duration of the License Product Term of an active and fully paid Lastline Licensed Product, Lastline warrants that the Licensed Products, will perform substantially as specified in the Documentation. Lastline does not warrant that the Licensed Products or Documentation, will meet Customer's requirements and expectations, that Licensed Products will be uninterrupted or error-free, or that the Licensed Products will protect Customer's networks from specific threats.

**Remedy for Performance Warranty Breach** Lastline's sole obligation with respect to a breach of this Section 12 is to use commercially reasonable efforts to correct the breach. If Lastline is unable to correct the breach despite its use of commercially reasonable efforts, then Lastline will notify Customer and Customer may terminate this Agreement. In the event Customer terminates this Agreement, Lastline will issue to Customer a pro-rata refund of the prepaid fees based on the balance of the then-current Term remaining for the applicable Licensed Products. **THE FOREGOING REMEDY IS CUSTOMER'S EXCLUSIVE REMEDY AND LASTLINE'S SOLE LIABILITY FOR A BREACH OF THE WARRANTY AS SET FORTH HEREIN.**

**WARRANTY DISCLAIMER EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER LASTLINE NOR ITS THIRD PARTY LICENSORS MAKE ANY ADDITIONAL WARRANTY WITH REGARD TO THE LICENSED PRODUCT, INCLUDING THAT OF ANY OF LASTLINE'S THIRD PARTY LICENSORS AND DOCUMENTATION. CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER'S USE OF THE MALWARE ARTIFACTS IS AT CUSTOMER'S SOLE RISK AND CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S PROPERTY OR PERSON, INCLUDING, BUT NOT LIMITED TO, DAMAGE TO CUSTOMER'S COMPUTER NETWORKS AND SYSTEMS OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING THE MALWARE ARTIFACTS. CUSTOMER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY PROVIDED HEREIN, NO ADDITIONAL WARRANTIES ARE MADE WITH REGARD TO THE MALWARE ARTIFACTS COLLECTED FROM THE INTERNET. TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, LASTLINE DISCLAIMS ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES WITH REGARD TO THE LICENSED PRODUCTS INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. LASTLINE DOES NOT WARRANT THAT THE LICENSED PRODUCTS WILL PERFORM ERROR FREE OR WITHOUT INTERRUPTIONS.**

Limitation of Liability. IN NO EVENT SHALL LASTLINE BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING COSTS OF PROCUREMENT OF SUBSTITUTE GOODS) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY PRODUCT OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LASTLINE'S TOTAL LIABILITY ARISING OUT OR RELATING TO THIS AGREEMENT OR ANY PRODUCTS OR SERVICES WILL NOT EXCEED THE AMOUNT PAID FOR THE LICENSED PRODUCT TO WHICH THE CLAIM RELATES, REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733, and the foregoing limitation of liability shall not apply to personal injury or death resulting from Licensor's negligence, or for any other matter for which liability cannot be excluded by law.

**RESERVED.**

**Ownership** Customer agrees that as a condition of its rights hereunder, Customer will not remove any product identification, copyright, proprietary or any other notices on the media, within the code and on all copies thereof, and on the Documentation, which appear on the media or within the code of the Licensed Products, and/or on all materials delivered by Lastline.

**RESERVED.****Reserved.**

**Privacy** Customer agrees to Lastline's collection, use, and disclosure of information as set forth in Lastline's attached Privacy Policy ("Privacy Policy"). Lastline uses Customer personal information only in connection with the administration of Customer's account as set forth in the Privacy Policy. In a Hosted or Hybrid Installation Environment, Lastline uses information gained during the analysis of Artifacts to assess if a subject is malicious and will use and share that information regarding Malicious Artifacts and any malware samples collected in such analysis according to the terms of our Privacy Policy.

**GENERAL PROVISIONS**

**United States Government Restricted Rights** All Products are commercial in nature and developed solely at private expense. The Product(s) are delivered as Commercial Computer Software as defined in DFARS 252.227-7014 (June 1995) or as a commercial item as defined in FAR 2.101(a) and as such is provided with only such rights as are provided in Lastline's Software License Agreement for such software. Technical data is provided with limited rights only as provided in DFARS 252.227-7015 (Nov. 1995) or FAR 52.227-14 (June 1987), whichever is applicable.

**Export** Customer is responsible for listing the country or countries in which any Lastline technology is deployed/used in the Order Form. Customer may not use, export, import, or transfer the Licensed Products and Documentation except as authorized by U.S. law, the laws of the jurisdiction in which Customer obtained the Licensed Products and Documentation, and any other applicable laws. In particular, but without limitation, the Licensed Products and Documentation, may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Licensed Products and Documentation, Customer represents and warrants that (i) Customer is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) Customer is not listed on any U.S. Government list of prohibited or restricted parties. Customer also will not use the Licensed Products, Documentation, or Malicious Artifacts for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. Customer acknowledges and agrees that products, services or technology provided by Lastline are subject to the export control laws and regulations of the United States. Customer shall comply with these laws and regulations and shall not, without prior

U.S. government authorization, export, re-export, or transfer Lastline products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

## LASTLINE PRIVACY POLICY

Effective Date: December 23, 2019

This Privacy Policy applies to our Service platform owned and operated by Lastline, Inc. (“Lastline”) that uses our customer’s Personal Data only in connection with the administration of their account as set forth in this Privacy Policy (“Policy”). Lastline respects the privacy of our customers and is committed to protecting the Personal Data that they share with us. This Policy describes how Lastline collects, uses, shares, secures and processes information from the networks of our customers in the course of providing threat detection Services (“Services”), and outlines the ways in which our customers can control our use of that information. The use of information collected through our service shall be limited to the purpose of providing the service for which the Client has engaged Lastline.

### Terms

**Artifact** – means any potentially Malicious file, URL, email content, or other material collected by the Sensor or submitted by the Customer to the Licensed Product for analysis.

**Artifact Sharing** – means the sharing of Suspicious and Malicious Artifacts with Lastline as determined by the product SKU purchased by the customer. Customers not wishing to share Suspicious or Malicious Artifacts with Lastline can purchase an On-Premises Private or On- Premises Air Gap deployment.

**Benign** – Those Artifacts Lastline scores as 0-29.

**Hosted** –The Licensed Product is installed in a hybrid deployment where the Lastline deployment leverages a multi-tenant Hosted platform installed in the Lastline Datacenter and sensors deployed at various sites in the customer’s network.

**Malicious** – Those Artifacts Lastline scores as 70 or higher.

**Meta data** – Is data that describes the Artifact and results of the analysis of the Artifact.

**On-Premises Artifact Sharing** – The Licensed Product is installed in a data center located at a Customer’s site. The Customer’s deployment shares information about Suspicious and Malicious Artifacts identified by their system with Lastline.

**On-Premises Private** – The Licensed Product is installed in a data center located at a Customer’s site. The Customer’s system does not share any Artifacts with Lastline but is capable of receiving information about Malicious Artifacts from Lastline.

**On-Premises Air Gap** – The Licensed Product is installed in a data center located at a Customer’s site. The Customer’s system shares no information with Lastline and does not receive any information about Malicious Artifacts from Lastline.

**Personal Data** – means any information relating to an identified or identifiable natural person (“data subject”) who can be directly or indirectly identified in particular by reference to an identifier, such as name, location etc.

**Services** – Means the analysis of Artifacts provided by Lastline to Company.

**Suspicious** – Those Artifacts Lastline scores between 30 and 69.

### EU-U.S. Privacy Shield and Swiss-U.S. Privacy Shield

Lastline participates in, and has certified its compliance with, the EU-US Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework. We are committed to subjecting all Personal Data received from European Union (EU) member countries and Switzerland, respectively, in reliance on each Privacy Shield Framework, to the Framework's applicable Principles. To learn more about the Privacy Shield Frameworks, and to view our certification, visit the U.S. Department of Commerce's Privacy Shield List.

[<https://www.privacyshield.gov>]

Lastline is responsible for the processing of personal data it receives under each Privacy Shield Framework and subsequently may transfer it to a third party acting as an agent on its behalf. Lastline complies with the Privacy Shield Principles for all onward transfers of personal data from the EU and Switzerland, including the onward transfer of liability provisions.

With respect to personal data received or transferred pursuant to the Privacy Shield Frameworks, Lastline is subject to the regulatory enforcement powers of the U.S. Federal Trade Commission. In certain situations, we may be required to disclose personal data in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.

If you have unresolved privacy or data use concerns that we have not addressed satisfactorily, please contact our U.S.-based third-party dispute resolution provider (free of charge) at <https://feedback-form.truste.com/watchdog/request>.

Under certain conditions, more fully described on the [Privacy Shield website](#), you may be entitled to invoke binding arbitration when other dispute resolution procedures have been exhausted.

Lastline commits to cooperate with the panel established by the EU data protection authorities (DPAs) and the Swiss Federal Data Protection and Information Commissioner (FDPIC) and comply with the advice given

by such authorities with regard to human resources data transferred from the EU and Switzerland in the context of the employment relationship.

## **IN THE EUROPEAN ECONOMIC AREA**

[Contact us](#) or our European GDPR Representative at the address below or by sending an email to [security@lastline.com](mailto:security@lastline.com). Please include your contact information, the name of the Lastline product or website, and a detailed description of your request or privacy concern.

Mail to: Lastline UK Office, M/S: Lastline, Inc., C/O Hillier Hopkins LLP, Chancery House, 199 Silbury Boulevard, Milton Keynes, Bucks, England, MK9 1JL

### Information the Lastline Product Collects

Lastline analyzes the traffic on a network and is designed to detect threats posed by malware, as well as communication with Malicious hosts on the internet. Lastline will collect and analyze certain Artifacts (files, URLs, as well as web and email content that could pose a threat to the organizations) that are transmitted via web traffic and as email attachments.

Lastline takes steps to avoid collecting information from our customer's network that could personally identify their end users or collect or view any data that could be reasonably associated to such information. However, the data we collect through our Services to identify security risks may also contain some Personal Data (i.e. username, email address or IP address). This information is only used in protecting the IT infrastructure of the organization

### INFORMATION LASTLINE INSPECTS

Network traffic, including:

The domain names resolved on the network including the host (IP Address) that resolved the domain.  
The content of some network connections that could pose a risk to an organization.  
Network flows to which Lastline network sensors have visibility.  
Executable programs, scripts, documents or other potential Artifacts that may contain executable code downloaded via the web (if Lastline network sensors are deployed) or sent as email messages and attachments (if Lastline email sensors are deployed).  
This includes email headers and any potentially malicious content in the email body.  
Refer to the Lastline Technical Support Knowledge Base for explicit details on files Lastline is able to analyze.



In On-Premises deployments of Lastline product offerings, with Artifact Sharing enabled (default behavior), the following Artifacts are shared with Lastline:  
Artifacts Lastline identifies and scores as Suspicious (30+) or Malicious (70+) [default; users customizable] are shared with Lastline for additional analysis.

These sharing options can be altered by the customer pursuant to their license agreement to expand file types shared with Lastline. (customers may refer to the Lastline Technical Support Knowledge Base or the user documentation for additional information regarding this functionality.)

Email contents, including:

Header information from email messages inspected by the Lastline Sensor or submitted via the API.

In hosted Deployments: Potentially Suspicious or Malicious Email Attachments

On-Premises Artifact Sharing Deployments: Any submitted Suspicious and Malicious content.

### INFORMATION LASTLINE RETAINS

Alert information, as well as activity that could become an alert, is collected whenever a computer is attached to a customer's network and performs Malicious activity for the purpose of providing organizations with meaningful reports regarding their security posture.

In On-Premises deployments, this data is stored on the local Manager, and not share with Lastline

In Hosted deployments, this data is stored in the Lastline Data Center.

Lastline will retain versions of all content submitted to the Lastline Hosted infrastructure, directly leveraging the UI or via the API. Artifacts are retained if submitted via the API, unless the delete after analysis flag has been set in the API call. Artifacts are always retained when submitted via the UI.

For customers with a Hosted deployment, Lastline will retain all Artifacts captured by the Lastline Sensor as well as any file the user uploaded or has configured to be uploaded to the system.

Lastline will generate and retain metadata as well as subsequent stage Artifacts generated during the Lastline analysis. This includes metadata about the file and behaviors observed during analysis, process snapshots, screenshots of analyzed content.

Customers with On-Premises systems can use the configuration options provided in the product portal to view, manage, and disable information that should never be shared/transmitted to Lastline. All data is retained for customers with a Hosted deployment for 30 days after the term of the agreement.

### INFORMATION LASTLINE SHARES

Lastline will share the hashes and Meta data about Malicious Artifacts that are detected within a Hosted or On-Premises deployment (if Artifact Sharing is enabled).

Metadata about the file is not available to a customer, unless that customer's Lastline deployment has analyzed the same Artifact, or the Artifact is publicly available on the Internet.

Lastline may exchange some Malicious Artifacts and Artifact metadata submitted to the Lastline Platform with other cyber security vendors, with whom we have a confidentiality agreement, to allow both vendors to improve and enhance their respective technologies to defend against new threats or attack vectors.

Pursuant to the license agreement, Customers can opt-out of this level of sharing any Malicious Artifacts with Lastline by sending an email to [support@lastline.com](mailto:support@lastline.com).

### Information Lastline Collects

In order for a customer to license our products and obtain technical support Services, we will collect certain Personal Data, such as the first and last names of our contacts, mailing address (including postal

code), email address, cell phone or work phone. This information is used only in connection with the administration of a customer's account with Lastline and for no other purpose.

For the purpose of marketing activities, we may collect the following Personal Data from you: name, title, location, company name, phone number and email address via our website, if you wish to request some types of product or company related content, a product demo or contact us for other reasons.

If you believe that we have inappropriately collected your Personal Data and you would like to request that it be removed from our databases, please contact our Data Protection Officer at [privacy@lastline.com](mailto:privacy@lastline.com).

### **USER DATA SUPPLEMENTATIONS**

We may receive information about you from other sources, including publicly available databases or third parties from whom we have purchased data and may combine this data with information we already have about you. This is to help us update, expand and analyze our records, identify new customers, and provide products and Services that may be of interest to you. If you provide us Personal Data about others, or if others give us your information, we will only use that information for the specific purpose for which it was provided to us.

Examples of the types of Personal Data that may be obtained from public sources or purchased from third parties and combined with information we already have about you, may include:

Address information about you from third party sources, such as the U.S. Postal Service, to verify your address so we can properly send necessary correspondence.

Purchased marketing data about our prospects or customers from third parties that is combined with information we may already have about you to create more tailored information about our products.

In order to opt-out of our marketing communications, please send a request to our Data Protection Officer at [privacy@lastline.com](mailto:privacy@lastline.com).

### **HOW WE USE THE DATA WE COLLECT**

Lastline does not sell, trade or rent to third parties any of the information we collect from our customer's network, or Personal Data (together "the Data"). We may use the Data that we collect for the following purposes:

- To provide our customers with our Services;
- To provide our customers with customized content;
- To process and respond to inquiries related to the Services or to our customer's account;
- To provide our customers with important notices relating to the Services, including scheduled downtime and updates to the software;
- To provide, maintain, protect and improve our Services; and
- To protect Lastline and our customers.

### Tracking Technologies

Lastline and its partners use cookies or similar technologies to analyze trends, administer the website, track users' movements around the website, and to gather demographic information about our user base as a whole. You can control the use of cookies at the individual browser level, but if you choose to disable cookies, it may limit your use of certain features or functions on our website or service.

As is true of most websites, we gather certain information automatically. This information may include Internet protocol (IP) addresses, browser type, Internet service provider (ISP), referring/exit pages, the files viewed on our site (e.g., HTML pages, graphics, etc.), operating system, date/time stamp, and/or clickstream data to analyze trends in the aggregate and administer the site.

We partner with a third party to implement marketing programs promoting Lastline and our products on third-party websites using cookies or similar technology. As part of this process we do not collect any Personal Data about website visitors. Anyone can remove themselves from these programs simply by erasing the cookies on their computer. Please note that you will continue to receive generic ads on some websites other than Lastline.com; this is outside of the control of Lastline.

The use of cookies by our partners, affiliates, tracking utility company, and service providers is not covered by this Policy. We do not have access or control over these cookies. Our partners, affiliates, and service

providers use session ID cookies to understand usage patterns on the website. These companies are obligated to protect our customer's Personal Data in accordance with their own policies, and Lastline

is not responsible for the privacy practices of other companies' websites or Services to which our products and Services may link or otherwise refer.

In order to personalize communications with our customers and to improve our Services, we may also ask you to provide consumer satisfaction information regarding your experience with our Services. You have the option of choosing not to provide that information.

### Third Party Partners

To provide the Lastline Hosted and some On-Premises Services, we may share submitted Artifacts and other meta data with third parties that provide Services, such as information processing, data storage and security Services, for instance Cloud hosting and data service providers. These third parties are only authorized to use our customer's data as necessary to provide Services to Lastline and are obligated to protect our customer's network data with provisions at least as protective as those contained in this Policy, and each such provider has security measures in place at least as protective as those described in this Policy.

### SHARING WITH SERVICE PROVIDERS

We may share your information with third parties who provide services on our behalf to help with our business activities. These companies are authorized to use your Personal Data only as necessary to provide these services to us. These services may include:

- Delivering letters or packages
- Payment processing
- Providing customer service
- Sending marketing communications
- Conducting research and analysis
- Providing cloud computing infrastructure [Legal Notice](#)

We may disclose your Personal Data as required by law, such as to comply with a subpoena or other legal process, when we believe in good faith that disclosure is necessary to protect our rights, protect your safety or the safety of others, investigate fraud, or respond to a government request.

If Lastline is involved in a merger, acquisition, or sale of all or a portion of its assets, you will be notified via email and/or a prominent notice on our website of any change in ownership, uses of your Personal Data, and choices you may have regarding your Personal Data.

We may also disclose your Personal Data to any other party with your prior consent.

### Protection of Personal Data

Lastline takes precautions, including administrative, technical, and physical measures, to safeguard our customer's Data against loss, theft, and misuse, as well as against unauthorized access, disclosure, alteration and destruction.

Lastline uses industry-standard efforts to safeguard the confidentiality of Data, including encryption, firewalls and SSL (Secure Sockets Layer). We have implemented reasonable administrative, technical, and physical security controls to protect against the loss, misuse, or alteration of our customer's Data.

### Lastline as a Service Provider

Lastline collects information under the direction of its customers and has no direct relationship with the individuals whose Personal Data it processes. If you are an employee or client of one of our customers and have questions, please contact your IT Security Team or Managed Service Provider for additional information. We may transfer contact information of customers and prospects to companies that help us provide our Service. Transfers to subsequent third parties are covered by the service agreement with our customers.



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Lastline acknowledges that you have the right to access your Personal Data. An individual who seeks access, or who seeks to correct, amend, or delete inaccurate data should direct their query to our customer (the data controller). If requested to remove data, we will respond within a reasonable timeframe.

### Access & Data Retention

Upon request, Lastline will provide you with information about whether we hold any of your Personal Data. If you wish to correct, amend, cancel your account or request that we no longer use your information to provide Services, you may contact us at: [info@lastline.com](mailto:info@lastline.com). We will respond to your request within a reasonable timeframe. We will retain your information for as long as your account is active or as needed to provide you with our Services. We will retain and use your information only as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements.

### Newsletter Preferences

You may sign up to receive an email or newsletter or other communications from us. If you would like to discontinue receiving this information, you may update your email preferences by using the “Unsubscribe” link found in emails we send to you or at your member profile on our website or by contacting us at [support@lastline.com](mailto:support@lastline.com).

### Notification of Privacy Policy Changes

We may update this Policy from time to time to reflect changes to Lastline’s information practices. If we make any material changes, we will notify you by email (sent to the email address specified in your account) or by means of a notice on this website prior to the change becoming effective. We encourage our customers to periodically review this page for the latest information on our privacy practices.

### **Lastline, Inc.**

1825 S. Grant St., Suite 635 San Mateo,

CA 94402 [privacy@lastline.com](mailto:privacy@lastline.com)

LOGRHYTHM, INC.  
4780 PEARL EAST CIRCLE  
BOULDER, CO 80301

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**LOGRHYTHM, INC.**

**LOGRHYTHM, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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These **Terms and Conditions** (the "Agreement") set forth the terms and conditions agreed to by LogRhythm, Inc. ("LogRhythm") and the Customer identified on the Order to which this Agreement is attached and incorporated ("Customer") under which Customer may license the software and purchase the hardware specified on the Order and other purchase orders submitted by Customer and accepted by LogRhythm. No Order shall be binding upon LogRhythm until accepted by LogRhythm in writing. In consideration of the mutual covenants and conditions set forth below, LogRhythm and Customer agree as follows:

**DEFINITIONS.**

"**Appliance**" means the appliance listed on an Order comprised of the Hardware and the Software installed on the Hardware.

"**Documentation**" means the user manuals provided to Customer with the Software or an Appliance in either electronic, online help files or hard copy format. All Documentation is provided in English.

"**Delivery Date**" means the date of delivery of the Appliance or the Software only, as applicable.

"**Effective Date**" means the date the Order was signed.

"**Intellectual Property Rights**" means all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and other proprietary rights.

"**Hardware**" means the hardware purchased from LogRhythm as set forth on an Order.

"**Software**" means the LogRhythm software programs identified in an Order, all Documentation for the Software, and any Updates (as defined in Exhibit A) that LogRhythm may provide to Customer in connection with Support Services.

**SOFTWARE LICENSE GRANT AND OTHER RIGHTS.**

**Software License Grant.** Subject to the terms and conditions of this Agreement, LogRhythm grants to Customer a perpetual, non-exclusive, non-transferable license to use the Software, solely for internal business purposes in accordance with the Documentation and the limitations set forth in this Agreement. If Customer has purchased an Appliance, then the Software may only be used on the Hardware on which the Software has been installed. If Customer licenses the Software for use in a virtual environment each virtual instance requires its own Software license. Customer may make a copy of the Software as necessary for back up and disaster recovery purposes.

**Restrictions On Use.** Except as expressly permitted by this Agreement, Customer will not (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) sublicense, distribute, sell or otherwise transfer the Software to any third party; (c) use the Software in any service bureau or time sharing arrangement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software or (e) otherwise use or copy the Software except as expressly permitted in Section 2.1.

**License Keys.** Customer acknowledges that the Software uses a license key mechanism and that use of the Software on a perpetual basis (as opposed to a temporary basis for evaluation purposes) requires authorized and valid license keys ("License Keys") that must be installed by Customer. Customer agrees not to use unauthorized license keys or otherwise circumvent LogRhythm's license key mechanism. LogRhythm will provide the License Keys upon payment in full of all applicable Fees. If LogRhythm has not received the License Fee payment from Customer within the payment time period set forth in Section 5.6, LogRhythm will not be obligated to provide Customer with the License Keys and the Software will cease functioning unless Customer requests and obtains an extension of the evaluation period from LogRhythm.

**System Files.** All system files, including SQL Server database files and transaction logs, used by an Appliance must reside on either the Appliance or an external storage device purchased from LogRhythm ("Supported Equipment"). Notwithstanding the foregoing, system files do not include LogRhythm archive files.

**DELIVERY, INSPECTION AND INSTALLATION.**

**HARDWARE PURCHASE AND DELIVERY.** If Customer is purchasing Hardware, then, subject to terms and conditions of this Agreement, Customer hereby agrees to purchase the Hardware from LogRhythm, and LogRhythm hereby agrees to sell the Hardware to Customer, pursuant to the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.

**License of Software Only.** If Customer is licensing the Software and not purchasing Hardware, then this Section 3.2, the terms and conditions of the Multiple Award Schedule 70 contract and the task/delivery order will govern the delivery of Software. If Customer has not already obtained a copy of the Software prior to the Effective Date, LogRhythm will ship to Customer the Software and Documentation and/or provide Customer a support account from which Customer can download the Software and Documentation in accordance with LogRhythm's reasonable instructions. Customer is responsible for configuring customerprovided hardware or virtual environment in accordance with the configuration parameters as noted in the Documentation. Improper hardware or virtual environment configuration may prevent the Software from operating properly and any such nonstandard configuration may not be supported by LogRhythm.

**Software Delivery.** Without limiting the warranties in Section 6.1 below, the Software will be deemed delivered the day the License Key is provided to Customer. Unless otherwise mutually agreed to in writing, Customer is responsible for installing the Software and License Keys in accordance with the Documentation.

**MAINTENANCE; DEPLOYMENT; TRAINING.**

**Maintenance.** Customer may obtain technical support and Software maintenance described in Exhibit A attached to this Agreement and incorporated herein ("Support Services") in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 Contract. Upon termination of Support Services Customer may continue to use the Software without the benefits provided under the Support Services Exhibit.

**Professional Services.** Subject to the terms and conditions of this Agreement, including the payment by Customer of the professional service fees ("Professional Service Fees") set forth in an Order, LogRhythm will provide to Customer the professional services described in Exhibit B attached to this Agreement and incorporated herein ("Professional Services"). Customer must use any contracted Professional Services within one year of the Effective Date.

**Training.** Subject to payment of any training fees ("Training Fees"), Customer may obtain training services from LogRhythm in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.

**FEES AND PAYMENT.**

**Fees.** Customer will pay LogRhythm the applicable Appliance price ("Appliance Fee") or Software license fees ("License Fees" and collectively, "Fees") as set forth in and in accordance with the applicable Order. All Fees are nonrefundable unless otherwise expressly stated herein.

**Professional Service Fees.** Customer will pay the Professional Services Fees set forth in and in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.

**Support Services Fees.** Customer will pay the Support Services Fees as set forth in the terms and conditions of the Multiple Award Schedule 70 contract.

**Additional Orders.** Customer may order more

Appliances, Software product modules and additional usage of the Software as permitted under this Agreement by executing the LogRhythm Order in addition to submitting written purchase orders to LogRhythm in accordance with the terms and conditions of the Multiple Award Schedule 70 contract.

**Records.** Customer will maintain complete and accurate records of its use of the Software and all other data reasonably necessary for verification of compliance with this Agreement.

**Audit Rights.** LogRhythm will have the right, during normal business hours, in accordance with United States Government security requirement and upon at least five (5) days prior written notice, to have an independent audit firm selected by LogRhythm audit Customer's records relating to Customer's activities pursuant to this Agreement in order to verify that Customer has complied with the terms of this Agreement. The audit will be conducted at LogRhythm's expense. LogRhythm may submit a request for payment of alleged owed amounts in accordance with the terms and conditions of the Multiple Award Schedule 70 Contract. Such audits will be conducted no more than once in any period of twelve (12) consecutive months.

**WARRANTY; DISCLAIMER.**

**Software Warranty.** For a period of ninety (90) days after the Effective Date (the "Software Warranty Period"), LogRhythm warrants that the Software, when used in accordance with the instructions in the Documentation, will operate as described in the Documentation in all material respects. LogRhythm does not warrant the Customer's use of the Software will be error-free or uninterrupted. LogRhythm will, at its own expense and as its sole obligation, correct any reproducible error in the Software reported to LogRhythm by Customer in writing during the Software Warranty Period. If LogRhythm determines that it is unable to correct the error or replace the Software, LogRhythm will refund to Customer all License Fees and Support Service Fees actually paid for the defective Software, in which case this Agreement and Customer's right to use the Software will terminate.

**Hardware and Third Party Software Warranty.** All Hardware and third party software is provided to Customer under the applicable warranty for such Hardware or third party software that is made available from the Hardware manufacturer or third party software licensor. LogRhythm provides no warranties directly to Customer for any Hardware or third party software.

**Disclaimers.** THE EXPRESS WARRANTIES IN SECTION 6.1 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE, HARDWARE AND SUPPORT SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE WHICH ARE HEREBY DISCLAIMED. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 6.1, THE SOFTWARE AND HARDWARE ARE PROVIDED "AS IS" WITH ALL FAULTS.

**INFRINGEMENT CLAIMS.**

**Indemnity.** LogRhythm will pay those costs and damages finally awarded against Customer in any such action, brought by a third party to the extent that the action is based upon a claim that the Software infringes any U.S. patents or any copyrights or misappropriates any trade secrets of a third party, that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. Customer shall give LogRhythm sole control of the defense of any such claim and any related settlement negotiations unless the Department of Justice ("DOJ") jurisdictional statute (28 USC 516) vests the right to defend the Government with the DOJ, and consequently the right to exercise sole control, solely in the DOJ. In such cases, Customer and the DOJ shall consult with LogRhythm regarding any such claim and LogRhythm shall have the right to intervene in the proceedings at its own expense through counsel of its choice.

**Injunction.** If the Software becomes, or in LogRhythm's opinion is likely to become, the subject of an infringement claim, LogRhythm may, at its option and expense, either (a) procure for Customer the right to continue using the Software, (b) replace or modify the Software so that it becomes non-infringing and remains functionally equivalent, or (c) accept return of the Software, terminate this Agreement upon written notice to Customer and refund Customer the Software Fees paid for such Software upon such termination, computed according to a thirty-six (36) month straight-line amortization schedule beginning on the Effective Date.

**Exclusions.** Notwithstanding the foregoing, LogRhythm will have no obligation under this Section 7 or otherwise with respect to any infringement claim based upon (a) any use of the Software not in accordance with this Agreement or the Documentation, (b) any use of the Software in combination with other products, hardware, equipment, software, or data not authorized by LogRhythm to be used with the Software, (c) any use of any release of the Software other than the most current release made available to Customer, or (d) any modification of the Software by any person other than LogRhythm or its authorized agents or subcontractors.

**LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LOGRHYTHM'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE AND ANY SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO LOGRHYTHM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. IN ADDITION, LOGRHYTHM DISCLAIMS ALL LIABILITY OF ANY KIND OF LOGRHYTHM'S LICENSORS. THE FOREGOING LIMITATIONS OF LIABILITY WILL NOT APPLY TO BREACH OF SECTIONS 2 OR 9 OR ANY INDEMNITY OBLIGATIONS IN SECTION 7. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

**CONFIDENTIALITY.**

**Confidential Information.** "Information" means information that is disclosed by a party ("Discloser") to the other party ("Recipient"), or which Recipient has access to in connection with this Agreement, and that should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself. Information may be disclosed in written or other tangible form (including on magnetic media) or by oral, visual or other means. Information includes, without limitation, information of or relating to the Discloser's present or future products, know-how, formulas, designs, processes, ideas, inventions and other technical, business and financial plans, processing information, pricing information, specifications, research and development information, customer lists, the identity of any customers or suppliers, forecasts and any other information relating to any work in process, future development, marketing plans, strategies, financial matters, personnel matters, investors or business operations of the Discloser.

**Protection of Information.** Recipient will not use any Information of Discloser for any purpose not expressly permitted by the Agreement, and will disclose the Information of Discloser only to the employees or contractors of Recipient who have a need to know such Information for purposes of the Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Discloser's Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**Exceptions.** Recipient's obligations under Section 9.2 with respect to any Information of Discloser will terminate if such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Information of Discloser to the extent that such disclosure is (i) approved in writing by Discloser, (ii) necessary for Recipient to enforce its rights under the Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

**Return of Information.** Except as otherwise expressly provided in this Agreement, Recipient will return to Discloser or destroy all Information of Discloser in Recipient's possession or control and permanently erase all electronic copies of such Information promptly upon the written request of Discloser upon the expiration or termination of the Agreement. Recipient will certify in writing signed by an officer of Recipient that it has fully complied with its obligations under this Section 9.4.

#### TERM AND TERMINATION

**Term.** The term of the Agreement will begin on the Effective Date and will continue until terminated.

**Termination for Breach.** Termination may only be conducted in accordance with the terms and conditions of the Multiple Award Schedule 70 contract.

**Effects of Termination.** Upon termination of this Agreement, Customer must promptly discontinue all use of the Software, erase all copies of the Software from Customer's computers, and return to LogRhythm or destroy all copies of the Software, Documentation and other LogRhythm Information in Customer's possession or control. Sections 1, 2.2, 5, 6.3, 7, 8, 9, 10.3 and 11 together with any accrued payment obligations, will survive expiration or termination of the Agreement for any reason.

#### GENERAL

**Proprietary Rights.** The Software and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of LogRhythm and its licensors. All rights in and to the Software not expressly granted to Customer in this Agreement are reserved by LogRhythm and its licensors. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of LogRhythm or its licensors on the Software or the Documentation.

**Third Party Software.** All third party software included with an Appliance is subject to the third party license agreements and/or additional terms and conditions provided with the Appliance that are imposed by LogRhythm's applicable third party manufacturers and licensors. Customer agrees that Customer will be bound to and comply with all such applicable license agreements and terms and conditions.

**Compliance with Laws.** Each party will comply with all applicable export and import control laws and regulations in its use of the Software and Appliances and, in particular, Customer will not export or re-export Software or Appliances without all required government licenses and Customer agrees to comply with the export laws, restrictions, national security controls and regulations of the all applicable foreign agencies or authorities.

**Assignment.** Neither party may assign or transfer, by operation of law or otherwise, this Agreement or any of its rights under the Agreement (including the license rights granted to Customer to the Software) to any third party without the other party's prior written consent, which consent will not be unreasonably withheld or delayed.

**Force Majeure.** Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond the reasonable control of such party.

**U.S. Government End Users.** If Customer is a branch or agency of the United States Government, the following provision applies. The Software is comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

**Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic mail, facsimile (fax), or by certified mail, (postage prepaid and return receipt requested) to the other party at the address set forth on the Order, and will be effective upon receipt or when delivery is refused. Either party may change its address by giving notice of the new address to the other party.

**Governing Law and Venue.** This Agreement and all Statements of Work will be governed by and interpreted in accordance with applicable Federal laws. If it is in the best interests of the Government, any action or proceeding arising from or relating to this Agreement shall be brought in a Federal District Court in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Section 8 will remain in effect notwithstanding the unenforceability of any provision in Section 6.

**Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to."

**Entire Agreement.** This Agreement, the Multiple Award Schedule 70 contract and the task/delivery order constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.

**Exhibit A**

**Support Services**

Subject to the terms and conditions of the applicable software license agreement between Customer and LogRhythm (“Agreement”), the terms and conditions of the Multiple Award Schedule 70 contract and this Support Services exhibit (including payment of the applicable fees (“Support Fees”), LogRhythm will provide the Support Services in accordance with the terms and conditions set forth below. Customer must purchase identical Support Services for all installed Software and/or Appliances within a Designated Deployment (defined below) and may not select different Support Services options to cover different installations of Software and/or Appliances across deployments within a Designated Deployment. LogRhythm will be responsible for providing Support Services only for the most current release and the immediately preceding major release of the Software. End-of-Life Support for third party optional software components are in accordance with the End-of-Life policy for each such component as announced. LogRhythm reserves the right to modify its Support Services offering at any time, by providing notice to its Customers, provided such Support Services modification will not be less than what is stated in this Support Services Exhibit and the modification is agreed to in writing and signed by an authorized Government Contracting Officer.

**DEFINITIONS.**

“**Business Day**” means 7:00 a.m. to 6:00 p.m. (Mountain Time), Monday through Friday (excluding LogRhythm holidays).  
 “**Designated Deployment**” shall mean the deployment of the LogRhythm Software that enables complete logging and processing of Customer data.  
 “**Enhanced Support Services**” shall mean the optional purchase by Customer of 24/7 support subject to the payment of any required additional fees.  
 “**Error**” shall mean a reproducible defect in the Supported Program when operated on a Supported Environment, which causes the Supported Program not to operate substantially in accordance with the Documentation.  
 “**Resolution**” shall mean a modification or workaround to the Supported Program and/or Documentation and/or other information provided by LogRhythm to Customer intended to resolve an Error.  
 “**Support Hour**” shall mean an hour during a Business Day.  
 “**Supported Environment**” shall mean any hardware and operating system platform which LogRhythm supports.  
 “**Supported Program**” shall mean the current version of the Software used in a Supported Environment in use at the Designated Deployment, for which Customer has paid the then current Support Fees.  
 “**Update**” means subsequent minor maintenance releases of the Software (e.g., 3.1 to 3.2) and patches that LogRhythm generally makes available for Software licensees at no additional license fee to Customers provided the Customers are under a current Support Services Agreement with LogRhythm. Updates shall not include any release, option or future product which LogRhythm licenses separately from Support Services for an additional fee.  
 “**Upgrade**” means subsequent major releases of the Software (e.g. 2.0 to 3.0) that LogRhythm generally makes available for Software licensees at no additional license fee to Customers provided the Customers are under a current Support Services Agreement with LogRhythm.

**SERVICES PROVIDED.**

**First Call.** LogRhythm is the first tier of support for the Software and Hardware purchased through LogRhythm.  
**Telephone Support.** LogRhythm will provide telephone support to the designated users during the Support Hours. Customer understands and acknowledges that Support Services are provided in English. Customers purchasing Enhanced Support Services will be given instructions for receiving Support Services after the end of a Business Day. Telephone support will include the following:  
 Assistance in identifying and verifying the causes of suspected Errors in the Supported Program;  
 Advice on bypassing identified Errors in the Supported Program, if reasonably possible;  
 Assistance in troubleshooting and identifying Hardware-related problems;  
 Clarification of the Documentation; and **(e)** Guidance in updates of the Supported Program. **2.3 E-Mail Support.** Customers may contact LogRhythm support via email 24 hours a day, 7 days a week. Support emails may be sent to support@logrhythm.com.

**2.4 Response Times.**

LogRhythm will respond to new support cases whether received via a telephone call or email within (i) four (4) Support Hours after receipt if received during a Business Day or (ii) by 12:00 p.m. Mountain Time the following Business Day if received after the end of a Business Day. LogRhythm will respond to new support cases via email or by directly contacting the applicable designated users. Response times for open support cases will vary depending on the specifics of the case and any Escalation required. If a response will require more than one business day to prepare, Customer will be notified and informed when a response can be expected.  
 If Customer has purchased Enhanced Support Services LogRhythm will respond to new support cases received via a telephone call within four (4) hours after receipt.

**LogRhythm Support Site.** LogRhythm maintains a product support site containing product manuals and additional support related information (e.g., FAQ’s, Knowledge Base). Subject to the payment of Support Fees, Customer will be provided 24/7 access to the support site. Customer will be provided support accounts to use when accessing the support site.

**Escalation and Severity Levels.** All calls are received by Tier 1 or Tier 2 support personnel. LogRhythm’s best attempts are made to solve support issues with Tier 1 support personnel. Issues that are not able to be resolved by the Tier 1 support personnel will be escalated as outlined below:

**Tiered Support Definitions:** Support requests will be answered and/or escalated based on the following generalized criteria. The Tier I support engineer will be the first contact and will determine escalation if an issue is not solved within 1 hour. Additional escalation will be issue specific and will remain within current contractual guidelines:

Tier I – General questions and minor configuration changes
Tier II – Functionality specific questions, advanced configuration changes and initial error investigation
Tier III – Advanced functionality and configuration questions and detailed error investigation



Tier IV (Sustaining Engineering) – Advanced error investigation to determine SW configuration changes and/or failed functionality

Tier IV software support is reserved for consultation on development related issues only during business hours.

All incoming tickets are automatically assigned to Tier I
Escalate to Tier II if issue is not resolved within one hour, with the following exceptions: <ul style="list-style-type: none"> <li>o Awaiting customer response o</li> <li>Awaiting internal response or follow up</li> </ul>
Tier II – If the issue is not resolved within two hours of escalation to Tier II, Escalate to Tier III
Tier III – If the issue is not resolved by the following business day, escalate to Tier IV

**Support Ticket Escalation:**

Support calls are generally not escalated if work is under way and/or a solution is being researched or created. However, severity levels are designed as means to provide escalation in cases of an inability to make systems operational as outlined below.

**Ticket Severity:**

<i>Critical (Severity 1)</i> – The system has crashed or is in a “hung” state, or displays a fatal error - resulting in data loss or corruption.
<i>High (Severity 2)</i> – System is severely degraded such that a component or feature does not meet requirements or are inaccessible or inoperable.
<i>Medium (Severity 3)</i> – System is slightly degraded such that a component or feature does not meet minimum or expected requirements.
<i>Low (Severity 4)</i> – System is functional with a minor defect or customer has general question or is requesting minor configuration change information.

**Support Cases.** Each support case will be assigned a case number. Customer must provide the number when providing communications to LogRhythm regarding the support case. Support cases will be closed when Customer has verified the issue is resolved, where possible. Support cases will also be closed after three (3) Business Days of inactivity on the part of Customer and can be re-opened upon request.

**Qualified Support Cases.** Qualified support cases are limited to questions that cannot be easily answered by referring to LogRhythm product documentation or information made available on the LogRhythm support site. Qualified support cases also include reporting any abnormal functioning of LogRhythm software. Qualified support cases do not include questions pertaining to the normal deployment, configuration, and operation of LogRhythm products as described in LogRhythm product documentation.

**Unqualified Support Cases.** Unqualified support cases include questions that could have been answered by reviewing LogRhythm Documentation or information made available via the LogRhythm support site. If Customer is submitting a high volume of Unqualified Support Cases, LogRhythm and Customer will work together to determine the areas of operation underlying the cases submitted and will jointly determine a corrective course of action as required.

**Travel and Other Expenses.** Support Services provided hereunder shall be provided at LogRhythm’s principal place of business, or at the Designated Deployment at Customer’s expense, as mutually agreed upon in writing by the parties and authorized by a Government Contracting Officer in accordance with the terms and conditions of the Multiple Award Schedule 70 contract, the Federal Acquisition Regulation and Agency Supplemental Regulations, as applicable.

**Exceptions.** LogRhythm shall have no responsibility under this Agreement to fix any Errors arising out of or related to the following causes: (a) Customer’s modification or combination of the Supported Program (in whole or in part), (b) use of the Supported Program in an environment other than a Supported Environment; or (c) problems related to nonLogRhythm provided hardware. Any corrections performed by LogRhythm for such Errors shall be made, in LogRhythm’s reasonable discretion, at LogRhythm’s then-current time and material charges.

**SOFTWARE SUPPORT.** Subject to the payment of the Support Services Fees or additional license fees set forth in the task/delivery order and in accordance with the terms and conditions of the Multiple Award Schedule 70 contract, LogRhythm will provide:



**Updates.** LogRhythm will provide Updates for the Supported Programs as and when developed for general release in LogRhythm's sole discretion. Each Update will consist of a set of programs and files made available from LogRhythm's web site and will be accompanied by Documentation adequate to inform Customer of the problems resolved and any significant operational differences resulting from such Update.

**Upgrades.** Customer will be entitled to major Software release upgrades (e.g. 2.0 to 3.0) at no additional cost while a Support Services contract is in effect. An upgrade to LogRhythm provided Hardware may be required in order to utilize any such Upgrades.

**Third-Party Software Updates.** LogRhythm approves and makes available information regarding Updates of Third Party software included in the Software to Customers via LogRhythm's web site support.

**Knowledge Base Updates.** Customer will be entitled to knowledge base updates at no additional cost.

**HARDWARE SUPPORT.** Subject to the payment of the

Support Services Fees or additional license fees set forth in the task/delivery order and in accordance with the terms and conditions of the Multiple Award Schedule 70 contract, LogRhythm will provide:

**Basic Hardware Services.** As part of Support Services, LogRhythm will facilitate Hardware warranty coverage with the Hardware manufacturer on servers and their components for a period of three (3) years after delivery for Hardware purchased through LogRhythm.

If Hardware is replaced in whole or in part under a warranty program Customer will be responsible for the cost of any Hardware or components not returned as may be required to comply with the warranty.

Modification, alteration, or any other changes to the Hardware may violate and/or void the Hardware warranty and/or Support Services agreement. In no instances should the Customer open the external case of the Hardware without direction from LogRhythm personnel.

Hardware shipped to customer will support the release of the Software installed on the Hardware at time of delivery and the next major release. If a second or subsequent major release of the Software requires an upgrade to the Hardware, Customer may choose to either (i) upgrade the Hardware at their cost and install the second or subsequent major release or (ii) receive Support Services on their current Hardware and Software through the life cycle of the second or subsequent major release.

Hardware upgrades for enhancements to

Software features included in Customers initial Software release will be provided by LogRhythm. Hardware upgrades to support new Software features provided to customer via a Software Upgrade or Update will not be provided by LogRhythm and Customer, at its option, may upgrade the Hardware to utilize such new Software features.

**Enhanced Hardware Services.** Hardware that is subject to an Enhanced Support Services agreement will be provided with 24/7 support with 4-hour onsite response, after troubleshooting.

**Extended Warranty.** Upon Customer's renewal of

Support Services in years four (4) and five (5); LogRhythm will facilitate an extended hardware warranty service for each of those years, provided such warranty service is offered by the hardware manufacturer. Hardware warranty services beyond year five (5) will continue to be facilitated by LogRhythm provided such are offered at the discretion of the hardware manufacturer.

**Pre-Replacement of Defective Hardware.** Hardware warranty repairs will be made in accordance with the Basic Hardware Services or Enhanced Hardware Services as contracted by Customer. Replacements for defective Hardware to be provided to Customer under the warranty program will be sent on a pre-replacement basis when possible. Customer will have ten (10) business days to return to the defective Hardware to LogRhythm. If the replacement of a complete Appliance is required, the replacement Appliance will be shipped fully configured for Customer's use unless an alternative course of action is mutually agreed upon by LogRhythm and Customer.

#### **CUSTOMER RESPONSIBILITIES.**

**Supervision and Management.** Customer is responsible for undertaking the proper supervision, control and management of its use of the Supported Programs, including, but not limited to: (a) assuring proper Supported Environment configuration, Supported Programs installation and operating methods; and (b) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction.

**Training.** Customer is responsible for ensuring that all appropriate personnel are trained and familiar with the operation and use of the Supported Programs and associated equipment.

**Designated Users.** Customer shall designate a reasonable number of individuals to serve as the designated users with LogRhythm for the Support Services provided hereunder. To receive notification of any new Updates available from LogRhythm Customer must subscribe to the LogRhythm user forums.

**Access to Personnel and Equipment.** Customer shall provide LogRhythm with access to Customer's personnel and, at Customer's discretion, its equipment during Support Hours.

LogRhythm will, to the best of its ability, provide Support Services to Customer in accordance with Customer's internal security and/or network access policies. If Customer requests Support Services for an Error that requires remote access and Customer is unable to provide such access, then the Government Contracting Officer may elect to pay LogRhythm additional Support Fees and Expenses incurred for onsite Support Services so long as the additional Support was agreed to in writing by an authorized Government Contracting Officer prior to the services being rendered. If Customer does not wish to pay for such onsite Support Services, LogRhythm's obligation to provide any Resolution for the Error shall be excused.

#### **Customer Introduced Third-Party Software.**

Customer may elect to install additional software on to the Hardware on the drive specified in the LogRhythm Documentation. It is recommended that Customer contact LogRhythm before installing any software on to the Hardware. In such instance, Customer acknowledges and assumes the risk that (a) LogRhythm is not responsible for the functionality of any such software; (b) LogRhythm reserves the right to require the removal of any and all such software when addressing support issues (failure to remove such software after requested by LogRhythm will void LogRhythm's Support Service obligations); (c) any such installation may negatively impact the performance, reliability and/or security of the Software and/or Hardware; (d) the Software may not perform as intended or in accordance with the LogRhythm Documentation; and (e) any such software which adversely affects the performance of the LogRhythm Appliance will void all warranties and cancel all Support Services obligations.

**EXHIBIT B LOGRHYTHM PROFESSIONAL SERVICES ATTACHMENT**

Subject to the terms and conditions of the applicable software license agreement between Customer and LogRhythm to which this Exhibit B is attached and incorporated therein ("Agreement"), the terms and conditions of the Multiple Award Schedule 70 contract and this Professional Services Attachment (including payment of the applicable fees, LogRhythm will provide the Professional Services in accordance with the terms and conditions set forth below.

**Scope of Services.** LogRhythm will provide the Professional Services to Customer under this Professional Services Attachment ("PSA"). At the start of the deployment planning, Customer and LogRhythm will develop a mutually agreed upon deployment plan that will be detailed in one or more Statements of Work ("SOW") (the "Services"). Deployment Services include but are not limited to the process of configuring the Software and/or Appliance and deploying in Customer's environment.

**Assumptions and Responsibilities**

**Assumptions.** The following assumptions are hereby acknowledged by the parties and apply to the performance of the Services under this PSA:

Changes to this PSA will be documented using a Project Change Request form in accordance with the process outlined in this PSA.

Customer will ensure that data backup is performed. LogRhythm will not be responsible for the loss or corruption of any Customer data or for any system downtime. Except as may be purchased under a separate LogRhythm Services Agreement, LogRhythm will not be responsible for any application or host system access that encompasses coding, scripting, application analysis, system performance, troubleshooting, or applications logins outside of the Services described in this PSA.

**LogRhythm Responsibilities.** Performance of the Services includes, without limitation, LogRhythm's undertaking of the following responsibilities as reasonably applicable to the Services being performed under this PSA:

LogRhythm will use commercially reasonable efforts to complete the Services described in this PSA in a timely manner.

LogRhythm will perform all appropriate

Services either onsite at the Customer facilities or remotely, via a remote desktop session. Services not requiring presence onsite may be performed at LogRhythm facilities by mutual agreement between Customer and LogRhythm.

LogRhythm reserves the right to subcontract any or all portions of the Services that LogRhythm is obligated to perform under this PSA.

LogRhythm will submit written or verbal status reports on the Services being performed under this PSA as necessary and mutually agreed upon by Customer and LogRhythm.

LogRhythm will provide a Project Lead with the qualifications, expertise, and knowledge to fulfill LogRhythm's obligations under this PSA, as necessary and applicable to the PSA requirements of Section 1.

**Customer Responsibilities.** Completion of the contingent upon Customer fulfilling the following responsibilities:

Customer will complete all necessary facilities arrangements prior to the commencement of the Services which will include but not be limited to such items as power, network connections, floor space, and cooling. Such required facility arrangements must be in place for the duration of this PSA.

Customer will make knowledgeable staff available to LogRhythm promptly upon a request via pager, telephone, or cell phone to provide background information and clarification of information required to perform the Services outlined in this PSA.

Documentation and information provided to LogRhythm staff by Customer must be accurate, complete and up-to-date.

Customer will be responsible for any business and data application testing and all necessary data backup in preparation for and during the performance of the Services.

Customer will assign system administrators and operators available by phone or pager for the duration of this PSA.

For the duration of this PSA and where applicable, Customer will provide LogRhythm adequate onsite access to office space and equipment, and to telephones with outside lines and a dedicated, secure line for internet access.

Should the project plan rely on electronic/network transfer of data, customer will provision and enable any network components or Services required to facilitate the data transfer.

Where applicable, Customer will provide security passes to cover the duration of this PSA to allow LogRhythm access, and the ability to enter and leave Customer facilities, with laptop personal computers and any other materials related to the Services to be performed under this PSA.

If required by LogRhythm, Customer will participate in testing as directed by LogRhythm.

Customer will provide a Project Lead with the requisite qualifications, expertise, and knowledge who is authorized by Customer to act as a liaison between Customer and LogRhythm and assume the responsibilities detailed in Section 2.4.

**Joint Project Management Responsibilities and Tasks.** Both the LogRhythm and Customer Project Leads will ensure the following responsibilities and tasks are met as are reasonably applicable to the Services being performed:

Each Project Lead will ensure that an authorized representative of its respective party will approve documents and specifications and accept Services provided in accordance with the acceptance procedures outlined in this PSA

. Coordinate, schedule and monitor all resources and activities related to the Services described in this PSA.

Coordinate and monitor all project change process activities related to the Services described in this PSA.

Act as the focal points for communications between Customer and LogRhythm during the provision of all Services described in this PSA.

Attend LogRhythm and Customer status meetings, as applicable.

Upon becoming aware of a situation which may delay, or threatens to delay, the timely performance of this PSA, promptly initiate the Project Change Process as described in Section 4 of this PSA, to address the potential delay.

**Status Notification.** LogRhythm will notify Customer of the status of Professional Services hours consumed on a regular basis. Additionally, LogRhythm will also notify customer when Deployment Services have been completed in accordance with the agreed upon Statement(s) of Work.

**Project Change Process.** In accordance with the terms and conditions of the Multiple Award Schedule 70 contract, any change to a PSA will be coordinated with the LogRhythm Project Lead.

**Change Initiation.** LogRhythm or the Customer may initiate change requests. The reasons for a change may include: customer requests; regulatory changes; changes in technical scope; or other detail program issues or requirements. The Project Lead of the party initiating a change will submit each change request to the other party's Project Lead, and then both Project Leads will review such request for validation. Project changes must be submitted in a clear and concise manner in the form of a Change Request Form (Attachment A). Upon the initiation of a change request, both parties must agree within twenty-four (24) hours of the receipt of the Change Request Form

by the non-initiating party whether or not to continue performance of the Services or to stop all Services being performed until a mutually agreed upon Change Request Form has been signed by both parties.

**Change Request Review.** After the submission of a Change Request Form to a Project Lead and validation of the requested change, the LogRhythm Project Lead will review the requested change to determine if it is within the scope of the SOW.

**Within Services Scope.** If the LogRhythm Project Lead determines that the change requested by Customer is within the scope of the SOW, the Project Leads of both parties will execute the Change Request Form and implement the change into performance of the Services as appropriate.

**Outside Services Scope.** If the LogRhythm Project Lead determines that the requested change is outside the scope of Services the SOW, the LogRhythm Project Lead will then determine whether such requested change impacts the pricing or scheduling projections for the performance of the Services.

If the LogRhythm Project Lead

determines that the requested change does not impact the pricing or scheduling projections of the SOW, the Project Leads will execute the Change Request Form and implement the requested change into the performance of the Services as appropriate.

If the LogRhythm Project Lead

determines that the requested change does impact the pricing or scheduling projections of the SOW, the terms of Section 4.3 will apply.

This process is not intended to handle change requests which would constitute a cardinal change to the SOW. Additionally,

LogRhythm reserves the right to reject change requests at its discretion.

**Cost Estimate Preparation.** Upon determination that the Change Request impacts the pricing or scheduling of the Services under the SOW, a cost estimate applicable to the performance of the requested change will be prepared by LogRhythm and provided to the Customer. The cost estimate will fully document the scope of the change, and provide a basis of estimate for the proposed adjustments in price, schedule, and/or other factors as applicable. If applicable, a schedule (separate from but integrated with the implementation plan) will be developed and maintained for each such authorized change.

**Change Implementation.** The execution of the Change Request Form by both the Multiple Award Schedule 70 Contractor, acting on behalf of LogRhythm and an authorized Government Contracting Officer, in accordance with the terms and conditions of the Multiple Award Schedule 70 contract and the Federal Acquisition Regulation and Agency Supplemental Regulations, as applicable, will cause the Change Request Form to become part of and incorporated into the SOW. Commencement of the performance of the requested change is conditioned upon the mutual execution of the Change Request, and LogRhythm's receipt of an additional P.O. authorization to cover the agreed upon price for each requested change.

#### **Fee Description and Payment**

**Professional Services Fees.** In accordance with the terms and conditions of the Multiple Award Schedule 70 contract, Customer will pay the Professional Service Fees for the performance of the Services under this PSA.

**Rights to Development.** LogRhythm will retain all right, title and interest in and to development tools, know-how, methodologies, processes, technologies or algorithms used in providing the Services, which are based on trade secrets or proprietary information. No license to any patents, trade secrets, trademarks or copyrights is deemed to be granted by either party to any of its patents, trade secrets, trademarks or copyrights except as otherwise expressly provided in the Agreement. Rights associated with any joint development projects will be subject to future discussion and under a separate agreement with terms to be mutually agreed upon by both parties.

**Constructive changes.** LogRhythm and Customer agree that: (a) Customer has knowledge of and control over the conditions and constraints of Customer's facilities, and IT environment; and administers how the services on Customer's IT infrastructure are performed; (b) LogRhythm may undertake a course of action under this engagement which was unforeseen at the time the PSA was executed but is necessary, arises from a latent or unusual condition, is at the direction of the Customer, or results from an act of omission of the Customer and, by changing LogRhythm's manner, method, or scope of work, increases LogRhythm's cost or schedule to perform; (c) should LogRhythm's cost or schedule to perform so increase, LogRhythm will have the right to an equitable adjustment to the price, schedule, and/or terms of the PSA for such changes even if these changes have not been submitted through the Project entire agreement between the parties regarding the delivery of Change Process set forth in Section 4. professional services and supercedes all prior or

**8. Entire Agreement.** This PSA, the Multiple Award contemporaneous agreements, understandings, and Schedule 70 contract and the task/delivery order constitute the communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.

**LogZilla Corporation**  
**11400 Concordia Univ Dr, Bldg B-202**  
**Austin, TX 78726**

## END USER LICENSE AGREEMENT

This End User License Agreement, including any Order which by this reference is incorporated herein (this “**Agreement**”), is a binding agreement between LogZilla Corporation (“**LogZilla**”) and the undersigned Ordering Activity under GSA Schedule contracts receiving the Software (as defined below) accompanied by this Agreement (“**Ordering Activity**” or “Customer” or “You”). The Ordering Activity may have received an “evaluation edition”, “alpha”, “beta”, or other non-commercial release

version of the Software (“**Evaluation Edition**”) or a commercially released or generally available version of the Software and the Ordering Activity’s rights will vary depending on the version that it received.

LogZilla provides the software solely on the terms and conditions set forth in this agreement and on the condition that Customer accepts and complies with them. By both parties executing this Agreement in writing, you accept this agreement and agree that Ordering Activity is legally bound by its terms; If the Ordering Activity does not agree to the terms of this agreement, LogZilla will not and does not license the software to the Ordering Activity and it may not install the software or documentation.

Notwithstanding anything to the contrary in this agreement or the Ordering Activity 's acceptance of the terms and conditions of this agreement, no license is granted (whether expressly, by implication or otherwise) under this agreement, and this agreement expressly excludes any right, concerning any software that the Ordering Activity did not acquire lawfully or that is not a legitimate, authorized copy of LogZilla's software.

**Definitions.** For purposes of this Agreement, the following terms have the following meanings:

“**Development Use**” means use of the Software by Ordering Activity to design, develop and/or test new applications for Production Use.

“**Documentation**” means user manuals, technical manuals and any other materials provided by LogZilla, in printed, electronic or other form, that describe the installation, operation, use or technical specifications of the Software.

“**Fees**” are the License Fees and the Support Fees in accordance with the GSA Pricelist.

“**License Fees**” means the license fees, paid by Ordering Activity in accordance with the GSA Pricelist for the license granted under this Agreement.

“**License Package**” means the type of license selected by Ordering Activity depending on the number of hosts and messages Ordering Activity needs. License Packages are available in evaluation, small business and enterprise sizes.

“**Order**” means the document by which the Software and any Support Services are ordered by Ordering Activity.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Production Use**” means using the Software with Ordering Activity’s applications for internal business purposes only, which may include third party Ordering Activity’s access to or use of such applications. “Production Use” does not include the right to reproduce the software for sublicensing, resale, or LogZilla EULA Final Version

distribution, including without limitation, operation on a time sharing or service bureau basis or distributing the software as part of an ASP, VAR, OEM, distributor or reseller arrangement.

“**Software**” means the object code versions of the software set forth in the Order.

“**Support Fees**” means the support fees to be paid by Ordering Activity for the Support Services ordered under this Agreement.

“**Third Party**” means any Person other than Ordering Activity or LogZilla. “**Use**”

means Development Use or Production Use.

License Grant and Scope. Subject to and conditioned upon Ordering Activity’s strict compliance with all terms and conditions set forth in this Agreement, LogZilla hereby grants to Ordering Activity a non-exclusive, non-transferable, non-sublicensable (except as expressly set forth in **Section 2(d)**), limited license during the Term (as defined below) to use the Software and Documentation, solely as set forth in this **Section 2** and subject to all conditions and limitations set forth in **Section 4** or elsewhere in this Agreement. This license grants Ordering Activity the right to:

Download and install in accordance with the Documentation the Software and Documentation solely for Ordering Activity’s Use and in accordance with the number messages or events associated with the License Package, each as specified in the Order. In addition to the foregoing, Ordering Activity has the right to make one copy of the Software solely for archival purposes, provided that Ordering Activity does not, and does not allow any Person to, install or use any such copy other than if and for so long as the copy installed in accordance with the preceding sentence is inoperable and, provided, further, that Ordering Activity uninstalls and otherwise deletes such inoperable copy. All copies of the Software made by Ordering Activity:

will be the exclusive property of LogZilla;

will be subject to the terms and conditions of this Agreement; and

must include all trademark, copyright, patent and other intellectual property rights notices contained in the original.

Use and run the Software as properly installed in accordance with this Agreement and the Documentation, solely as set forth in the Documentation and solely for Ordering Activity’s internal business purposes. If Ordering Activity has acquired Software for Development Use, Ordering Activity is not permitted to use the Software for Production Use. If Ordering Activity has acquired Software for Production Use, Ordering Activity is not permitted to use the Software for Development Use.

Download or otherwise make a reasonable number of copies of the Documentation depending on the



License Package and use such Documentation, solely in support of its licensed use of the Software in accordance herewith. All copies of the Documentation made by Ordering Activity:

will be the exclusive property of LogZilla;

will be subject to the terms and conditions of this Agreement; and

must include all trademark, copyright, patent and other intellectual property rights notices contained in the original.

Permit third party consultants to access and use the Software solely for Ordering Activity's internal business operations, provided that such consultants execute an agreement with Ordering Activity with terms and conditions no less protective of LogZilla than those in this Agreement. Ordering Activity remains liable for any breach of this Agreement by a third party consultant.

Third-Party Materials. The Software may include software, content, data or other materials, including related documentation, that are owned by Persons other than LogZilla and that are provided to Ordering Activity on terms that are in addition to and/or different from those contained in this Agreement ("**Third-Party Licenses**"). Ordering Activity is not bound by any Third-Party Licenses that it has not executed in writing with the third party.

Use Restrictions. Ordering Activity will not:

use (including make any copies of) the Software or Documentation beyond the scope of the license granted under **Section 2**;

except as may be permitted by **Section 2(d)** and strictly in compliance with its terms, provide any other Person, including any subcontractor, independent contractor, affiliate or service provider of Ordering Activity, with access to or use of the Software or Documentation;

modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;

combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;

reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Software or Documentation, including any copy thereof;

except as expressly set forth in **Section 2(a)** and **Section 2(c)**, copy the Software or Documentation, in whole or in part;

rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the



Software or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network and whether or not on a hosted basis, including in connection with the internet, web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud or other technology or service;

use the Software in, or in association with, the design, construction, maintenance or operation of any hazardous environments or systems, including:

power generation systems;

aircraft navigation or communication systems, air traffic control systems or any other transport management systems;

safety-critical applications, including medical or life-support systems, vehicle operation applications or any police, fire or other safety response systems; and

military or aerospace applications, weapons systems or environments;

use the Software in violation of any Federal law, regulation or rule; or

use the Software for purposes of competitive analysis of the Software, the development of a competing software product or service or any other purpose that is to LogZilla's commercial disadvantage.

Responsibility for Use of Software. Ordering Activity is responsible and liable for all uses of the Software through access thereto provided by Ordering Activity, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Ordering Activity is responsible and liable for all actions and failures to take required actions with respect to the Software by any other Person to whom Ordering Activity may provide access to or use of the Software, whether such access or use is permitted by or in violation of this Agreement.

Feedback. If Ordering Activity provides any feedback to LogZilla concerning the functionality and performance of the Software (including identifying potential errors and improvements) (“**Feedback**”), Ordering Activity hereby assigns to LogZilla all right, title, and interest in and to the Feedback, and LogZilla is free to use the Feedback without any payment or restriction to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

#### Compliance Measures.

The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against use of the Software: (i) beyond the scope of the license granted pursuant to **Section 2**; or (ii) prohibited under **Section 4**. Ordering Activity will not, and will not attempt to, remove, disable, circumvent or otherwise create or implement any workaround to, any such copy protection or security features.

Upon reasonable notice to Ordering Activity, during the Term and for three years thereafter, Ordering Activity will keep current, complete, and accurate records regarding the reproduction, distribution, and use of the Software. Ordering Activity will provide such information to LogZilla and certify that it has paid all

fees required under this Agreement within five business days of any written request, so long as no more than one request in a 12 month period is made. LogZilla may, in LogZilla's sole discretion, audit Ordering Activity's use of the Software under this Agreement at any time during the Term and for three years thereafter to ensure Ordering Activity's compliance with this Agreement, provided that (i) any such audit will be conducted on not less than 30 days' prior notice to Ordering Activity, and (ii) no more than 1 audit may be conducted in any 12 month period except for good cause shown. LogZilla also may, in its sole discretion, audit Ordering Activity's systems within 3 months after the end of the Term to ensure Ordering Activity has ceased use of the Software and removed the all copies of the Software from such systems as required hereunder. Ordering Activity will fully cooperate with LogZilla's personnel conducting such audits and subject to Government Security requirements provide all reasonable access requested by LogZilla to records, systems, equipment, information and personnel, including machine IDs, serial numbers and related information. LogZilla will only examine information related to Ordering Activity's use of the Software. LogZilla may conduct audits only during Ordering Activity's normal business hours and in a manner that does not unreasonably interfere with Ordering Activity's business operations. If any of the measures taken or implemented under this **Section 6** determines that Ordering Activity's use of the Software exceeds or exceeded the use permitted by this Agreement then:

Ordering Activity will, within thirty (30) days following the date of receipt of written notice and invoice from LogZilla, pay to LogZilla the retroactive License Fees for such excess use and obtain and pay for a valid license to bring Ordering Activity's use into compliance with this Agreement. In determining the Ordering Activity Fee payable pursuant to the foregoing, the rates for such licenses will be determined in accordance with the GSA Schedule Pricelist.

#### Maintenance and Support.

Subject to **Section 8(d)**, the license granted hereunder entitles Ordering Activity to the technical support and maintenance services ("**Support Services**") identified on the Order, if any, during the Term.

Support Services will include provision of such updates, upgrades, bug fixes, patches and other error corrections (collectively, "**Updates**") as LogZilla makes generally available at no additional charge to the Ordering Activity of the Software then entitled to Support Services. LogZilla may develop and provide Updates in its sole discretion, and Ordering Activity agrees that LogZilla has no obligation to develop any Updates at all or for particular issues. Ordering Activity further agrees that all Updates will be deemed "Software," and related documentation will be deemed "Documentation," all subject to all terms and conditions of this Agreement. Ordering Activity acknowledges that LogZilla may provide Updates via download from a website designated by LogZilla and that Ordering Activity's receipt thereof will require an internet connection, which connection is Ordering Activity's sole responsibility. LogZilla has no obligation to provide Updates via any other media. Support Services do not include any new version or new release of the Software LogZilla may issue as a separate or new product, and LogZilla may determine whether any issuance qualifies as a new version, new release or Update in its sole discretion.

If Ordering Activity reports a bug or error to LogZilla, LogZilla will use commercially reasonable efforts to begin development on an Update for such bug or error within 12 hours of receipt of notification from Ordering Activity.

LogZilla reserves the right to condition the provision of Support Services, including all or any Updates, on Ordering Activity's registration of the copy of Software for which support is requested. LogZilla has no obligation to provide Support Services, including Updates:

for any but the most current version or release of the Software;

for any copy of Software for which all previously issued Updates have not been installed;

if Ordering Activity is in breach under this Agreement; or

for any Software that has been modified other than by or with the authorization of LogZilla, or that is being used with any hardware, software, configuration or operating system not specified in the Documentation or expressly authorized by LogZilla in writing.

#### Collection and Use of Information.

Ordering Activity acknowledges that LogZilla may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, through:

the provision of maintenance and support services; and

security measures included in the Software as described in **Section 6**.

Ordering Activity agrees that LogZilla may use such information for any purpose related to any use of the Software by Ordering Activity or on Ordering Activity's equipment, including but not limited to:

improving the performance of the Software or developing Updates; and

verifying Ordering Activity's compliance with the terms of this Agreement and enforcing LogZilla's rights, including all intellectual property rights in and to the Software.

Intellectual Property Rights. Ordering Activity acknowledges and agrees that the Software and Documentation are provided under license, and not sold, to Ordering Activity. Ordering Activity does not acquire any ownership interest in the Software or Documentation under this Agreement, or any other rights thereto other than to use the same in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. LogZilla and its licensors and service providers reserve and retain their entire right, title and interest in and to the Software and all intellectual property rights arising out of or relating to the Software, except as expressly granted to Ordering Activity in this Agreement. Ordering Activity will safeguard all Software (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access. Ordering Activity will promptly notify LogZilla if Ordering Activity becomes aware of any infringement of LogZilla's intellectual property rights in the Software and fully cooperate with LogZilla, at LogZilla's sole expense, in any legal action taken by LogZilla to enforce its intellectual property rights. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

Confidentiality. By virtue of this Agreement, the parties may have access to information that is confidential to one another ("**Confidential Information**"). Confidential Information includes the Software, Documentation, and all information clearly identified as confidential. A party's Confidential Information does not include information that: (a) is or becomes a part of the public domain through no

act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party. The parties agree to hold each other's Confidential Information in confidence during the term of this Agreement and for a period of 2 years after termination of this Agreement. The parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party for any purpose other than the implementation of this Agreement. LogZilla may reasonably use Ordering Activity's name and a description of Ordering Activity's use of the Software for its investor relations and marketing purposes to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71, unless Ordering Activity provides written notice within 7 days of installation of the Software to LogZilla that it may not do so. LogZilla recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

Payment. All License Fees and Support Fees are payable within 30 days of the receipt date of invoice from LogZilla and. Any renewal of the license or maintenance and support services hereunder will not be effective until the fees for such renewal have been paid in full. Late payments accrue interest at a rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. The contract price excludes all state and local taxes levied or measured by the contract or sales price of the services or completed supplies furnished under this agreement. LogZilla shall state separately on its invoices that taxes are excluded from the fees and the Ordering Activity agrees to either pay the amount of the taxes to LogZilla or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

#### Term and Termination.

This Agreement and the license granted hereunder will remain in effect for the term set forth on the Order or until earlier terminated as set forth herein (the "**Initial Term**" This Agreement may be renewed for additional successive one (1) year terms by executing a new Agreement in writing (each, a "**Renewal Term**" and both the Initial Term and the Renewal Term are the "**Term**"). Notwithstanding the foregoing, for Evaluation Edition licenses, this Agreement and the license granted hereunder will end upon completion of the testing or evaluation period specified by LogZilla, which shall not exceed 30 days from delivery of the Software to Ordering Activity unless otherwise expressly agreed in writing by LogZilla.

when the end user is an instrumentality of the u.s., recourse against the united states for any alleged breach of this agreement must be brought as a dispute under the contract disputes clause (contract disputes act). during any dispute under the disputes clause, logzilla shall proceed diligently with performance of this agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the agreement, and comply with any decision of the contracting officer.

Reserved.

Upon expiration or earlier termination of this Agreement, the license granted hereunder will also terminate, and Ordering Activity will cease using and destroy all copies of the Software and Documentation. No expiration or termination will affect Ordering Activity's obligation to pay all Fees that may have become due before such expiration or termination, except as set forth in **Section 14(c)**.

Limited Warranties, Exclusive Remedy and Disclaimer/Warranty Disclaimer.

If you are using Evaluation Edition of the Software, the Software is provided “AS IS” and without any warranties. Solely with respect to Software for which LogZilla receives a Fee, LogZilla warrants that, for a period of 90 days following the first installation of the Software, the Software will substantially contain the functionality described in the Documentation, and when properly installed on a computer meeting the specifications set forth in, and operated in accordance with, the Documentation, will substantially perform in accordance therewith. THE FOREGOING WARRANTY DOES NOT APPLY, AND LOGZILLA STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY MATERIALS.

The warranties set forth in **Section 14(a)** will not apply and will become null and void if Ordering Activity or any other Person provided access to the Software by Ordering Activity, whether or not in violation of this Agreement:

installs or uses the Software on or in connection with any hardware or software not specified in the Documentation or expressly authorized by LogZilla in writing;

modifies or damages the Software; or

misuses the Software, including any use of the Software other than as specified in the Documentation or expressly authorized by LogZilla in writing.

If, during the period specified in **Section 14(a)**, any Software covered by the warranty set forth in such Section fails to perform substantially in accordance with the Documentation, and such failure is not excluded from warranty pursuant to the **Section 14(b)**, LogZilla will, subject to Ordering Activity’s promptly notifying LogZilla in writing of such failure, either:

repair or replace the Software, provided that Ordering Activity provides LogZilla with all information LogZilla requests to resolve the reported failure, including sufficient information to enable LogZilla to recreate such failure; or

if LogZilla is unable to repair or replace the Software, refund the License Fees paid for such Software, subject to Ordering Activity’s ceasing all use of and, if requested by LogZilla, returning to LogZilla all copies of the Software or certifying in writing that all copies of the Software have been destroyed.

If LogZilla repairs or replaces the Software, the warranty will continue to run from the installation date, and not from Ordering Activity’s receipt of the repair or replacement. The remedies set forth in this **Section 14(c)** are Ordering Activity’s sole remedies and LogZilla’s sole liability under the limited warranty set forth in **Section 14(a)**.

EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN **Section 14(a)** AND THE SUPPORT SERVICES SET FORTH IN **Section 8**, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO ORDERING ACTIVITY “AS IS” AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LOGZILLA, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, LOGZILLA PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET ORDERING ACTIVITY'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.



Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

IN NO EVENT WILL LOGZILLA OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO ORDERING ACTIVITY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE SOFTWARE, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION, BREACHES IN SYSTEM OR NETWORK SECURITY OR OTHER SECURITY INCIDENTS OF ANY KIND, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT LOGZILLA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitation of liability shall not apply to

- (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE;
- (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

IN NO EVENT WILL LOGZILLA'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF THE CONTRACT PRICE.

THE LIMITATIONS SET FORTH IN **Section 15(a)** AND **Section 15(b)** WILL APPLY EVEN IF ORDERING ACTIVITY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

Export Regulation. The Software and Documentation may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations. Ordering Activity will not, directly or indirectly, export, re-export or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. Ordering Activity will comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Software or Documentation available outside the US.

US Government Rights. The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if Ordering Activity is the U.S. Government or any contractor therefor, Ordering Activity will receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance 48 C.F.R. §12.212, Ordering Activity and their contractors.

### Miscellaneous.

This Agreement will be governed by and construed in accordance with the Federal laws of the United States and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.

Excusable delays shall be governed by FAR 52.212-4.

All notices, requests, consents, claims, demands, waivers and other communications hereunder will be in writing and will be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order (or to such other address as may be designated by a party from time to time in accordance with this **Section 18(c)**).

This Agreement (including the Order) and , together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), that are incorporated by reference herein, constitutes the sole and entire agreement between Ordering Activity and LogZilla with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of a conflict between the terms in the body of this Agreement and the Order, the terms of the Order will prevail.

Ordering Activity will not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, merger, a sale of all or substantially all of Ordering Activity's assets, business reorganization or otherwise, without LogZilla's prior written consent. Any purported assignment, delegation or transfer in violation of this **Section 18(e)** is void LogZilla may not assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Customer's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving.

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order

referred to herein will be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

The following Sections survive termination of this Agreement: 1, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18.

The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

**LOOKINGGLASS CYBER SOLUTIONS INC.  
11091 SUNSET HILLS ROAD SUITE 210  
RESTON, VA 20190**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

**Scope.** This Rider and the attached **Lookingglass Cyber Solutions Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific Terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the

terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**LOOKINGGLASS CYBER SOLUTIONS, INC.**

**LOOKINGGLASS CYBER SOLUTIONS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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**DEFINITIONS.** Certain capitalized terms, if not otherwise defined on herein shall have the meanings set forth below in this Section 1.

**“Appliance”** shall mean, collectively, the Computer Equipment, the Licensed Software, and any third party software and any patches, updates, improvements, additions and other modifications or revised versions that may be provided by Lookingglass from time to time ordered and paid for by Ordering Activity pursuant to an Order Form.

**“Computer Equipment”** means Lookingglass’ network information management hardware equipment, including the various hardware components that comprise such equipment.

**“Confidential Information”** means any material or information relating to a Party’s research, development, products, product plans, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade secrets that such disclosing Party treats as proprietary or confidential. Without limiting the foregoing, the software and any databases (including any data models, structures, non-customer specific data and aggregated statistical data contained therein) of Lookingglass shall constitute Confidential Information of Lookingglass.

**“Customer Content”** means the data, media and content (structured and unstructured) generated, collected or recorded by the Ordering Activity or by any supplier or licensor to Ordering Activity that is uploaded, stored, analyzed and made available to and through the Licensed Software.

**“Data”** shall mean Lookingglass’ commercially available proprietary analysis and information and third party information regarding the characteristics of certain security threats and vulnerabilities, data and analysis of malicious software and executables that is periodically provided to Lookingglass customers and the Ordering Activity through a Data Service Subscription pursuant to the terms of this Attachment A.

**“Data Service Subscription”** shall mean Lookingglass’ service that Lookingglass customers may purchase through an Order Form, whereby the Data is delivered to the Appliance(s) at Ordering Activity’s site for use by Ordering Activity.

**“Documentation”** shall mean Lookingglass’ standard user manuals and/or related documentation generally made available to Ordering Activities of the Licensed Software.

**“Effective Date”** shall have the meaning set forth in Order Form placed with Contractor.

**“Initial Term”** shall have the meaning given such term in Section 8.1.

**“Installation Services”** shall have the meaning given such term in Section 6.2.

**“Intellectual Property Rights”** shall have the meaning given such term in Section 4.

**“Licensed Products”** shall mean, collectively, the Licensed Software, Data and the Documentation.

**“Licensed Software”** shall mean, collectively, the executable, object code version(s) of Lookingglass’ proprietary software, procedures, rules or routines, including Upgrades and updates that are furnished or developed under this Attachment A or the Maintenance Services, excluding any third party applications, that is included on an Appliance.

**“Maintenance and Support Services”** shall mean the services described in Section 6.1 and Exhibit B.

**“Professional Services”** shall have the meaning given such term in Section 6.3.

**“Term”** means the period during which the Order Form remains in force and effect in accordance with Section 8.1.

**“Training Services”** shall have the meaning given such term in Section 6.4.

**“Updates”** means a new issuance of any Licensed Software that provides: (i) minor improvements to existing features; and/or (ii) minor additions in functionality compared to the previous issuance; and/or (iii) bug fixes, corrections, patches, or work-arounds. An Update shall be identified by the numeral change to the right of the first decimal point (e.g. a change from version 1.5 to 1.6 or from 1.4.1 to 1.4.2).



“**Warranty Period**” shall have the meaning given such term in Section 7.1.

#### **PURCHASE OF APPLIANCE.**

**Purchase of Appliance.** During the Term, Ordering Activity may purchase, and Contractor agrees to sell, the Appliance pursuant to one or more standard Order Forms, provided, however, that Ordering Activity’s rights in, and the use of, any Licensed Software, installed on such Appliance, shall be governed by the license grant and restrictions contained in Section 3.

**Order Forms.** During the Term, Ordering Activity may order the Appliance, Data Service Subscription and/or the Maintenance and Support Services by submitting an executed Order Form.

#### **SOFTWARE & DATA LICENSE.**

**Software License.** Subject to the terms and conditions of this Attachment A, Contractor hereby grants to Ordering Activity a limited, non-exclusive, non-transferable, non-sublicenseable, perpetual license (“Lookingglass License”) to use the Licensed Products for Ordering Activity’s internal use. Ordering Activity may use the Licensed Software embedded on an Appliance only with the Appliance for which the Licensed Software is provided and registered for use. If any Licensed Software is provided on separate media, Ordering Activity may (i) only use it in accordance with the terms set forth in this Attachment A and (ii) make a reasonable number of copies solely for internal backup purposes.

**Data License.** During the Term and subject to the terms and conditions of this Attachment A, Ordering Activity may purchase a Data Service Subscription from Contractor for use with the Appliance. Upon payment of applicable GSA fees by Ordering Activity, Contractor hereby grants to Ordering Activity a non-transferable, non-sub-licensable, non-exclusive license to download, install and use the Data on the Appliance(s) only for internal Ordering Activity purposes. Ordering Activity may install and use only a single copy of the Data on a single Appliance.

#### **OWNERSHIP.**

**Appliances and Licensed Products.** Ordering Activity acknowledges that Lookingglass and its licensors own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, mask work rights, and other intellectual property rights (“**Intellectual Property Rights**”) in and to the Appliances and the Licensed Products (including all components thereof), and Lookingglass expressly reserves all rights not expressly granted to Ordering Activity in this Attachment A. Ordering Activity shall not engage in any act or omission that would impair Lookingglass’ and/or its licensors’ Intellectual Property Rights in the Licensed Products and any other materials, information, processes or subject matter proprietary to Lookingglass. Raw data shall not be redistributed, republished, or posted for others not a party to this Attachment A to view, use, or otherwise manipulate.

**Customer Content.** Contractor through Lookingglass acknowledges that, as between the Ordering Activity and Lookingglass, Ordering Activity owns all Intellectual Property Rights in and to the Customer Content. Ordering Activity agrees that Lookingglass may copy, store, process, analyze and display such Customer Content through the Licensed Software and hereby grants to Lookingglass a non-exclusive, non-transferable right and license to use the Customer Content during the Term for the limited purposes of performing Lookingglass’ obligations under this Attachment A, solely as authorized hereunder, and to collect and use any such data, in non-user specific and aggregated statistical form, for the development and maintenance of its products and services and for Lookingglass’ other business purposes. Ordering Activity hereby represents and warrants that it has sufficient right to grant Lookingglass access to and use of the Customer Content, solely as authorized in accordance with the terms of this Attachment A. Ordering Activity shall be solely responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness, consistency integrity, legality, reliability, and appropriateness of all Customer Content. Lookingglass shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Content.

#### **GENERAL USAGE RESTRICTIONS.**

**Prohibited Uses.** Ordering Activity will not use the Appliances or the Licensed Products for any purposes beyond the scope of the licenses granted in this Attachment A. Without limiting the generality of the foregoing, Ordering Activity will not: (i) authorize or permit use of the Licensed Products by persons; (ii) distribute any copies of the Licensed Products; (iii) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Ordering Activity’s rights under the licenses granted in Section 3; (iv) modify or create any derivative works of the Licensed Products (or any component thereof), except with the prior written consent of Contractor through Lookingglass; or (v) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Licensed Products are compiled or interpreted, and Ordering Activity hereby acknowledges that nothing in this Attachment A shall be construed to grant Ordering Activity any right to obtain or use such source code.

**Proprietary Notices.** Ordering Activity shall duplicate all proprietary notices and legends of Lookingglass and its suppliers or licensors upon any and all copies of the Appliances and the Licensed Products made by Ordering Activity. Ordering Activity shall not remove, alter or obscure any Lookingglass proprietary notice or legend.

#### **MAINTENANCE AND SUPPORT; OTHER SERVICES.**

**Maintenance and Support Terms and Conditions.** Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass’ Maintenance and Support Services by paying Contractor the then-applicable annual maintenance and support GSA fee. The terms and conditions that govern the Maintenance and Support Services as provided by Contractor through Lookingglass are attached hereto

as **Exhibit B**. Any Updates provided to Ordering Activity pursuant to the Maintenance and Support Services shall be deemed part of the Licensed Software and shall be licensed under the terms and conditions of the grant of License in **Section 3** above.

**Installation Services.** Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass' installation services, either on-sight or remotely, for the Appliance ("**Installation Services**").

**Professional Services.** Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass' professional services under which support shall be provided to Ordering Activity by Contractor through Lookingglass ("**Professional Services**").

**Training Services.** Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass' training services ("**Training Services**"), under which a representative of Lookingglass shall be present at Ordering Activity's designated location to provide training services on the operation of the Appliance(s) to the Ordering Activity.

#### **WARRANTIES AND LIMITATIONS.**

**Limited Lookingglass Warranties.** Contractor hereby warrants, for the benefit of Ordering Activity only, that the unmodified Appliances and Licensed Software will conform in all material respects to the specifications within the Documentation for a period of ninety (90) days after the delivery date ("**Warranty Period**"), provided that such warranty will not apply to failures to conform to the specifications to the extent such failures arise, in whole or in part, from: (i) any use of the Appliances or the Licensed Software other than in accordance with the Documentation; (ii) modification of the Appliances or the Licensed Software by Ordering Activity or any third party; or (iii) any combination of the Appliances and the Licensed Softwares with software, hardware or other technology not provided by Contractor through Lookingglass under this Attachment A. Contractor further warrants that the media on which the Licensed Products are delivered to Ordering Activity will be free of material defects for Warranty Period. During the Warranty Period, Contractor will replace the Appliances, Licensed Software, and media, free of charge to Ordering Activity, provided Ordering Activity promptly notifies Contractor of such defect and returns the Products to Contractor.

ORDERING ACTIVITY ACKNOWLEDGES AND AGREES THAT DATA AND INFORMATION PROVIDED MAY BE UNEVALUATED AND UNVERIFIED, AND SHALL NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY. ORDERING ACTIVITY ACKNOWLEDGES AND AGREES THEY MUST USE ITS OWN JUDGMENT IN ASSESSING THE NATURE AND ACCURACY OF THE DATA AND INFORMATION PROVIDED.

**No Other Warranties.** EXCEPT AS EXPRESSLY WARRANTED IN SECTION 7.1 OF THIS ATTACHMENT A, THE APPLIANCES AND THE LICENSED PRODUCTS, AND ANY OTHER MATERIALS, SOFTWARE, DATA AND/OR SERVICES PROVIDED BY CONTRACTOR ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. ORDERING ACTIVITY IS RESPONSIBLE FOR IMPLEMENTING APPROPRIATE PROCEDURES TO MAKE ONSITE BACK-UP COPIES OF ORDERING ACTIVITY'S PROGRAM FILES AND DATA FILES TO MINIMIZE ANY DAMAGE THAT MIGHT ARISE FROM AN ERROR OR DEFECT IN THE APPLIANCES OR THE LICENSED PRODUCTS. NO WARRANTY IS MADE BY CONTRACTOR ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. CONTRACTOR DOES NOT WARRANT THAT THE APPLIANCES OR THE LICENSED PRODUCTS OR ANY OTHER INFORMATION, MATERIALS, TECHNOLOGY OR SERVICES PROVIDED UNDER THIS ATTACHMENT A WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. ORDERING ACTIVITY ACKNOWLEDGES THAT CONTRACTOR'S OBLIGATIONS UNDER THIS ATTACHMENT A ARE FOR THE BENEFIT OF ORDERING ACTIVITY ONLY.

#### **MISCELLANEOUS.**

**8.1. U.S. Government End-Users.** Each of the components that constitute the Licensed Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Licensed Software with only those rights set forth herein.

#### **EXHIBIT B MAINTENANCE AND SUPPORT SERVICES TERMS AND CONDITIONS**

##### **Definitions.**

**"Error"** means any reproducible failure of the Software to perform any material function set forth in the accompanying documentation.

**"New Release"** means a new release of the Software issued by Lookingglass provided for the purpose of materially enhancing the functionality or performance of the Software. New Release shall be identified by the numeral to the left of the first decimal point (e.g. a change from version 1.1 to 2.0).

**"Maintenance Release"** means a bug fix or minor enhancement to the Software, which is identified by the numeral to the right of the first decimal point in the Software (e.g., a change from version 1.1 to 1.2).

**“Maintenance and Support Services”** means that (a) Contractor through Lookingglass shall provide Ordering Activity with all Maintenance Releases released during the term for which Maintenance and Support Services fees have been paid; (b) Contractor through Lookingglass shall answer questions from Ordering Activity regarding the operation of the Software via telephone and e mail, according to the escalation procedures set forth below; and (c) Contractor through Lookingglass shall use commercially reasonable efforts to correct any Errors in the Software reported by Ordering Activity and confirmed by Lookingglass in accordance with the priority level assigned to the Error by Lookingglass, as described in the escalation procedures set forth below.

**Ordering Activity Obligations.**

Ordering Activity shall furnish descriptions and machine readable examples of Errors in the form requested by Lookingglass technical support personnel. Ordering Activity shall also assist Lookingglass’ efforts to duplicate any Errors or problems reported by Ordering Activity.

Contractor through Lookingglass reserves the right to limit the number of individuals who are authorized to make requests for Maintenance and Support Services, and requests Ordering Activity to designate two (2) initial primary contacts. Such technical support contacts must be knowledgeable in the use of the Software and the Ordering Activity’s operating environment. Ordering Activity agrees to notify Lookingglass of any changes in primary support contacts within a reasonable time period.

**Help Desk; Escalation Procedures.**

Contractor through Lookingglass shall provide the following support: answering of telephone calls placed to the customer support telephone number 888-SCOUT93 (726-8893), and e-mail support at support@lgscout.com. Lookingglass shall use commercially reasonable efforts to provide such support from 9 a.m. to 5 p.m. in each Continental United States Time Zone, excluding Alaska, Monday through Friday excluding U.S. holidays. Errors may be reported any time.

Contractor through Lookingglass shall respond to Errors in accordance with the priority level indicated in the chart below, which priority level shall be determined by Lookingglass.

Priority	Definition	Target Response for Initial Requests*	Actions
Priority 1	Error that renders the Software inoperative or causes the Software to fail catastrophically	Within 4 business hours	Lookingglass shall promptly initiate the following procedures upon confirmation of the Error by Lookingglass: (1) assign a senior technical support manager to correct the Error; (2) notify senior Lookingglass management that a Priority 1 defect has been reported and that steps are being taken to correct the defect; (3) provide Ordering Activity with periodic reports on the status of the resolution; (4) commence work to provide Ordering Activity with a workaround or fix.
Priority 2	Error that materially restricts Ordering Activity’s use of the Software	Within 1 business day	Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.
Priority 3	Error that causes only a minor impact on Ordering Activity’s use of the Software and/or a defect for which a workaround is available.	Within 2 business days	Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.
Priority 4	A cosmetic or documentation Error that does not impact use of the Software	Within 2 business days	Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.

\* Target response time for support requests by e-mail or other on-line facility is within one (1) business day.

c. The response times set forth in the chart above are target response times only. Lookingglass’ sole obligation is to use commercially reasonable efforts to respond to Errors within such time frames, not to have resolved them.

**4. Exclusions and Limitations.** Lookingglass shall have no obligation to support:

Altered, damaged or modified Software;

Software that is not the current release or the most recent previous release;

Errors or other software problems caused by Ordering Activity's negligence, changes made by any party other than Lookingglass, hardware malfunction, and/or other causes beyond the reasonable control of Lookingglass;

Software installed in an operating or hardware environment not supported by Lookingglass.

**5. Maintenance Releases.** Contractor through Lookingglass' obligations to provide Maintenance Releases shall only require Lookingglass to supply such releases as soon as reasonably possible after such releases become generally available. This Maintenance and Support Services Exhibit shall not be construed to obligate Lookingglass to provide Maintenance Releases to Ordering Activity on any specific timetable.

**MICRO FOCUS GOVERNMENT SOLUTIONS**  
8609 Westwood Centre Drive  
Vienna, Virginia 22182

**ATTACHMENT A**  
**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**MICRO FOCUS GOVERNMENT SOLUTIONS LLC**

**END USER LICENSE AGREEMENT – ENTERPRISE VERSION**

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**APPLICABILITY.** This end user license agreement (the "Agreement") governs the use of accompanying software, unless it is subject to a separate agreement between Ordering Activity under GSA Schedule contracts ("you" or "Ordering Activity") and Micro Focus LLC and its subsidiaries ("Micro Focus"). By downloading, copying, or using the software you agree to this Agreement. By both parties executing this Agreement in writing, you agree to this Agreement.

**TERMS.** This Agreement includes attached supporting material, which may be software license information, additional license authorizations, software specifications, published warranties, supplier terms, open source software licenses and similar content ("Supporting Material"). Nothing herein shall bind the Ordering Activity to any Supporting Material terms unless the terms are provided for review and agreed to in writing by all parties.

**AUTHORIZATION.** If you agree to this Agreement on behalf of another person or entity, you warrant you have authority to do so.

**CONSUMER RIGHTS.** If you obtained software as a consumer, nothing in this Agreement affects your statutory rights.

**ELECTRONIC DELIVERY.** Micro Focus may elect to deliver software and related software product or license information by electronic transmission or download.

**LICENSE GRANT.** If you abide by this Agreement, Micro Focus grants you a non-exclusive nontransferable license to use one copy of the version or release of the accompanying software for your internal purposes only, and is subject to any specific software licensing information that is in the software product or its Supporting Material.

Your use is subject to the following restrictions, unless specifically allowed in Supporting Material:

You may not use software to provide services to third parties.

You may not make copies and distribute, resell or sublicense software to third parties.

You may not download and use patches, enhancements, bug fixes, or similar updates unless you have a license to the underlying software. However, such license doesn't automatically give you a right to receive such updates and Micro Focus reserves the right to make such updates only available to customers with support contracts.

You may not copy software or make it available on a public or external distributed network.

You may not allow access on an intranet unless it is restricted to authorized users.

You may make one copy of the software for archival purposes or when it is an essential step in authorized use.

You may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of software. If you have a mandatory right to do so under statute, you must inform Micro Focus in writing about such modifications.

**REMOTE MONITORING.** Some software may require keys or other technical protection measures and Micro Focus may monitor your compliance with the Agreement, remotely or otherwise. If Micro Focus makes a license management program for recording and reporting license usage information, you will use such program no later than 180 days from the date it's made available.

**OWNERSHIP.** No transfer of ownership of any intellectual property will occur under this Agreement.

**COPYRIGHT NOTICES.** You must reproduce copyright notices on software and documentation for authorized copies.

**OPERATING SYSTEMS.** Operating system software may only be used on approved hardware and configurations.

90-day Limited Warranty for Micro Focus Software.

Micro Focus -branded software materially conforms to its specifications, if any, and is free of malware at the time of delivery; if you notify Micro Focus within 90 days of delivery of non-conformance to this warranty, Micro Focus will replace your copy. This Agreement states all remedies for warranty claims. Micro Focus does not warrant that the operation of software will be uninterrupted or error free, or that software will operate in hardware and software combinations other than as authorized by Micro Focus in Supporting Material. To the extent permitted by law, Micro Focus disclaims all other warranties.

**INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.** Micro Focus will defend and/or settle any claims against you that allege that Micro Focus -branded software as supplied under this Agreement infringes the intellectual property rights of a third party. Micro Focus will rely on your prompt notification of the claim and cooperation with our defense. Micro Focus may modify the software so as to be noninfringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to you the amount paid for the affected product in the first year or the depreciated value thereafter. Micro Focus is not responsible for claims resulting from any unauthorized use of the software. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

**LIMITATION OF LIABILITY.** Micro Focus's liability to you under this Agreement is limited to the amount actually paid by you to Micro Focus for the relevant software, except for amounts in Section 12 ("Intellectual Property Rights Infringement"). Neither you nor Micro Focus will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; willful repudiation of the Agreement; or any liability that may not be excluded or limited by applicable law.

**TERMINATION.** This Agreement is effective until terminated or in the case of a limited-term license, upon expiration; however When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Micro Focus shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Immediately upon termination or expiration, you will destroy the software and documentation and any copies, or return them to Micro Focus. You may keep one copy of software and documentation for archival purposes. We may ask you to certify in writing you have complied with this section. Warranty disclaimers, the limitation of liability, this section on termination, and Section 15 ("General") will survive termination.

#### **GENERAL.**

**Assignment.** You may not assign this Agreement without prior written consent of Micro Focus, payment of transfer fees and compliance with Micro Focus's software license transfer policies. Authorized assignments will terminate your license to the software and you must deliver software and documentation and copies thereof to the assignee. The assignee will agree in writing to this Agreement. You may only transfer firmware if you transfer associated hardware. Micro Focus is also prohibited from assigning this Agreement without prior written consent.

**U.S. Government.** If the software is licensed to you for use in the performance of a U.S. Government prime contract or subcontract, you agree that, consistent with FAR 12.211 and 12.212, commercial computer software, computer software documentation and technical data for commercial items are licensed under Micro Focus's standard commercial license.

**Global Trade Compliance.** You agree to comply with the trade-related laws and regulations of the U.S. and other national governments. If you export, import or otherwise transfer products provided under this Agreement, you will be responsible for obtaining any required export or import authorizations. You confirm that you are not located in a country that is subject to trade control sanctions (currently Cuba, Iran, N. Korea, N. Sudan, and Syria) and further agree that you will not retransfer the products to any such country.

**Audit.** Micro Focus may audit you for compliance with the software license terms. Upon reasonable notice, and subject to Government security requirements, Micro Focus may conduct an audit during normal business hours (with the auditor's costs being at Micro Focus's expense). If an audit reveals underpayments then you will pay to Micro Focus such underpayments within thirty (30) days of the invoice receipt date.

**Open Source Components.** Nothing herein shall bind the Ordering Activity to any Open Source License terms unless the terms are provided for review and agreed to in writing by all parties. To the extent Supporting Material includes the GNU General Public License or the GNU Lesser General Public License: (a) the software includes a copy of the source code; or (b) if you downloaded the software from a website, a copy of the source code is available on the same website; or (c) if you send Micro Focus written notice, Micro Focus will send you a copy of the source code for a reasonable fee.

**Notices.** Written notices under this Agreement may be provided to Micro Focus via the method provided in the Supporting Material.

**Governing Law.** This Agreement will be governed by the Federal laws of the United States. You and Micro Focus agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

**Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**Entire Agreement.** This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. If Micro Focus doesn't exercise its rights under this Agreement, such delay is not a waiver of its rights.

Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Vendor shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204.

Vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.



MARIADB PLC  
68 WILLOW RD  
MENLO PARK, CA 94025

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached MariaDB plc ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has

not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

MariaDB Subscription Services Policies

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**Introduction**

MariaDB subscription customers have access to technical support services, including Problem Resolution Support, Engineering Support, Consultative Support, Remote Login Support, and Telephone Support for MariaDB Enterprise via the [Customer Support Portal](#) (see table of Support Services below). Customers may also purchase Remote Database Administrator (“DBA”) or SkyDBA services for additional support options.

These MariaDB Subscription Services Policies describe (a) the types of support provided by MariaDB, (b) issue priority designations and service level agreements, and (c) supported products. The latest version of this policy is always available at [Subscription Services Policies](#).

Each of the Customer’s designated technical contacts will receive a [Customer Support Portal](#) login (based on their associated email address) that can be used to report new support issues, monitor ongoing support issues, or review historical support issues. Information regarding making changes to technical contacts can be found in the “Welcome Letter” provided after signup and is also available in the “Contact Us” section of the [Customer Support Portal](#). If you have any difficulty initially logging into the [Customer Support Portal](#), you will be prompted to email [support@mariadb.com](mailto:support@mariadb.com) for further assistance.

If Remote DBA or SkyDBA services are purchased, an onboarding call will be scheduled to gather the necessary information for the relevant MariaDB DBA team to remotely access supported products. Information about the architecture, operating systems, database server versions, backup schedules, etc. will also be documented during this call. Once the required information has been collected, monitoring software will be installed and set up as required to alert MariaDB about database and environment health. Certain alerts such as server availability, replication health, and others will be configured to open issues automatically in the [Customer Support Portal](#).

All services are delivered in English. MariaDB will use reasonable efforts to provide technical support in languages other than English using MariaDB’s available personnel via voice calls and in-person meetings, but may not have such resources available in general or at the time of a particular support request. All communication via the [Customer Support Portal](#) should be in English. There are no Service Level Agreements for non-English support at this time.

**Notable Changes in this Version**

- Replaced occurrences of “MariaDB Corporation” and “MariaDB Corporation Ab” with “MariaDB plc”.

**Types of Support Provided**

Through the [Customer Support Portal](#), MariaDB and SkySQL subscribers have access to our global team of MariaDB Certified Support Engineers who are available to assist with product questions and tasks as they relate to [MariaDB Enterprise](#).

Subscriber Service	Support	Remote DBA and SkyDBA
Problem Resolution Support	✓	✓
Engineering Support	✓	✓
Consultative Support	✓	✓
Remote Login Support		✓
Telephone Support (escalation for callback)	✓	✓
Real-Time Chat Support (Slack)		✓

**Problem Resolution Support**

The focus of Problem Resolution Support is helping to restore service (due to outages caused by crashes, replication failures, table corruption, etc.) and assisting with command syntax, installation, configuration, upgrades, and other general product usage topics.

**ENGINEERING SUPPORT**

Engineering Support can include bug fixes, patches, hotfixes, and topics that require communication with and/or escalations to the product engineering teams. Hot fixes are provided to address critical failures and may not receive the full QA and regression testing performed on regular maintenance releases due to the urgent nature of the situation. Hot fixes are generally built upon the last GA release of a product and are intended for temporary use until a fixed GA release is available.

Custom feature development (Non-Recurring Engineering) is a separate service and is not included in Engineering Support.

Engineering Support is available on those platforms for which we or our partners produce supported product binaries, subject to the relevant Maintenance and Lifecycle policies for the specific product and platform. Engineering Support is unavailable for products or platforms that have reached their maintenance end of life.

Review [MariaDB plc Engineering Policies](#) for more information. For other products, please see the respective vendor's website.

### Consultative Support

Consultative Support covers issues that are specific to a customer's deployment on subscribed database servers, such as performance tuning, best practice recommendations, and basic code reviews, rather than general product usage, service failures, or software defects. MariaDB Remote DBA and SkyDBA are separate services and are not included in Consultative Support. At the discretion of the assigned MariaDB Subscription Services Engineer, long running consultative support tasks (ie: greater than 2 hours) may be referred to MariaDB Professional Services.

Consultative Support is intended for narrow, specific topics and is not a replacement for a dedicated, on-site or remote consulting engagement to address systemic, architectural, or wide-ranging subjects.

The MariaDB Subscription Services Engineer will provide assistance resolving performance problems caused by server configuration, poorly performing queries, table definitions, indexing strategies, storage engines, and more, suggesting changes and identifying alternative implementations suited to a particular environment.

MariaDB Subscription Services Engineers can review source code to assist with following best practices and ensuring code correctness regarding the various client APIs, stored procedures and server extensions, recommending changes as necessary to support particular needs.

Requests for support of non-subscribed database servers may be declined at the discretion of the assigned MariaDB Subscription Services Engineer.

### REMOTE LOGIN SUPPORT (REMOTE DBA AND SKYDBA)

A MariaDB Remote DBA or SkyDBA subscription provides remote login support as well as the following services listed below. The main distinguisher between Remote DBA or SkyDBA Support and Technical Support is that the DBA has the ability to log into your environment and do the work for you, whereas a Technical Support Engineer will walk you through the needed resolution steps via communication within the [Customer Support Portal](#) through the relevant support ticket.

#### What Is Included with Remote DBA or SkyDBA Subscriptions?

- Installation of a supported monitoring and alerting solution
- Real-time chat service via MariaDB provided Slack
- Telephone support as necessary and available (limitations apply)
- Initial environment and configuration review
- Ongoing database configuration recommendations
- Backup configuration and monitoring (limitations apply)
- Review and recommend best practices
- Database recovery assistance
- Backup verification via automatic restore (limitations apply)
- Replication setup, configuration, and repair
- Assistance with schema related migrations and changes
- Reactive tuning assistance (limitations apply)
- Quarterly upgrades of MariaDB products (limitations apply)
- Semi-annual security audits as requested
- Semi-annual performance audits as requested
- Semi-annual architecture review as requested
- Other database administration-related tasks as agreed

**Connectivity.** The MariaDB Remote DBA team requires the use of SSH from secured jump boxes via a linux based command line, with VPN optional. Remote DBA services may not be provided via screen sharing applications such as Zoom and WebEX as the primary connectivity solution.

Virtual Desktop Infrastructure (VDI) products such as Citrix or VMware Horizon View, which virtualize desktops or applications through a GUI, can be used in specific pre-agreed scenarios. The VDI must provide access to a linux based jump host within the customer's environment. Use of VDI based access will affect included services, including, but not limited to, all regular quarterly services can only be provided once per calendar year. Customers must agree to install MariaDB access and configuration packages in a timely manner. No SLAs or 24x7 coverage can be guaranteed for customers that require VDI based access unless otherwise agreed between MariaDB and customer in writing.

**Server and Database Accounts.** It is preferred to have one vendor account for server and database access (and VPN, if required). However, in some circumstances, security policies or regulations may prevent use of a single vendor account (PCI, HIPAA, etc). In those circumstances, individual accounts for each Remote DBA will be permitted. The customer is responsible for timely creation of the vendor account or, when permitted, the individual Remote DBA accounts.

No SLAs or 24x7 coverage can be guaranteed for customers that require individual accounts unless otherwise agreed between MariaDB and customer in writing. Additionally, the use of SSH keys and/or two-factor authentication (Authy, Google Authenticator, RSA SecurID, etc.) is highly recommended.

**Monitoring and Administration Tools.** The MariaDB Remote DBA team prefers to have a server within the customer's infrastructure for monitoring and other utilities. This can be the same server as the SSH jumpbox.

#### **GEOGRAPHICAL RESTRICTIONS**

Due to security policies or regulations, a customer may require that employees be located in a single region or regions and will not allow MariaDB employees outside of those designated regions to access their environment. Any geographical restrictions on the locations of DBAs must be agreed between MariaDB and the customer in writing.

**Full Geographical Restrictions.** Only business hours coverage is available. SLAs will only be guaranteed during business hours for the given region. Outside of these hours, SLAs will be paused and best efforts will be made to provide help and support to a customer as available.

**Partial Geographical Restrictions.** A customer may only require that employees outside of a certain region cannot access data (read or write) in their environment, while still allowing for DDL, replication and infrastructure types of assistance from other regions.

In such a case, MariaDB will place database and system controls in place so that DBAs outside of the acceptable region are unable to read or write data but can work on issues that do not require those permissions. A customer must ensure that database root password is not available on the host file system, MariaDB Enterprise Server with fully encrypted logs and tablespaces can be installed and all query logs must use tables within the database and not be logged to files.

If database recovery or other operations require one of the removed privileges, they are not subject to SLA guarantees.

#### **REAL-TIME CHAT**

Real time chat support is available to customers with an Enterprise Architect, Remote DBA or SkyDBA subscription.

Customer technical contacts will be invited to join real-time chat facilitated through a private channel in MariaDB's Slack instance.

Real-time chat allows for better communication between Customer and MariaDB. There is no response SLA or expectation of immediacy for chat requests. Chat is a first come, first served, as available channel for communication and does not replace the [Customer Support Portal](#) as the primary way to receive support.



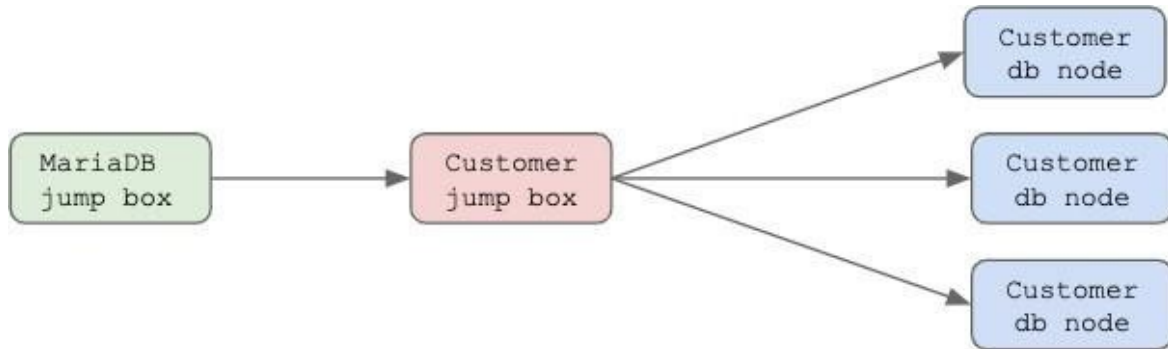
The Slack channel will either be a private channel with Customer technical contacts or a shared cross-organizational Slack private channel.

**DBA DATA PROCESSING & ACCESS POLICIES**

The security of customer data is important to MariaDB. As used in this section, “Customer Data” refers to all customer data and information that Remote DBAs or SkyDBAs are provided access to in order to perform the services.

If Customer has a data processing agreement in place with MariaDB, MariaDB Remote DBAs will comply with the terms of such data processing agreement. In addition, MariaDB takes the following security measures:

- **DBA Access to the Customer Environment**
  - “Customer Environment” refers to the operating environment, physical, virtual or containerized servers, networks, operating systems, software and databases that MariaDB Remote DBAs are provided access to in order to perform the services.
  - Customer Environments are accessed through a dedicated jumphost. This dedicated jumphost is kept up to date with security patches, and is only accessible by the Remote DBA team.
  - Passwords are kept in a PCI-compliant, password-protected vault that is accessible only to the Remote DBA team and certain members of MariaDB IT.
    - Geographically restricted customer credentials are only accessible to employees within acceptable regions.



- **Customer Data**
  - Remote DBAs will not remove Customer Data from the Customer Environment, e.g. by storing or copying it onto MariaDB or third-party systems (laptops, servers, etc).
  - When a Remote DBA must access Customer Data in order to perform troubleshooting and performance tuning, the Remote DBA team will perform the work in a secured Customer Environment and will track tasks via MariaDB’s ticketing system
  - Notwithstanding the foregoing, MariaDB may include error codes, error messages, logs, and similar metrics in the ticketing system to track progress until resolution and to improve performance.
  - Customers are instructed not to include personal data, as such term is defined in the EU General Data Protection Regulation 2016/679, in any submissions to the MariaDB ticketing system. If a Customer does submit a file that contains personal data, a member of the RDBA team will take commercially reasonable efforts to delete the customer data from the file before adding it to the ticketing system.

**P1 Voice Support (Callback as requested)**

Voice support from the Technical Support Team is reserved for P1 production outages only. As such, for P1 emergency production outages, customers may request that a MariaDB Subscription Services Engineer make

contact by voice. Resolving technical issues generally requires analysis of system logs and other data that must be transmitted via file attachments to the support issue or uploading to our FTP server rather than by telephone. Including this information when reporting the support issue dramatically hastens the process of resolving the problem and restoring production functionality.

**ISSUE PRIORITY AND SERVICE LEVEL AGREEMENTS**

All issues are assigned a priority level (P1-P4) reflecting the impact to production operations.

This is set initially by the customer technical contact when reporting a new issue via the [Customer Support Portal](#), and MariaDB Subscription Services Engineers will confirm the issue receives an appropriate rating in their sole discretion. Each priority level has a corresponding Service Level Agreement (SLA).

Priority	Description	Initial Response Time
P1	Catastrophic problem that severely impacts the ability to conduct business. This means that production systems are down (completely non-responsive or not functioning) and no known workaround exists.	30 minutes 24x7
P2	High impact problem in which production operations are disrupted but remain somewhat productive or have an available workaround.	2 hours 24x5
P3	Medium or lower impact problem that involves partial loss of non-critical functionality. This may be a minor issue with limited or no loss of functionality or impact to production operations. This includes administrative requests and errors in product documentation.	4 hours 24x5
P4	Low level problem that does not significantly affect system function or operations. This includes new feature requests.	8 hours 24x5

**REMOTE DBA VDI BASED ACCESS SERVICE LEVEL AGREEMENT**

Due to the nature of graphical Virtual Desktop Infrastructure based access (e.g. Citrix) and the time it may take to verify connectivity or complete routine tasks, SLAs times are increased as defined below.

Priority	Description	Initial Response Time
P1	Catastrophic problem that severely impacts the ability to conduct business. This means that production systems are down (completely non-responsive or not functioning) and no known workaround exists.	1 hour 24x7
P2	High impact problem in which production operations are disrupted but remain somewhat productive or have an available workaround.	3 hours 24x5

P3	Medium or lower impact problem that involves partial loss of non-critical functionality. This may be a minor issue with limited or no loss of functionality or impact to production operations. This includes administrative requests and errors in product documentation.	6 hours 24x5
P4	Low level problem that does not significantly affect system function or operations. This includes new feature requests.	12 hours 24x5

**Escalation Requests**

Customers may request escalation of a specific support issue directly within the [Customer Support Portal](#) by clicking the Escalate Issue link at the top of any issue detail page, then selecting the type of escalation and supplying other relevant information.

Available escalations include:

- Emergency Callbacks for P1 emergency production outages
- Higher Priority Handling when an issue has become more serious than reported
- Engineer in Different Timezone

**Technical Account Managers**

MariaDB Technical Account Managers (TAM) are a technical liaison for our customers to ensure their satisfaction with MariaDB Services and Enterprise Portfolio. A TAM will educate and work with customers to ensure that the MariaDB suite of products can help to move their business forward.

Technical Account Managers work closely with MariaDB Support, SkyServices, Sales, Product Managers, development engineers and various other departments to help streamline and expedite resolution. TAMs also directly interface with customers to implement solutions and drive adoption that adhere to golden standards and best practices.

The Technical Account Managers are experienced Subject Matter Experts (SME) that come with extensive database and architecture backgrounds. The program provides:

- A Single Technical Point of Contact
- Customers will have access to a TAM's calendar, work phone and email address
  - Customers can chat with TAMs via Slack
  - May not be a named resource, but a team available to Customer
- Assistance expediting and/or escalating support requests
- Evaluation of customer needs and goals to suggest upgrades or recommend additional features
- Data collection from customers to inform recommendations and accelerate troubleshooting information for the support team
- Answers to product-related queries as available
- Basic implementation reviews, discussion on product features, and assurance of prompt resolution of technical challenges
- Weekly (or less frequent meeting cadence) with customer and key MariaDB stakeholders
- Discussions on current and future customer projects
  - Tracking of issues and tickets with an intent towards expedited resolution
- Coordination of efforts between different teams within MariaDB and customer organizations
- Help during incidents, as available

- Does not have an SLA and is an "as available" service, usually during business hours in the applicable region
- At least one on-site visit per year (as health norms, government mandates and MariaDB or customer company policy allow)
- On average, the expected allocation is 4 hours per week per TAM subscription
- MariaDB reserves the right to reduce available hours if TAM usage exceeds the average over an extended period

### Enterprise Architect Program

Enterprise Architects (EA) solve issues specific to the overall business goals and architecture of a customer. The EA performs as a trusted technical customer advisor and provides advice on strategy, architecture and migrations by learning the details of every customer's unique use case. The EA program provides one-on-one proactive and reactive support, performance tuning, check-ups and on-site reviews. Through the program, MariaDB helps drive successful business outcomes across a broad set of enterprise customers through the EA team's passion for educating, training, designing and building world-class solutions.

Enterprise Architects represent MariaDB's highest level experts that directly interface with customers. They have the ability to work and support various customer personas including developers, database administrators, and architects as well as leadership. The Enterprise Architect is also an advocate for the customer within MariaDB, straddling both worlds to help ensure success is the paramount priority.

The Enterprise Architect is a dedicated, responsive, proactive technical resource who:

- Provides architectural and roadmap reviews on a regular cadence (at least once per month)
- Coordinates efforts with stakeholders in both organizations (MariaDB and customer)
- Designs and delivers a technical roadmap following the initial onboarding engagement that is maintained and updated annually as customer needs evolve
- Helps streamline customer projects and processes around SkySQL, MariaDB Enterprise Platform, other MariaDB products, and commonly used open source or cloud products
- Recommends best practices and preparation guidance for migrations, backup, security, replication, etc. based upon golden standards with MariaDB and similar products in production environments and internal benchmarks
- Proactively suggests optimizations based on usage and ticket history
- Manages escalations (as available) resulting in quicker turnarounds for research and resolution
- Holds regular status calls, at least once per month (but usually once per week) to review roadmap, performance, issues, deployments, tuning, and maintenance
- Visits the customer on-site at least once per quarter, as health norms, government mandates and MariaDB or customer company policy allow
- Provides general guidance and support (as available) up to an average total of one day (8 hours) per week per Enterprise Architecture subscription
  - MariaDB reserves the right to reduce available hours if EA usage exceeds the average over an extended period
- Reviews security and common vulnerabilities/exposures on a regular cadence and evaluates patches and hotfixes for customer use cases
- Does not have an SLA and is an "as available" service, usually during business hours in the applicable region

While the Enterprise Architect is like an "embedded" MariaDB expert in your organization, the program as a whole provides greater visibility within MariaDB for the Customer and their needs. Recognizing that any single architect, no matter how senior, cannot be a deep expert in all possible technical topics- the program seeks to also provide access to experts on any applicable topic within MariaDB via the assigned Enterprise Architect.

**SUPPORTED PRODUCTS**

Product	MariaDB Enterprise	Add-on
MariaDB Enterprise Server	✓	
MariaDB Enterprise Cluster (Galera) *		✓
MariaDB MaxScale **	✓	
MariaDB Xpand	✓	
MariaDB Shell Enterprise ***	✓	
MariaDB Enterprise Backup	✓	
MariaDB C Connector	✓	
MariaDB C++ Connector	✓	
MariaDB JDBC Connector	✓	
MariaDB Node.js Connector	✓	
MariaDB ODBC Connector	✓	
MariaDB Python Connector	✓	
MariaDB R2DBC Connector	✓	
MariaDB Microsoft Power BI Adapter	✓	
MongoDB Driver Libraries (with MaxScale) *	Best Effort	
Remote Observability Service	✓	
IDERA SQL Diagnostic Manager *	✓	
IDERA SQLyog *	✓	

- \* Engineering level support is delivered by the vendor based on their policies
- \*\* Experimental plugins will receive best effort support and may not be eligible for engineering level support
- \*\*\* MariaDB Tools open source community plugins will receive best effort support.

**Supported Storage Engines**

Storage Engine	10.2	10.3	10.4	10.5	10.6
Aria	✓	✓	✓	✓	✓
Blackhole	✓	✓	✓	✓	✓
ColumnStore	✓	✓	✓	✓	✓
CSV	✓	✓	✓	✓	✓
InnoDB	✓	✓	✓	✓	✓
Memory	✓	✓	✓	✓	✓
MyISAM	✓	✓	✓	✓	
MyISAM MERGE	✓	✓	✓	✓	
MyRocks		✓	✓	✓	✓
Spider		✓	✓	✓	✓
Spider ODBC				✓	✓
S3		✓	✓	✓	✓

**Supported Plugins**

Plugin	10.2	10.3	10.4	10.5	10.6
Audit Plugin	✓	✓			
MariaDB Enterprise Audit			✓	✓	✓
AWS Key Management	✓	✓	✓	✓	✓
Client Statistics	✓	✓	✓	✓	✓
Cracklib Password Check	✓	✓	✓	✓	✓
Dialog	✓	✓	✓	✓	✓
ed25519		✓	✓	✓	✓
Feedback	✓	✓	✓	✓	✓
File Key Management	✓	✓	✓	✓	✓



GSSAPI Authentication	✓	✓	✓	✓	✓
Hashicorp Vault Plugin				✓	✓
Index Statistics	✓	✓	✓	✓	✓
Locales	✓	✓	✓	✓	✓
Metadata Lock Info	✓	✓	✓	✓	✓
MySQL Clear Password	✓	✓	✓	✓	✓
Named Pipe	✓	✓	✓	✓	✓
PAM Auth	✓	✓	✓	✓	✓
Query Response Time	✓	✓	✓	✓	✓
Semisync	✓	✓	✓	✓	✓
Sequence	✓	✓	✓	✓	✓
Simple Password Check	✓	✓	✓	✓	✓
SQL Error Log	✓	✓	✓	✓	✓
Table Statistics	✓	✓	✓	✓	✓

Unix Socket Authentication	✓	✓	✓	✓	✓
User Statistics	✓	✓	✓	✓	✓

**Additional Information**

[Contact Sales](#) for more information regarding available MariaDB Subscription Services.

Consulting services and commercially reasonable “best effort” Support services for additional products and technologies may be delivered at MariaDB’s discretion and availability. The overall level of support available for a particular product and platform combination may vary from version to version.

Support for community or legacy versions of products that no longer receive Engineering Support may require an additional fee. [Contact Sales](#) for more information regarding support for legacy products.

Support for issues specific to a platform that lacks Engineering Support may be limited to problems that can be reproduced on a platform that has Engineering Support. Examples include those platforms that have

reached their maintenance end of life (such as RHEL 6 and Windows 2008 Server), and platforms for which we or our partners do not produce supported product binaries (such as FreeBSD).

New versions and fixes for MariaDB Subscription Services customers will be provided on MariaDB Enterprise Server or other Platform X or Enterprise products.

MariaDB will make commercially reasonable efforts to work with other product and platform vendors to resolve issues affecting our supported products.

MariaDB may modify these MariaDB Subscription Service Policies by providing notice on the [Customer Support Portal](#). It is the customer's obligation to keep up to date on changes to these Policies.

**Microsoft Azure**  
**5404 Wisconsin Avenue**  
**Chevy Chase, MD 20815**

## *Appendix A*

### **Microsoft License Terms and Conditions**

MICROSOFT CORPORATION (“MICROSOFT”) IS A FIRST TIER SUBCONTRACTOR UNDER THIS CONTRACT. THESE MICROSOFT LICENSE TERMS AND CONDITIONS APPLY TO MICROSOFT PRODUCTS THAT YOU ORDER FROM THE CONTRACTOR UNDER THE CONTRACTOR’S GSA SCHEDULE CONTRACT (THE “CONTRACT”). THESE MICROSOFT LICENSE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY CONFLICTING TERMS IN AN ORDER OR ORDERING DOCUMENTATION.

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In this agreement, the following definitions apply:

“Additional Product” means any Product identified as such in the Product List and chosen for Enrolled Affiliate under the applicable Enrollment and identified on your Order.

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) an Enrolled Affiliate with Customer Data that is subject to Government regulations for which the Enrolled Affiliate determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet the Enrolled Affiliate’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Customer Data” means all data, including all text, sound, software, or image files that are provided to Microsoft by, or on behalf of, Enrolled Affiliate through its use of the Online Services.

Any reference in this agreement or an Enrollment to a “day” means a calendar day, except references that specify “business day”.

“Enrollment” means the document that Government Partner submits to Microsoft to place orders for Enrolled Affiliate.

“Enrolled Affiliate” or “you” means any entity of the United States or entity authorized by the United States that enters into a Government Contract for Products with Government Partner.

“Enterprise” means Enrolled Affiliate and the Affiliates listed on an Enrollment.

“Enterprise Product” means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms for which Government Partner chooses to order License(s) under an Enrollment for Enrolled Affiliate. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Fixes” means Product fixes, modifications or enhancements or their derivatives that Microsoft releases generally (such as Product service packs), or provides to Enrolled Affiliate to address a specific issue.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“Government Contract” means the Government Partner’s GSA Schedule Contract, which incorporates these Microsoft License Terms and Conditions.

“Government Partner” means the entity from whom you place your order for Products under the Government Contract.

“Industry Device” (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) (“Industry Program”). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

“License” means Enrolled Affiliate’s right to use the quantity of a Product ordered. For certain Products, a License may be available on a subscription basis (“Subscription License”). Licenses for Online Services will be considered Subscription Licenses under these Additional Use Right and Restrictions.

“Managed Device” means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

“Online Services” means the Microsoft-hosted services identified in the Online Services section of the Product Terms.

“Online Services Terms” means the additional terms that apply to Customer’s use of Online Services published on the Volume Licensing Site and updated from time to time.

“Order” means the order placed by you to the Government Partner under the Government Partner’s GSA Schedule contract.

“Product” means all products identified on the Product Terms, such as software, Online Services and other web-based services, including pre-release or beta versions. Product availability may vary by region.

“Product Terms” means the document that provides information about Microsoft Products available through volume licensing. The Product Terms document is published on the Volume Licensing Site at <http://explore.ms.com> and is updated from time to time.

“Qualified Device” means any device that is used by or for the benefit of Enrolled Affiliate’s Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure (“VDI”). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device.

At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate’s Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

“Qualified User” means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

“Reserved License” means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

“SLA” means Service Level Agreement, which specifies the minimum service level for Online Services and is published on the Volume Licensing Site.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

“Software Assurance” means an offering that provides new version rights and other benefits for Products as described in the Product Terms.

“Trade Secret” means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights,” means the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

“use” or “run” means to copy, install, use, access, display, run or otherwise interact.

### ***LICENSES FOR PRODUCTS.***

Upon Microsoft’s acceptance of Government Partner’s Enrollment for an Enrolled Affiliate, the Enrolled Affiliate has the following rights during the term of its Order. These rights apply to the Licenses obtained under the Order.

**License Grant.** By accepting an Enrollment, Microsoft grants the Enterprise a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under the Enrollment. The rights granted are subject to the terms of the Use Rights and the Product Terms and are conditions on Enrolled Affiliate’s continued compliance with the terms of this agreement, including, without limitation, payment for the Licenses. Microsoft reserves all rights not expressly granted in this agreement.

**Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the Enrollment is renewed or Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.

### **Applicable Use Rights.**

**Products (other than Online Services).** The Use Rights in effect on the effective date of the Enrollment will apply to Enterprise’s use of the version of each Product that is current at the time. For future versions and new Products, the Product Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft



makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply. The Use Rights applicable to perpetual Licenses that were acquired under a previous agreement or Enrollment are determined by the agreement or Enrollment under which they were acquired. Renewal of Software Assurance does not change which Use Rights apply to those Licenses.

**Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.

More restrictive use rights. If a new version of a Product has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to the Enterprise's use of that Product during the term.

**Downgrade rights.** Enterprise may use an earlier version of Product than the version that is current on the effective date of the Enrollment. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.

**New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enterprise chooses not use the new version immediately.

Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Use Rights.

If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses obtained through Software Assurance replace any perpetual Licenses for the earlier version.

**License confirmation.** The Government Contract, the Order, the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses ordered by the Government Partner under an Enrollment for an Enrolled Affiliate.

**Reorganizations, Consolidations, and Privatizations.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of any member of the Enterprise, Microsoft will work with Government Partner in good faith to determine how to accommodate the Enterprise's changed circumstances in the context of these Additional Use Rights and Restrictions.

**Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service in any country or jurisdiction where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may be in conflict with any such requirement or obligation.

**Program updates.** Microsoft may make a change to the Enterprise and/or Enterprise Subscription programs that will make it necessary for Enrolled Affiliates to enter into a new agreement and Enrollments with Government Partner at the time of an Enrollment renewal. If any such updates occur during a current contract, including option periods, such change(s)

will be made at no increase in cost to Enrolled Affiliate: all pricing in the current contract, including contract options will be honored despite any such change(s).

## **MAKING COPIES OF PRODUCTS AND RE-IMAGING RIGHTS.**

**General.** Enrolled Affiliate may make as many copies of the Products as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees that it will be responsible for any third party's actions. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of the Government Contract and the Order.

**Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Product for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.

**Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under the Order may be generally used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:

Separate Licenses must be acquired from the separate source for each Product that is re-imaged.

The Product, language, version and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.

Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type from the separate source.

Enrolled Affiliate must adhere to any Product specific processes or requirements for re- imaging identified in the Product Terms.

Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any warranty or support obligation.

## **TRANSFERRING AND ASSIGNING LICENSES.**

**License transfers.** License transfers are not permitted, except that Enrolled Affiliate may transfer only fully-paid perpetual Licenses to:

an Affiliate, or

a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) a reorganization or privatization of an Affiliate or a division of an Affiliate or (2) a consolidation involving Enrolled Affiliate or an Affiliate.

Upon such transfer, Enrolled Affiliate must uninstall and discontinue using the licensed Product and render any copies unusable.

**Notification of License Transfer.** Enrolled Affiliate must notify Microsoft of a transfer of License by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the license transfer. No License transfer will be valid unless Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by

Microsoft under the licenses being transferred (including, without limitation, the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability. Any license transfer not made in compliance with this section will be void.

**Internal assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned as described in the Use Rights.

### ***USE, OWNERSHIP, RIGHTS, AND RESTRICTIONS.***

**Products.** Use of any Product is governed by the Use Rights specific to each Product and version and by these Additional Use Rights and Restrictions.

**Fixes.** Each fix is under the same license terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use terms Microsoft provides with the Fixe will apply.

#### **Non-Microsoft software and technology.**

Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.

Microsoft is not a party to and is not bound by any terms governing Enrolled Affiliate's use of non-Microsoft software or technology. Without limiting the foregoing, non-Microsoft software or scripts linked to or referenced from any Product website, are governed by the open source licenses used by the third parties that own such code, not by Microsoft and Microsoft's licensing terms.

If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fixes, it directs and controls the installation in and use of such software or technology in the Products or Fixes, through its actions (e.g., through Enrolled Affiliate's use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Enrolled Affiliate.

**Restrictions** Enrolled Affiliate must not (and must not attempt to): (1) reverse engineer, decompile or disassemble any Product, Fix, or Services Deliverable, (2) install or use non- Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement; or (3) work around any technical limitations in the Products or restrictions in Product documentation. Except as expressly permitted in this agreement, Enrolled Affiliate must not (i) separate and run parts of a Product on more than one device, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (ii) distribute, sublicense, rent, lease, lend, or use any Product, or Fix to offer hosting services to a third party.

No transfer of ownership; **Reservation of rights.** Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft (1) does not transfer any ownership rights in any Products or Fixes and (2) reserves all rights not expressly granted to Enrolled Affiliate.

**CONFIDENTIALITY.**

“Confidential Information” is non-public information that is designated “confidential” or that a reasonable person should understand is confidential, including Customer Data. Confidential Information does not include information that (1) becomes publicly available without a breach of this agreement, (2) the receiving party received lawfully from another source without a confidentiality obligation, (3) is independently developed, or (4) is a comment or suggestion volunteered about the other party’s business, products or services.

Each party will take reasonable steps to protect the other’s Confidential Information and will use the other party’s Confidential Information only for purposes of the parties’ business relationship. Neither party will disclose that Confidential Information to third parties, except to its employees, Affiliates, contractors, advisors and consultants (“Representatives”) and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

A party may disclose the other’s Confidential Information if required by law; but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives’ unaided memories in the development or deployment of the parties’ respective products or services does not create liability under this agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

These obligations apply (i) for Customer Data until it is deleted from the Online Services, and (ii) for all other Confidential Information, for a period of five years after the Confidential Information is received.

**Freedom of Information Act (FOIA).** Notwithstanding anything in this section to the contrary, the parties acknowledge and agree that Enrolled Affiliate is subject to the United States Freedom of Information Act (5 U.S.C. § 552) and may disclose information in response to a valid request in accordance with FOIA. Should Enrolled Affiliate receive a request under FOIA for Microsoft’s confidential information, Enrolled Affiliate agrees to give Microsoft adequate prior notice of the request and before releasing Microsoft’s confidential information to a third party, in order to allow Microsoft sufficient time to seek injunctive relief or other relief against such disclosure.

**PRIVACY AND COMPLIANCE WITH LAWS.**

Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of these Microsoft License Terms and Conditions and the applicable Order. Enrolled Affiliate will obtain all required consents from third parties (including Enrolled Affiliate’s contacts, resellers, distributors, administrators, and employees) under applicable privacy and data protection law before providing personal information to Microsoft.

Unless otherwise specified in the Enrollment or the Use Rights, personal information collected under these Microsoft License Terms and Conditions (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.

**U.S. export.** Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to Microsoft products, services, and technologies.

## **WARRANTIES.**

### **Limited warranties and remedies.**

**Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Enrolled Affiliate is first licensed for that version. If it does not and Enrolled Affiliate notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price Customer paid for the Software license, or (2) repair or replace the Software.

**Online Services.** Microsoft warrants that each Online Services will perform in accordance with the applicable SLA during the Enrolled Affiliate's use. Enrolled Affiliate's remedies for breach of this warranty are in the SLA.

The remedies above are Enrolled Affiliate's sole remedies for breach of the warranties in this section. Enrolled Affiliate waives any breach of warranty claims not made during the warranty period.

**Exclusions.** The warranties in this agreement do not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release, or beta Products, or to components of Products that Enrolled Affiliate is permitted to redistribute.

**DISCLAIMER.** Microsoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

## **DEFENSE OF THIRD PARTY CLAIMS.**

**By Microsoft.** Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party that (i) any Product or Fix made available by Microsoft infringes its patent, copyright or trademark or makes unlawful use of its Trade Secret, or (ii) that arises from Microsoft's provision of an Online Service in violation of laws applicable to all online services providers. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. This does not apply to claims or awards based on (i) Customer Data; (ii) non-Microsoft software; (iii) modifications to a Product or a Fix Enrolled Affiliate makes or any specifications or materials Enrolled Affiliate provides; (iv) Enrolled Affiliate's combination of a Product or Fix with (or damages based on the value of) a non-Microsoft product, data, or business process; (v) Enrolled Affiliate's use of a Microsoft trademark without express, written consent or the use or redistribution of a Product or Fix in violation of this agreement;

(vi) Enrolled Affiliate's continued use of a Product or Fix after being notified to stop due to a third party claim; or (vii) Products or Fixes provided free of charge.

**Your agreement to protect.** Enrolled Affiliate agrees that use of Customer Data or non-Microsoft software Microsoft hosts on Enrolled Affiliate's behalf will not infringe any third party's patent, copyright or trademark or make unlawful use of any third party's Trade Secret. . In addition, Enrolled Affiliate will not use an

Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services

**Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Enrolled Affiliate's use of the Product or Fix, Microsoft will seek to obtain the right for Enrolled Affiliate to keep using it or modify or replace it with a functional equivalent, in which case Enrolled Affiliate must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Enrolled Affiliate's right to the Product or Fix and refund any amounts Enrolled Affiliate has paid for those rights to Software and Fixes and, for Online Services, any amount paid for a usage period after the termination date.

**Other terms.** Enrolled Affiliate must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft sole control over the defense and settlement; and provide reasonable assistance in defending the claims. Microsoft will reimburse Enrolled Affiliate for reasonable out of pocket expenses that it incurs in providing assistance. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, Microsoft's rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

#### ***LIMITATION OF LIABILITY.***

To the extent permitted by applicable law, for each Product, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Enrolled Affiliate was required to pay for the applicable Products during the term of the Agreement, subject to the following:

**Online Services.** For Online Services, Microsoft's maximum liability to Enrolled Affiliate for any incident giving rise to a claim will not exceed the amount Enrolled Affiliate paid for the Online Service during the 12 months before the incident.

**Free Products and Distributable Code.** For Products provided free of charge and code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.

**Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

**Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.

This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to these Microsoft License Terms and Conditions under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

#### ***TRUE-UP REQUIREMENTS***

**True-Up Order.** Enrolled Affiliate must submit an annual true-up order that accounts for changes since the initial order or last true-up order. If there are no changes, then an update statement must be submitted instead of a true-up order. Microsoft, at its discretion, may validate the true-up data submitted through a formal product deployment assessment using an approved Microsoft partner.

**Enterprise Products.** Enrolled Affiliate must determine the number of Qualified Devices and Qualified



Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

**Additional Products.** For Additional Products that have been previously ordered, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.

**Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may reserve the additional Licenses prior to use, and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Enrolled Affiliate's Government Partner. Reserved Licenses will be invoiced retroactively to the month in which they were reserved.

**Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the enrollment anniversary date on a prospective basis if permitted in the Product Terms as follows:

For Subscription Licenses part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses and add-on subscription licenses do not count towards this total count.

For Enterprise Online Services not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

**Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise has not: (1) changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due within 30 days prior to the Expiration Date.

**True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third- year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled

Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

**Late true-up.** If the true-up order or update statement is not received when due:

Enrolled Affiliate will be invoiced for all Reserved Licenses not previously ordered; and .

*Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).*

**Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.

If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.

### **VERIFYING COMPLIANCE.**

**Right to verify compliance.** Enrolled Affiliate must keep records relating to all use and distribution of Products by Enrolled Affiliate and its Affiliates. Microsoft has the right, at its expense, to verify Enrolled Affiliate's and its Affiliates compliance with the Product's license terms.

**Verification process and limitations.** Microsoft will provide Enrolled Affiliate at least 30 days' notice of its intent to verify compliance. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliates operations. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation and subject to Enrolled Affiliate's security requirements. Enrolled Affiliate must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. Enrolled Affiliate agrees to complete Microsoft's self-audit process; which Microsoft may require as an alternative to a third party audit. Any information collected in the self-audit will be used solely for purposes of determining compliance.

**Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then, within 30 days, Contractor will invoice Enrolled Affiliate for sufficient Licenses to cover that use or distribution. If unlicensed use or distribution is 5% or more, Enrolled Affiliate may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of Licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Enrolled Affiliate from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109). If there is no unlicensed use, Microsoft will not subject Enrolled Affiliate to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.

### **GOVERNMENT COMMUNITY CLOUD.**

**Community requirements.** Agency certifies that all Enrolled Affiliates in the Enterprise are members of the Community and represents that all Enrolled Affiliates in the Enterprise have agreed to use Government Community Cloud Services solely in their capacities as members of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Government Partner's or an Enrolled Affiliate's license(s) for Government Community Cloud

Services. Agency acknowledges that only Community members may use Government Community Cloud Services.

All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this Amendment.

Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

Any Enrolled Affiliate in the Enterprise that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.

**Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:

Government Community Cloud Services will be offered only within the United States.

Additional European Terms, as set forth in the Use Rights, will not apply.

References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

#### **MISCELLANEOUS.**

**Severability.** If any provision in this agreement is found unenforceable, the balance of the agreement will remain in full force and effect.

**Management and Reporting.** Enrolled Affiliate must provide and manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center web site (or successor site) at <https://www.microsoft.com/licensing/servicecenter>. On the effective date of this agreement and any Enrollments, the contact(s) Enrolled Affiliate has identified for this purpose will be provided access to this site and may assign additional users and contacts.

**Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

**Free Products.** Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate purposes only, and is not provided for use by or personal benefit of any specific government employee.

**Assignment.** Enrolled Affiliate may assign all its rights under this agreement to an Affiliate, but it must notify Microsoft in writing of the assignment. Any other proposed assignment under this agreement must be approved by the other party in writing. Any assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.

**Use of contractors.** Microsoft may use contractors to support services but will be responsible for their performance subject to the terms of this agreement.

**Third party beneficiary.** Microsoft is a third party beneficiary of this agreement and may enforce its terms.

**Survival.** All provisions survive termination or expiration of this agreement except those requiring performance only during the term of the agreement.

#### **Privacy and Compliance with applicable Laws, privacy and security.**

Microsoft and Enrolled Affiliate will each comply with all applicable laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate's industry that are not also generally applicable to information technology services providers.

**Natural disaster.** In the event of a natural disaster, Microsoft may provide additional assistance or rights to Enrolled Affiliate than are set forth in this agreement by posting them on <http://www.microsoft.com> at such time.

**Disputes.** Any breach of these Microsoft License Terms and Conditions, including Enrolled Affiliate's obligations set forth herein, shall be handled in accordance with the Contracts Disputes Act (41 U.S.C. §§7101-7109).

**Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for Products and the Microsoft technologies used in providing the Online Services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at <http://www.microsoft.com/enable>.

If any document incorporated by reference into these Microsoft License Terms and Conditions, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein, contains a provision (a) allowing for the automatic termination of your license rights or Software Assurance services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law; and/or (d) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into these Microsoft License Terms and Conditions, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any product(s) or services acquired under these Microsoft License Terms and Conditions shall apply in place of, or serve to modify any provision of these Microsoft License Terms and Conditions, even if a user or authorized officer of Enrolled Affiliate purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of these Microsoft License Terms and Conditions, then the relevant term or condition of these Microsoft License Terms and Conditions shall govern and supersede the purchase of such product(s) or services to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

**Section headings.** All section and subsection headings used in this agreement are for convenience only and shall not affect the interpretation of this agreement

## **Appendix A**

### **Microsoft License and Services Terms and Conditions**

MICROSOFT CORPORATION (“MICROSOFT”) IS A FIRST TIER SUBCONTRACTOR UNDER THIS CONTRACT. THESE MICROSOFT LICENSE TERMS AND CONDITIONS APPLY TO MICROSOFT PRODUCTS THAT YOU ORDER FROM THE CONTRACTOR UNDER THE CONTRACTOR’S GSA SCHEDULE CONTRACT (THE “CONTRACT”). THESE MICROSOFT LICENSE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY CONFLICTING TERMS IN AN ORDER OR ORDERING DOCUMENTATION.

In this Agreement, the following definitions apply:

“Additional Product” means any Product identified as such in the Product List and chosen for Enrolled Affiliate under the applicable Enrollment and identified on your Order.

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“Azure Government Services” means one or more of the services or features Microsoft makes available to Enrolled Affiliate under this Enrollment and identified at <http://azure.microsoft.com/en-us/regions/#services>, which are Government Community Cloud Services.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) an Enrolled Affiliate with Customer Data that is subject to Government regulations for which the Enrolled Affiliate determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet the Enrolled Affiliate’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Compliance Trust Center Page” means the compliance page of the Microsoft Trust Center, published by Microsoft at <https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx> or a successor site Microsoft later identifies.

“Customer Data” means all data, including all text, sound, software, or image files that are provided to Microsoft by, or on behalf of, Enrolled Affiliate through its use of the Online Services or provided in connection with the delivery of Professional Services.

Any reference in this agreement or an Enrollment to a “day” means a calendar day, except references that specify “business day”.

“Enrollment” means the document you submit to Microsoft to place orders for Enrolled Affiliate.

“Enrolled Affiliate” or “you” means any entity of the United States or entity authorized by the United States that enters into a Government Contract for Products.

“Enterprise” means Enrolled Affiliate and the Affiliates listed on an Enrollment.

“Enterprise Product” means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms for which Enrolled Affiliate chooses to order License(s) under an Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Fixes” means Product fixes, modifications or enhancements or their derivatives that Microsoft releases generally (such as Product service packs), or provides to Enrolled Affiliate to address a specific issue.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“Government Contract” means the Government Partner’s GSA Schedule Contract, which incorporates these Microsoft License Terms and Conditions.

“Government Partner” means the entity from whom you place your order for Products under the Government Contract.

“Industry Device” (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) (“Industry Program”). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

“Joint Ownership” means each party has the right to independently exercise any and all rights of ownership now known or hereinafter created or recognized, including without limitation the rights to use, reproduce, modify and distribute the Service Deliverable for any purpose, without the need for further authorization to exercise any such rights or any obligation of accounting or payment of royalties;

“License” means Enrolled Affiliate’s right to use the quantity of a Product ordered. For certain Products, a License may be available on a subscription basis (“Subscription License”). Licenses for Online Services will be considered Subscription Licenses under these Additional Use Right and Restrictions.

“Managed Device” means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

“Office 365 Service Descriptions” means the Service Descriptions for Office 365 GCC High, published by Microsoft at <https://technet.microsoft.com/en-us/library/mt774581.aspx> (for the product superset, Office 365 US Government) and <https://technet.microsoft.com/en-us/library/mt774968.aspx> (for the product subset, Office 365 GCC High), or at successor sites Microsoft later identifies.

“Office 365 US Government” means the Government Community Cloud Service described by the Office 365 Service Descriptions, and purchased by Enrolled Affiliate pursuant to the terms and conditions of the Enrollment.



“Office 365 GCC High” means the Government Community Cloud Service described by the Office 365 Service Descriptions, and purchased by Enrolled Affiliate pursuant to the terms and conditions of the Enrollment.

“Online Services” means the Microsoft-hosted services identified in the Online Services section of the Product Terms.

“Online Services Terms” means the additional terms that apply to Customer’s use of Online Services published on the Volume Licensing Site and updated from time to time. Notwithstanding anything in the Mandatory Addendum License Agreement or Service Level Agreement included in the Government Contract to the contrary, the Online Services Terms are hereby incorporated into this agreement and the Government Contract and a binding on the parties.

“Order” means the order placed by Government Partner on your behalf under the Government Partners’ GSA Schedule contract or Blanket Purchase Agreement issued thereunder.

“Pre-Existing Work” means any computer code or materials developed or otherwise obtained independently of the efforts of a party under a Statement of Services;

“Product” means all products identified on the Product Terms, such as software, Online Services and other web-based services, including pre-release or beta versions. Product availability may vary by region.

“Product Terms” means the document that provides information about Microsoft Products available through volume licensing. The Product Terms document is published on the Volume Licensing Site at <https://www.explore.ms/> and is updated from time to time. Notwithstanding anything in the Mandatory Addendum License Agreement or Service Level Agreement included in the Government Contract to the contrary, the Product Terms are hereby incorporated into this agreement and the Government Contract and a binding on the parties.

“Professional Services” means all Product support services and Microsoft research or engineering services or advice provided to Customer under this Agreement. “Professional Services” or “services” does not include Online Services;

“Qualified Device” means any device that is used by or for the benefit of Enrolled Affiliate’s Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure (“VDI”). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate’s Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

“Qualified User” means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

“Reserved License” means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

“Service Deliverables” means any computer code or materials, other than Products or Fixes, that Microsoft leaves with Enrolled Affiliate at the conclusion of Microsoft’s performance of the Professional Services;

“Services”. The precise scope of the Professional Services will be specified in a Statement of Services. Enrolled Affiliate or any of Enrolled Affiliate’s Affiliates may enter into Statements of Services under this Agreement with Microsoft’s local Affiliates. Microsoft’s ability to deliver the Professional Services depends upon Enrolled Affiliate’s full and timely cooperation, as well as the accuracy and completeness of any information Enrolled Affiliate provides. This Agreement does not obligate either party or its Affiliates to enter into any Statements of Services.

“SLA” means Service Level Agreement, which specifies the minimum service level for Online Services and is published on the Volume Licensing Site.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

“Software Assurance” means an offering that provides new version rights and other benefits for Products as described in the Product Terms.

“Statement of Services” means any work orders, services descriptions, or other description of Professional Services that incorporates this Agreement;

“Trade Secret” means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights,” means the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms. Notwithstanding anything in the Mandatory Addendum License Agreement or Service Level Agreement included in the Government Contract to the contrary, the Use Rights are hereby incorporated into this agreement and the Government Contract and a binding on the parties.

“use” or “run” means to copy, install, use, access, display, run or otherwise interact.

## LICENSES FOR PRODUCTS.

Upon Microsoft’s acceptance of an Enrollment for an Enrolled Affiliate, the Enrolled Affiliate has the following rights during the term of its Order. These rights apply to the Licenses obtained under the Order.

**License Grant.** By accepting an Enrollment, Microsoft grants the Enterprise a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under the Enrollment. The rights granted are subject to the terms of the Use Rights and the Product Terms and are conditions on Enrolled Affiliate’s continued compliance with the terms of this agreement, including, without limitation, payment for the Licenses. Microsoft reserves all rights not expressly granted in this agreement.

**Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the

Enrollment is renewed or Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.

### **Applicable Use Rights.**

**Products (other than Online Services).** The Use Rights in effect on the effective date of the Enrollment will apply to Enterprise's use of the version of each Product that is current at the time. For future versions and new Products, the Product Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply. The Use Rights applicable to perpetual Licenses that were acquired under a previous agreement or Enrollment are determined by the agreement or Enrollment under which they were acquired. Renewal of Software Assurance does not change which Use Rights apply to those Licenses.

**Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.

More restrictive use rights. If a new version of a Product has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to the Enterprise's use of that Product during the term.

**Downgrade rights.** Enterprise may use an earlier version of Product than the version that is current on the effective date of the Enrollment. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.

**e.New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enterprise chooses not use the new version immediately.

Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Use Rights.

If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses obtained through Software Assurance replace any perpetual Licenses for the earlier version.

**License confirmation.** The Government Contract, the Order, the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses ordered by an Enrollment for an Enrolled Affiliate.

**Reorganizations, Consolidations, and Privatizations.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of any member of the Enterprise, Microsoft will work with Enrolled Affiliate in good faith to determine how to accommodate the Enterprise's changed circumstances in the context of these Additional Use Rights and Restrictions.

**Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service in any country or jurisdiction where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation

or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or

(3) causes Microsoft to believe these terms or the Online Service may be in conflict with any such requirement or obligation.

## **Making copies of Products and re-imaging rights.**

**General.** Enrolled Affiliate may make as many copies of the Products as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees that it will be responsible for any third party's actions. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of the Government Contract and the Order.

**Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Product for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.

**Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under the Order may be generally used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:

Separate Licenses must be acquired from the separate source for each Product that is re-imaged.

The Product, language, version and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.

Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type from the separate source.

Enrolled Affiliate must adhere to any Product specific processes or requirements for re- imaging identified in the Product Terms.

Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any warranty or support obligation.

## **Transferring and assigning licenses.**

**License transfers.** License transfers are not permitted, except that Enrolled Affiliate may transfer only fully-paid perpetual Licenses to:

an Affiliate, or

a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) a reorganization or privatization of an Affiliate or a division of an Affiliate or (2) a consolidation involving Enrolled Affiliate or an Affiliate. Upon such transfer, Enrolled Affiliate must uninstall and discontinue using the licensed Product and render any copies unusable.

**Notification of License Transfer.** Enrolled Affiliate must notify Microsoft of a transfer of License by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the license transfer. No License transfer will be valid unless Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by Microsoft under the licenses being transferred (including, without limitation, the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability). Any license transfer not made in compliance with this section will be void.

**Internal assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned as described in the Use Rights.

## Use, ownership, rights, and restrictions.

**Products.** Use of any Product is governed by the Use Rights specific to each Product and version and by these Additional Use Rights and Restrictions.

**Fixes.** Each fix is under the same license terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use terms Microsoft provides with the Fixe will apply.

### Non-Microsoft software and technology.

Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.

Microsoft is not a party to and is not bound by any terms governing Enrolled Affiliate's use of non-Microsoft software or technology. Without limiting the foregoing, non-Microsoft software or scripts linked to or referenced from any Product website, are governed by the open source licenses used by the third parties that own such code, not by Microsoft and Microsoft's licensing terms.

If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fixes, it directs and controls the installation in and use of such software or technology in the Products or Fixes, through its actions (e.g., through Enrolled Affiliate's use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Enrolled Affiliate.

**Restrictions.** Enrolled Affiliate must not (and must not attempt to): (1) reverse engineer, decompile or disassemble any Product, Fix, or Services Deliverable, (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement; or (3) work around any technical limitations in the Products or restrictions in Product documentation. Except as expressly permitted in this agreement, Enrolled Affiliate must not (i) separate and run parts of a Product on more than one device, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (ii) distribute, sublicense, rent, lease, lend, or use any Product, or Fix to offer hosting services to a third party.

**No transfer of ownership; Reservation of rights.** Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft (1) does not transfer any ownership rights in any Products or Fixes and (2) reserves all rights not expressly granted to Enrolled Affiliate.

## Confidentiality.

"Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including Customer Data and any Statement of Services.

Confidential Information does not include information that (1) becomes publicly available without a breach of this agreement, (2) the receiving party received lawfully from another source without a confidentiality



obligation, (3) is independently developed, or (4) is a comment or suggestion volunteered about the other party's business, products or services.

Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose that Confidential Information to third parties, except to its employees, Affiliates, contractors, advisors and consultants ("Representatives") and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

A party may disclose the other's Confidential Information if required by law; but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly. These obligations apply (i) for Customer Data until it is deleted from the Online Services, and (ii) for all other Confidential Information, for a period of five years after the Confidential Information is received.

**Freedom of Information Act (FOIA).** Notwithstanding anything in this section to the contrary, the parties acknowledge and agree that Enrolled Affiliate is subject to the United States Freedom of Information Act (5 U.S.C. § 552) and may disclose information in response to a valid request in accordance with FOIA. Should Enrolled Affiliate receive a request under FOIA for Microsoft's confidential information, Enrolled Affiliate agrees to give Microsoft adequate prior notice of the request and before releasing Microsoft's confidential information to a third party, in order to allow Microsoft sufficient time to seek injunctive relief or other relief against such disclosure.

## Privacy and Compliance with Laws.

Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of these Microsoft License Terms and Conditions and the applicable Order. Enrolled Affiliate will obtain all required consents from third parties (including Enrolled Affiliate's contacts, resellers, distributors, administrators, and employees) under applicable privacy and data protection law before providing personal information to Microsoft.

Unless otherwise specified in the Enrollment or the Use Rights, personal information collected under these Microsoft License Terms and Conditions (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.

**U.S. export.** Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to Microsoft products, services, and technologies.



## Warranties.

### Limited warranties and remedies.

**Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Enrolled Affiliate is first licensed for that version. If it does not and Enrolled Affiliate notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price Customer paid for the Software license, or (2) repair or replace the Software.

**Online Services.** Microsoft warrants that each Online Services will perform in accordance with the applicable SLA during the Enrolled Affiliate's use. Enrolled Affiliate's remedies for breach of this warranty are in the SLA.

**Professional Services.** Microsoft warrants that all Professional Services will be performed with professional care and skill. If Microsoft fails to do so and Enrolled Affiliate notifies Microsoft within 90 days of the date of performance, then Microsoft will either re-perform the Professional Services or return the price paid for them as Enrolled Affiliate's sole remedy for breach of the Professional Services warranty.

Enrolled Affiliate will perform its applicable responsibilities and obligations to support Microsoft's performance of the Professional Services, as specified in the applicable Statement of Services.

The remedies above are Enrolled Affiliate's sole remedies for breach of the warranties in this section. Enrolled Affiliate waives any breach of warranty claims not made during the warranty period.

**Exclusions.** The warranties in this agreement do not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release, or beta Products, or to components of Products that Enrolled Affiliate is permitted to redistribute.

**DISCLAIMER.** Microsoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

## Defense of third party claims.

**By Microsoft.** Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party that (i) any Product or Fix or Service Deliverable made available by Microsoft infringes its patent, copyright or trademark or makes unlawful use of its Trade Secret, or (ii) that arises from Microsoft's provision of an Online Service in violation of laws applicable to all online services providers. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. This does not apply to claims or awards based on (i) Customer Data; (ii) non-Microsoft software; (iii) modifications to a Product or a Fix or a Service Deliverable Enrolled Affiliate makes or any specifications or materials Enrolled Affiliate provides; (iv) Enrolled Affiliate's combination of a Product or Fix or Service Deliverable with (or damages based on the value of) a non-Microsoft product, data, or business process; (v) Enrolled Affiliate's use of a Microsoft trademark without express, written consent or the use or redistribution of a Product or Fix or Service Deliverable in violation of this agreement; (vi) Enrolled Affiliate's continued use of a Product or Fix or Service Deliverable after being notified to stop due to a third party claim; or (vii) Products or Fixes or Service Deliverables provided free of charge.

**Your agreement to protect.** Enrolled Affiliate agrees that use of Customer Data or non-Microsoft software Microsoft hosts on Enrolled Affiliate's behalf will not infringe any third

party's patent, copyright or trademark or make unlawful use of any third party's Trade Secret. In addition, Enrolled Affiliate will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.

**Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Enrolled Affiliate's use of the Product or Fix or Service Deliverable, Microsoft will seek to obtain the right for Enrolled Affiliate to keep using it or modify or replace it with a functional equivalent, in which case Enrolled Affiliate must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Enrolled Affiliate's right to the Product or Fix or Service Deliverable and refund any amounts Enrolled Affiliate has paid for those rights to Software and Fixes and Service Deliverables and, for Online Services, any amount paid for a usage period after the termination date.

**Other terms.** Enrolled Affiliate must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft sole control over the defense and settlement (subject to 28 U.S.C.

§ 516); and provide reasonable assistance in defending the claims. Microsoft will reimburse Enrolled Affiliate for reasonable out of pocket expenses that it incurs in providing assistance. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, Microsoft's rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

### **Limitation of liability.**

To the extent permitted by applicable law, for each Product, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Enrolled Affiliate was required to pay for the applicable Products during the term of the Agreement, subject to the following:

**Online Services.** For Online Services, Microsoft's maximum liability to Enrolled Affiliate for any incident giving rise to a claim will not exceed the amount Enrolled Affiliate paid for the Online Service during the 12 months before the incident.

**Professional Services.** Each party's total liability for all claims relating to Professional Services will be limited to the amounts Enrolled Affiliate was required to pay for the Professional Services or the limitation of liability for the Online Service with which the Professional Services are offered, whichever is greater.

**Free Products, Professional Services and Distributable Code.** For Professional Services, products provided free of charge and code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.

**Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

**Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.

This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to these Microsoft License Terms and Conditions under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

## True-up requirements

**True-Up Order.** Enrolled Affiliate must submit an annual true-up order that accounts for changes since the initial order or last true-up order. If there are no changes, then an update statement must be submitted instead of a true-up order. Microsoft, at its discretion, may validate the true-up data submitted through a formal product deployment assessment using an approved Microsoft partner.

**Enterprise Products.** Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

**Additional Products.** For Additional Products that have been previously ordered, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.

**Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may reserve the additional Licenses prior to use, and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Enrolled Affiliate. Reserved Licenses will be invoiced retroactively to the month in which they were reserved.

**Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the enrollment anniversary date on a prospective basis if permitted in the Product Terms as follows:

For Subscription Licenses part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses and add-on subscription licenses do not count towards this total count.

For Enterprise Online Services not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

**Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise has not: (1) changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due within 30 days prior to the Expiration Date.

**True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

**Late true-up.** If the true-up order or update statement is not received when due:

Enrolled Affiliate will be invoiced for all Reserved Licenses not previously ordered; and

Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

**Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.

If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.

## Verifying compliance.

**Right to verify compliance.** Enrolled Affiliate must keep records relating to all use and distribution of Products by Enrolled Affiliate and its Affiliates. Microsoft has the right, at its expense, to verify Enrolled Affiliate's and its Affiliates compliance with the Product's license terms.

**Verification process and limitations.** Microsoft will provide Enrolled Affiliate at least 30 days' notice of its intent to verify compliance. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliates operations. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation and subject to Enrolled Affiliate's security requirements. Enrolled Affiliate must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. Enrolled Affiliate agrees to complete Microsoft's self-audit process; which Microsoft may require as an alternative to a third party audit. Any information collected in the self-audit will be used solely for purposes of determining compliance.

**Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then, within 30 days, Contractor will invoice Enrolled Affiliate for sufficient Licenses to cover that use or distribution. If unlicensed use or distribution is 5% or more, Enrolled Affiliate may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of Licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Enrolled Affiliate from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109). If there is no unlicensed use, Microsoft will not subject Enrolled Affiliate to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.

## Professional services.

**Description of Supplier Services.** The precise scope of the Professional Services will be specified in a Statement of Services. Enrolled Affiliate or any of Enrolled Affiliate's Affiliates may enter into Statements of Services under this Agreement with Microsoft's local Affiliates. Microsoft's ability to deliver the Professional Services depends upon Enrolled Affiliate's full and timely cooperation, as well as the accuracy and completeness of any information Enrolled Affiliate provides. This Agreement does not obligate either party or its Affiliates to enter into any Statements of Services.

### Use, ownership, rights and restrictions.

**Fixes.** Each Fix is licensed under the same terms as the Product to which it applies (e.g., Azure Government Services). If the Fix is not provided for a specific Product, any use terms Microsoft provides with the Fix will apply. If no use terms are provided, Enrolled Affiliate shall have a non-exclusive, perpetual, fully paid-up license to use and reproduce the Fix solely for its internal business use. Enrolled Affiliate may not modify, change the file name or combine any Fix with any non-Microsoft computer code, except as expressly permitted in a licensing agreement.

**Pre-Existing Work.** All rights in Pre-Existing Work will remain the sole property of the party providing the Pre-Existing Work. Each party may use, reproduce and modify the other party's Pre-Existing Work only as needed to perform obligations related to Professional Services. Upon payment in full and subject to Enrolled Affiliate's compliance with this Agreement, Microsoft grants Enrolled Affiliate a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (excluding object code) any Microsoft Pre-Existing Work provided as part of a Service Deliverable, solely in the form delivered to Enrolled Affiliate and solely for Enrolled Affiliate's internal business purposes.

**Service Deliverables.** Except as may be otherwise explicitly expressed in a Statement of Services, upon payment in full, Microsoft grants to the Enrolled Affiliate a non-exclusive, perpetual, fully paid up license to use, reproduce and modify any Service Deliverables for the Enrolled Affiliates internal governmental purposes only and not for sale or distribution to any unaffiliated third party. Microsoft or the Enrolled Affiliate will be the sole owner of any modifications that each makes based upon the Service Deliverables. If any Service Deliverables are determined not to be commercial items and are delivered subject to: (i) the Department of Defense FAR Supplement ("DFARS") in the course of performance of this Agreement, Microsoft assigns to the Enrolled Affiliate unlimited rights in the Service Deliverables if the conditions at DFARS 252.227-7014(b)(1) are present; or with government purpose rights if the conditions at DFARS 252.227-7014(b)(2) are present; or with restricted rights if the conditions at DFARS 252.227-7014(b)(3) are present; or (ii) the Federal Acquisition Regulation ("FAR"), Microsoft assigns to the Enrolled Affiliate unlimited rights in the Service Deliverables if the conditions at FAR 52.227-14(b) are present; or limited rights or restricted rights if the conditions at FAR 52.227-14(g) are present. Any modification made to Service Deliverables or other data with Enrolled Affiliate funds shall remain the property of the party making the modification.

**Affiliates rights.** Enrolled Affiliate may only sublicense its rights to the Services Deliverables and Sample Code granted hereunder to its Affiliates, but Enrolled Affiliate's Affiliates may not sublicense these rights. Enrolled Affiliate is responsible for ensuring its Affiliates' compliance with this Agreement.

**Materials.** All rights in any Materials developed by Microsoft (other than Software code) and provided to Customer in connection with the services shall be owned by Microsoft except to the extent such Materials constitute Customer's Pre-Existing Work. Upon payment in full, Microsoft grants Customer a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify the Materials solely for

Customer's internal business operations and without any obligation of accounting or payment of royalties.



**Non-Microsoft Software and Technology.** Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses. Enrolled Affiliate may not install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this Agreement.

**Sample Code.** Upon payment in full, Microsoft grants Enrolled Affiliate a non-exclusive, perpetual, non-transferable license to use and modify any Software code provided by Microsoft for the purposes of illustration ("Sample Code") and to reproduce and distribute the object code form of the Sample Code for Enrolled Affiliate's internal business purposes only and not to any unaffiliated third party.

**General Use Restrictions and Reservations.** Enrolled Affiliate must not (and must not attempt to) reverse engineer, decompile, or disassemble any Microsoft proprietary products, services and/or intellectual property, including, without limitation, Azure Government Services, Microsoft Products and/or Pre-Existing Work. Except as expressly permitted in this Agreement, Enrolled Affiliate must not (a) separate and run parts of a Microsoft Product on more than one computer, upgrade or downgrade parts of a Microsoft Product at different times, or transfer parts of a Microsoft Product separately or (b) distribute, sublicense, rent, lease, lend, or host any Microsoft Product, Fixes, or Services. Notwithstanding anything in this Agreement to the contrary, all rights not expressly granted are reserved to Microsoft.

**Restrictions on use.** The U.S. Government must agree to not reverse engineer, decompile or disassemble any Product, Fix or Service Deliverable, except to the extent expressly permitted by applicable law despite this limitation. Except as expressly permitted in this Agreement, the U.S. Government must agree not to distribute, sublicense, rent, lease, lend or host any Product, Fix or Service Deliverable.

**Reservation of Rights.** Products, Fixes, and Service Deliverables are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this Agreement. No rights will be granted or implied by waiver or estoppel.

**Supportability of Products.** Support for Products is available under the terms of a licensing agreement, a separate Statement of Services or under the terms set forth at <http://support.microsoft.com> or a successor site.

## **Segmentation.**

The purchase of any Products and related Professional Service Offerings or other Service offerings are all separate offers and separate from any other order for any Products and related Professional Service offerings or other Service offerings you may receive or have received from Microsoft. You understand that you may purchase and/or acquire any Products and related Professional Service offerings or other Service offerings independently of any other Products or Service offerings. Your obligation to pay for (a) any Products and related Professional Service offerings is not contingent on performance of any other Professional Service offerings or delivery of any other Products or (b) other Professional Service offerings is not contingent on delivery of any Products or performance of any additional/other Professional Service offerings

## **Government Community Cloud.**

**Community requirements.** Agency certifies that all Enrolled Affiliates in the Enterprise are members of the Community and represents that all Enrolled Affiliates in the Enterprise have agreed to use Government Community Cloud Services solely in their capacities as members of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of an



Enrolled Affiliate's license(s) for Government Community Cloud Services. Agency acknowledges that only Community members may use Government Community Cloud Services.

All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this Amendment.

Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

Any Enrolled Affiliate in the Enterprise that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.

**Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:

Government Community Cloud Services will be offered only within the United States.

Additional European Terms, as set forth in the Use Rights, will not apply.

References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted herein.

Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

The Compliance Trust Center Page describes the control standards and frameworks with which Azure Government Services comply.

Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain. Additionally, Office 365 US Government may not be deployed or used in the same domain as other Government Community Cloud Services

Notwithstanding the Data Processing Terms section of the Online Services Terms, Office 365 GCC High and Azure Government Services are not subject to the same control standards and frameworks as the Microsoft Azure Core Services. The Compliance Trust Center Page describes the control standards and frameworks with which Office 365 GCC High and Azure Government Services comply.

#### **Operational and ordering considerations for Office 365 GCC High**

Enrolled Affiliate (i) acknowledges that its Tenant administrator console (when available) will appear to include more licenses than it has ordered and is entitled to; and (ii) agrees that it must order licenses for every User account it assigns. Notwithstanding anything to the contrary in the Enrollment and Product Terms, Licenses will be deemed "Reserved" for each user (and thereby subject to a True-Up Order requirement in accordance with the terms and conditions of the Enrollment), as of the

day that User's account is reserved, unless a License for each such User is ordered in advance. Enrolled Affiliate is solely responsible for keeping accurate records of the month each User is assigned to a User account, and will provide such records to Microsoft with its True-Up orders.

ii. Enrolled Affiliate acknowledges that (i) availability of its Office 365 GCC High tenant may follow several weeks after its initial order, and (ii) the service components provided pursuant to its orders for "Suite" SKUs such as E1 and E3, as listed in the Office 365 Service Descriptions, may differ from those components available in similar suites available in other forms of Office 365 Services.

## Miscellaneous.

**Severability.** If any provision in this agreement is found unenforceable, the balance of the agreement will remain in full force and effect.

**Management and Reporting.** Enrolled Affiliate must provide and manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. On the effective date of this agreement and any Enrollments, the contact(s) Enrolled Affiliate has identified for this purpose will be provided access to this site and may assign additional users and contacts.

**Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

**Free Products.** Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate purposes only, and is not provided for use by or personal benefit of any specific government employee.

**Assignment.** Enrolled Affiliate may assign all its rights under this agreement to an Affiliate, but it must notify Microsoft in writing of the assignment. Any other proposed assignment under this agreement must be approved by the other party in writing. Any assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.

**Use of contractors.** Microsoft may use contractors to support services but will be responsible for their performance subject to the terms of this agreement.

**Third party beneficiary.** Microsoft is a third party beneficiary of this agreement and may enforce its terms.

**Survival.** All provisions survive termination or expiration of this agreement except those requiring performance only during the term of the agreement.

### Privacy and Compliance with applicable Laws, privacy and security.

Microsoft and Enrolled Affiliate will each comply with all applicable laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate's industry that are not also generally applicable to information technology services providers.

**Natural disaster.** In the event of a natural disaster, Microsoft may provide additional assistance or rights to Enrolled Affiliate than are set forth in this agreement by posting them on <http://www.microsoft.com> at such time.

**Disputes.** Any breach of these Microsoft License Terms and Conditions, including Enrolled Affiliate's obligations set forth herein, shall be handled in accordance with the Contracts Disputes Act (41 U.S.C. §§7101-7109).

**Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for Products and the Microsoft technologies used in providing the Online Services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at <https://www.microsoft.com/en-us/accessibility>.

If any document incorporated by reference into these Microsoft License Terms and Conditions, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein, contains a provision (a) allowing for the automatic termination of your license rights or Software Assurance services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law; and/or (d) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into these Microsoft License Terms and Conditions, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any product(s) or services acquired under these Microsoft License Terms and Conditions shall apply in place of, or serve to modify any provision of these Microsoft License Terms and Conditions, even if a user or authorized officer of Enrolled Affiliate purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of these Microsoft License Terms and Conditions, then the relevant term or condition of these Microsoft License Terms and Conditions shall govern and supersede the purchase of such product(s) or services to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

**Insurance while performing Professional Services on Enrolled Affiliate's premises.** Microsoft will maintain industry-appropriate insurance coverage at all times when performing Professional Services on Enrolled Affiliate's premises under this Agreement via commercial insurance, self insurance, or any other similar risk financing alternative. Microsoft will provide Enrolled Affiliate with evidence of coverage on request.

**Cost or pricing data.** Microsoft will not, under any circumstances, provide Enrolled Affiliate with, or accept any Statement of Services that would require the submission of, cost or pricing data as defined by 48 CFR 15.4 or the submission of noncommercial items.

**Section headings.** All section and subsection headings used in this agreement are for convenience only and shall not affect the interpretation of this agreement.

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## EXHIBIT A

# Microsoft Cloud Agreement

## US Government Community Cloud

This Microsoft Cloud Agreement is incorporated into the Customer Agreement entered into between the Ordering Activity under GSA Schedule contracts customer who is a Community member (“**Customer**” or “**Ordering Activity**”) and the person or entity who has entered into a prime contract with the Customer (“**Contractor**”) as an addendum and governs Customer’s use of the Microsoft Products. It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the “**agreement**”). It is effective on the date that the Contractor provisions the Customer’s Subscription. Key terms are defined in Section 9.

### ***Grants, rights and terms.***

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Customer nor any of its Affiliates is in material breach of this agreement.

**Software.** Upon acceptance of each order, Microsoft grants Customer a limited right to use the Software in the quantities ordered.

**Use Rights. The Use Rights in effect when Customer orders Software will apply to Customer’s** use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.

**Temporary and perpetual licenses.** Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.

**Online Services.** Customer may use the Online Services as provided in this agreement.

**Online Services Terms.** The Online Services Terms in effect when Customer orders or renews a Subscription to an Online Service will apply for the applicable Subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period

**Suspension. Microsoft may temporarily suspend use of an Online Service during Customer’s violation of the** Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.

**End Users.** Customer controls access by End Users and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.

**Customer Data.** Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with **respect to Customer Data or to**

**Customer’s use of the Product other than as expressly set forth in this agreement or as required by applicable law.**

**Responsibility for your accounts.** Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer's use of the Online Services.

Customer must promptly notify customer support about any possible misuse of Customer's accounts or authentication credentials or any security incident related to the Online Services.

**Reservation of rights.** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

**Restrictions.** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer's use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.

**Preview releases.** Microsoft may make Previews available. **Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLA and all limited warranties provided in this agreement.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into "General Availability."

#### **Verifying compliance for products.**

**Right to verify compliance.** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including, subject to the Government's reasonable security requirements, access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft's self-audit process, which Microsoft may request as an alternative to a third-party audit. Such an audit request shall not occur more than once in a twelve month period.

**Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use of Products, then Customer will, within 30 days, order sufficient licenses to cover any unlicensed use of products and Contractor will invoice Customer for additional license fees sufficient to cover the unauthorized use revealed by the audit and payment will be due 30 days after receipt of the invoice . If unlicensed use or distribution is 5% or more, the Customer may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Customer from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), if and as applicable. If there is no unlicensed use, Microsoft will not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.

**Verification process.** Microsoft will notify Customer at least 30 days in advance of its intent to verify Customers' compliance with the license terms for the Products Customer and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a



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confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification is subject to the Government's reasonable security requirements, will take place during normal business hours, and in a manner that does not unreasonably interfere with Customer's operations.

### **Subscriptions, ordering.**

**Available Subscription offers.** The Subscription offers available to Customer will be established by the Customer Agreement and generally can be categorized as one or a combination of the following:

**Online Services Commitment Offering.** Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.

**Consumption Offering (also called Pay-As-You-Go).** Customer pays based on actual usage with no upfront commitment.

**Limited Offering.** Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.

**Software Commitment Offering.** Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.

### **Ordering.**

Orders must be placed through the Contractor. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Customer also may assign the rights granted under **Section 1.a and 1.b to a third party for use by that third party in Customer's internal business.** If Customer grants any rights to Affiliates or third parties with respect to **Software or Customer's Subscription, such Affiliates or third parties** will be bound by this agreement and Customer agrees to be responsible for any actions of such Affiliates or third parties related to their use of the Products

The Contractor may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.

**Pricing and payment.** Prices for each Product and any terms and conditions for invoicing and payment will be in accordance with the GSA Pricelist.

**reserved**

**Eligibility for Academic, Government and Nonprofit versions.** Customer agrees that if it is purchasing an academic, government or nonprofit offer, Customer meets the respective eligibility requirements listed at the following sites:

For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at <https://azuregov.microsoft.com/general>;

For government offers, the requirements listed at <https://azuregov.microsoft.com/general> and

For nonprofit offers, the requirements listed at <https://azuregov.microsoft.com/general> As an exception to the foregoing, if Customer is not a government entity but has been verified by Contractor to be an eligible member of the Community, then the requirements in (ii) above shall not apply. Microsoft reserves the right to verify eligibility at any time and submit a claim to the Contracting Officer under the Contract Disputes Act if Microsoft believes the eligibility requirements are not met.

### ***Security, privacy, and data protection.***

Reseller Administrator Access and Customer Data. Customer acknowledges and agrees that (i) the Contractor will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from its Contractor; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Contractor's administrative privileges; (iii) the Contractor's privacy practices with respect to Customer Data or any services provided by the Contractor are subject to the terms of the Customer Agreement and may differ from Microsoft's privacy practices; and (iv) the Contractor may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to Microsoft providing the Contractor with Customer Data and information that Customer provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.

If Customer plan to include criminal justice information or federal tax information with its Customer Data, it is Customer's responsibility to ensure compliance with FBI CJIS Policy, including ensuring that all of Customer's and/or Contractor's employees that will have unencrypted access to Customer Data meet the FBI background check. Customer must contract Contractor to obtain an applicable amendment to this Government Agreement for that purpose.

Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Customer may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. Customer will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.

Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by the Contractor.

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As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by the Contractor or as required by law, and Customer shall obtain the users' consent to the same.

Customer appoints the Contractor as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

### ***Warranties.***

#### **Limited Warranty.**

**Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.

**Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are in the SLA. The remedies above are Customer's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

**Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.

**DISCLAIMER. EXCEPT FOR THE LIMITED WARRANTIES ABOVE, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, MICROSOFT PROVIDES NO WARRANTIES OR CONDITIONS FOR PRODUCTS AND DISCLAIMS ANY OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTIES FOR PRODUCTS, INCLUDING WARRANTIES OF QUALITY, TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### ***Defense of third party claims.***

**By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product or Fix after being notified to stop due to a third-party claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

**Customer's agreement.** Customer agrees that use of Customer Data or non-Microsoft software Microsoft provides or otherwise makes available on Customer's behalf will not infringe any third party's patent, copyright or trademark or make unlawful use of any third party's trade secret. In addition, Customer will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.

**Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Customer's use of the Product or Fix, Microsoft will seek to obtain the right for Customer to keep using it or

modify or replace it with a functional equivalent, in which case Customer must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may

terminate Customer's right to the Product or Fix and refund any amounts Customer has paid for those rights to Software and Fixes and, for Online Services, any amount paid for a usage period after the termination date.

**Other terms.** Customer must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft control over the defense and settlement (provided that for any Federal Agency Customers, the control of the defense and settlement is subject to 28 U.S.C. 516); and provide reasonable assistance in defending the claim. Microsoft will reimburse Customer for reasonable out of pocket expenses that it incurs in helping. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, and solely with respect to Federal Agency Customers, Microsoft's rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

***Limitation of liability.***

For each Product, each party's maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:

**Online Services.** For Online Services, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident; provided that in no event will Microsoft's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.

**ii. Free Products and distributable code.** For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.

**iii. EXCLUSIONS. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOSS OF REVENUE OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF USE, LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION, HOWEVER CAUSED OR ON ANY THEORY OF LIABILITY.**

**iv. Exceptions.** The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under section 6; (2) violation of the other's intellectual property rights,

For Customers that are Federal Agencies, this Section shall not impair the Customer's right to recover for fraud or crimes arising out of or related to this agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

**ITAR Covered Services.** This section applies to only the ITAR Covered Services, defined below, Customer buys subject to this Agreement. These terms ***only apply if*** Customer provides express notice to Microsoft of Customer's intent to manage ITAR controlled data in the Customer Data during the eligibility validation phase of the online application process.

Customer Prerequisites:

Customer is responsible for ensuring that the prerequisites established or required by the ITAR are fulfilled prior to introducing ITAR-controlled data into the ITAR Covered Services.



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Customer acknowledges that the ITAR Covered Services ordered by Customer under this Agreement enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, “add-ons”), as described in services documentation and/or in the portal through which Customer’s administrator(s) will manage and configure the ITAR Covered Services.

Customer is responsible for reviewing Online Services documentation, configuring the ITAR Covered Services, and adopting and implementing such policies and practices for Customer’s End Users’ use of ITAR Covered Services, together with any add-ons, as Customer determines are appropriate to comply with the ITAR or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.

Customer acknowledges that only ITAR Covered Services will be delivered subject to the terms of this Section. Processing and storage of ITAR-controlled data in other services, including without limitation add-ons, is not supported. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization, if any, or data provided by or on Customer’s behalf to Microsoft’s billing or commerce systems in connection with purchasing or ordering ITAR Covered Services, if any, is not subject to the provisions of this Section. Customer is solely responsible for ensuring that ITAR-controlled data is not included in support information or support case artifacts.

#### Special Terms.

(i) ITAR Covered Services. The ITAR Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of Customer’s preparation to use the ITAR Covered Services for the storage, processing, or transmission of ITAR-controlled data, Customer should review applicable services documentation. Customer’s compliance with the ITAR will be dependent, in part, on Customer’s configuration of the services and

adoption and implementation of policies and practices for Customer’s End Users’ use of ITAR Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with the ITAR.

Personnel. Microsoft personnel and contractors authorized by Microsoft to access Customer Data (that may include ITAR-controlled data) in the ITAR Covered Services, will be limited to U.S. persons, as that term is defined in the ITAR. Customer may also authorize Microsoft personnel and contractors to access its Customer Data. Customer is solely responsible for ensuring any such authorization is permissible under the ITAR.

Use of Subcontractors. As set forth in the OST, Microsoft may hire subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the ITAR Covered Services will be permitted to obtain Customer Data (that may include ITAR-controlled data) only to deliver the ITAR Covered Services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the ITAR Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with ITAR Covered Services, they are obligated to follow Microsoft’s policies, including without limitation the geographic restrictions and controls selected by you in the configuration of the ITAR Covered Services. Microsoft remains responsible for its subcontractors’ compliance with Microsoft’s obligations.

Notification. The Security Incident handling process defined in the OST will apply to the ITAR Covered Services. In addition, the parties agree to the following:



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Customer acknowledges that effective investigation or mitigation of a Security Incident involving ITAR-controlled data may be dependent upon information or services configurations within Customer's control. Accordingly, proper treatment of ITAR-controlled data will be a joint obligation between Microsoft and Customer. If Customer becomes aware of any unauthorized release of ITAR-controlled data to Microsoft or the use of a service other than the ITAR Covered Service to store, process, or transmit ITAR-controlled data, Customer will promptly notify Microsoft of such event and provide reasonable assistance and information necessary for Microsoft to investigate and report such event.

If, subsequent to notification of a Security Incident by Microsoft, Customer determines that ITAR-controlled data may have been subject to unauthorized inspection or disclosure, it is Customer's responsibility to notify the appropriate authorities of such event, or to notify impacted individuals, if Customer determines such notification is required under applicable law or regulation or your internal policies.

If either party determines it is necessary or prudent to make a voluntary disclosure to the Directorate of Defense Trade Controls regarding the treatment of ITAR-controlled data in the Online Services, such party will work in good faith to notify the other party of such voluntary disclosure prior to providing such voluntary disclosure. The parties will work together in good faith in the development and reporting of any such voluntary disclosure.

f. Conflicts. If there is any conflict between any provision in this Section and any provision in the agreement, this Section shall control.

**IRS 1075 Covered Services.** *If the Customer is subject to IRS 1075 with respect to its use of the Online Services, then this section applies but only to the IRS 1075 Covered Services, defined below, Customer buys under the Subscription*

#### *Customer Prerequisites*

*Customer is responsible to ensure that the prerequisites established or required by IRS Publication 1075 are fulfilled prior to introducing FTI into the IRS 1075 Covered Services.*

*Customer acknowledges that the IRS 1075 Covered Services ordered by Customer under the Subscription enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, "add-ons"), as described in services documentation and/or in the portal through which your administrator(s) will manage and configure the IRS 1075 Covered Services.*

*Customer is responsible for reviewing Online Services documentation, configuring the services, and adopting and implementing such policies and practices for your End Users' use of IRS 1075 Covered Services, together with any add-ons, as Customer determines are appropriate in order for Customer to comply with IRS Publication 1075 or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.*

*Customer acknowledges that only IRS 1075 Covered Services will be delivered subject to the terms of this Section 9. No other services are supported by the terms of this Section 9. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization ("Support Data"), if any, or data provided by or on Customer's behalf to Microsoft's billing or commerce systems in connection with purchasing/ordering IRS 1075 Covered Services ("Billing Data"), if any, is not subject to the provisions of this Section 9. Customer is solely responsible for ensuring that FTI is not provided as Support Data or Billing*

**Data.**

**IRS Publication 1075 Special Terms.**

**IRS 1075 Covered Services.** The IRS 1075 Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of your preparation to use the services for FTI, Customer should review applicable services documentation.

Customer's compliance with IRS Publication 1075 will be dependent, in part, on Customer's configuration of the services and adoption and implementation of policies and practices for Customer's End Users' use of IRS 1075 Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with IRS Publication 1075.

Attachment 1 contains the Safeguarding Contract Language for Technology Services specified by IRS Publication 1075. Microsoft and Customer has agreed that certain requirements of the Safeguarding Contract Language and IRS Publication 1075 will be fulfilled as set forth in the remainder of this section 9.

**Personnel Records and Training.** Microsoft will maintain a list of screened personnel authorized to access Customer Data (that may include FTI) in the IRS 1075 Covered Services, which will be available to Customer or to the IRS upon written request. Customer will treat Microsoft personnel personally identifiable information (PII) as Microsoft trade secret or security-sensitive information exempt from public disclosure to the maximum extent permitted by applicable law, and, if required to provide such Microsoft personnel PII to the IRS, will require the IRS to treat such personnel PII the same.

**Training Records.** Microsoft will maintain security and disclosure awareness training records as required by IRS Publication 1075, which will be available to Customer upon written request.

**Confidentiality Statement.** Microsoft will maintain a signed confidentiality statement, and will provide a copy for inspection upon request.

**Cloud Computing Environment Requirements.** The IRS 1075 Covered Services are provided in accordance with the FedRAMP System Security Plan for the applicable services. Microsoft's compliance with controls required by IRS Publication 1075, including without limitation encryption and media sanitization controls, can be found in the applicable FedRAMP System Security Plan.

**Use of Subcontractors.** Notwithstanding anything to the contrary in Attachment 1, as set forth in the OST, Microsoft may use subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the IRS 1075 Covered Services will be permitted to obtain Customer Data (that may include FTI) only to deliver the services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the IRS 1075 Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with IRS 1075 Covered Services, they are obligated to follow Microsoft's policies. Microsoft remains responsible for its subcontractors' compliance with Microsoft's obligations. Subject to the preceding, Microsoft may employ subcontractor personnel in the capacity of augmenting existing staff, and understands IRS Publication 1075 reference to employees to include employees and subcontractors acting in the manner specified herein. It is the responsibility of the Customer to gain approval of the IRS for the use of all subcontractors.

Microsoft maintains a list of subcontractor companies who may potentially provide personnel authorized to access Customer Data in the Online Services, published for Azure branded services at <http://azure.microsoft.com/en-us/support/trust-center/>, or successor locations identified by Microsoft.

Microsoft will update these websites at least 14 days before authorizing any new subcontractor to access Customer Data, Microsoft will update the website and provide Customer with a mechanism to obtain notice of that update.

**Security Incident Notification.** The Security Incident handling process defined in the OST will

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apply to the IRS 1075 Covered Services. In addition, the parties agree to the following:

Customer acknowledges that effective investigation or mitigation of a Security Incident may be dependent upon information or services configurations within Customer's control. Accordingly, compliance with IRS Publication 1075 Incident Response requirements will be a joint obligation between Microsoft and Customer.

*If, subsequent to notification from Microsoft of a Security Incident, Customer determines that FTI may have been subject to unauthorized inspection or disclosure, it is Customer responsibility to notify the appropriate Agent-in-Charge, TIGTA (Treasury Inspector General for Tax Administration) and/or the IRS of a Security Incident, or to notify impacted individuals, if Customer determines this is required under IRS Publication 1075, other applicable law or regulation, or Customer internal policies.*

*Customer Right to Inspect.*

*Audit by Customer. Customer will, (i) be provided quarterly access to information generated by Microsoft's regular monitoring of security, privacy, and operational controls in place to afford you an ongoing view into the effectiveness of such controls, (ii) be provided a report mapping compliance of the IRS 1075 Covered Services with NIST 800-53 or successor controls, (iii) upon request, be afforded the opportunity to communicate with Microsoft's subject matter experts for clarification of the reports identified above, and (iv) upon request, and at Customer's expense, be permitted to communicate with Microsoft's independent third party auditors involved in the preparation of audit reports. Customer will use this information above to satisfy with any inspection requirements under IRS Publication 1075 and agrees that the audit rights described in this section are in full satisfaction of any audit that may otherwise be requested by the Customer.*

*Confidentiality of Audit Materials. Audit information provided by Microsoft to Customer will consist of highly confidential proprietary or trade secret information of Microsoft. Microsoft may request reasonable assurances, written or otherwise, that information will be maintained as confidential and/or trade secret information subject to this agreement prior to providing such information to Customer, and Customer will ensure Microsoft's audit information is afforded the highest level of confidentiality available under applicable law.*

This Section 9.c is in addition to compliance information available to Customer under the OST.

**Criminal Justice Information Services (CJIS).** If the Customer is subject to CJIS with respect to its use of the Online Services, then this section applies but only to the Government CJIS Covered Services, defined below, you buy under the Subscription.

Customer Prerequisites

Microsoft's representations as it relates to its CJIS Covered Services' compliance with the FBI Criminal Justice Information Systems ("CJIS") Security Addendum (Appendix H of FBI CJIS Policy) are subject to Customer's incorporation of applicable state-specific CJIS Amendment terms and conditions into Customer's order with the Contractor. They are also subject to Customer's incorporation and flow down of such terms in Customer's contracts with a Covered Entity.

Please visit <https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS> for additional information about CJIS Covered States and CJIS Covered Services. Note that not all states are CJIS Covered States and that different CJIS Covered Services may apply in different CJIS Covered States. For more information about how to sign up for CJIS Covered Services through an Enterprise Agreement, please visit <https://azure.microsoft.com/en-us/pricing/enterprise-agreement/>. For purposes of this section, if Customer is not in a CJIS Covered State, then Microsoft is unable to provide CJIS-related representations at this time, and no CJIS Amendment will apply.

Customer can access the terms and conditions of Microsoft's adherence to the FBI CJIS

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Policy by contacting the CSA in a CJIS Covered State. The Security Addendum for Private Contractors (Cloud Providers) referenced in the FBI CJIS Policy and CSA-provided terms and conditions is incorporated herein by reference, and you acknowledge that Microsoft's support for CJIS will be in accordance with those terms agreed to and/or signed by the applicable state CSA. Customer also acknowledges that it is Customer's responsibility to contact the applicable state CSA for this and any additional information. Customer is required to, and acknowledge it will, work directly with the applicable state CSA for any CJIS-related documentation and audit requirements.

Customer is responsible to ensure that the CJIS Security Addendum has been signed by the CSA, that the CSA has approved Customer's use of the Covered Services to store or process CJIS, and that any other prerequisites established or required by either the FBI, state CSA, or Customer is fulfilled prior to introducing CJIS into the Covered Services.

Customer acknowledges that it will keep records of any Covered Entity to which it provides CJIS State Agreements or other CJIS-related documentation Customer obtains from the state CSA and shall make such records available to Microsoft promptly upon request.

If there is any conflict between any provision in this Section and any provision in the agreement, this Section shall control.

**Government Community requirements.** Customer certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacities as a member of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited. Customer acknowledges that only Community members may use Government Community Cloud Services.

All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this Agreement.

Customer may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

Any Customer that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.

Use Rights for Government Community Cloud Services. For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:

Government Community Cloud Services will be offered only within the United States.

Additional European Terms, as set forth in the Use Rights, will not apply.

References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted herein.

Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain. Additionally,

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Office 365 US Government may not be deployed or used in the same domain as other Government Community Cloud Services.

Notwithstanding the Data Processing Terms section of the Online Services Terms, Office 365 GCC High and Azure Government Services are not subject to the same control standards and frameworks as the Microsoft Azure Core Services. The Compliance Trust Center Page describes the control standards and frameworks with which Office 365 GCC High and Azure Government Services comply.

**Operational and Ordering Consideration for GCC High:**

Customer (a) acknowledges that its Tenant administrator console (when available) will appear to include more licenses than it has ordered and is entitled to; and (ii) agrees that it must order licenses for every User account it assigns. Notwithstanding anything to the contrary in the order and Product Terms, Licenses will be deemed "Reserved" for each user (and thereby subject to a True-Up Order requirement in accordance with the terms and conditions of the order), as of the day that User's account is reserved, unless a License for each such User is ordered in advance. Customer is solely responsible for keeping accurate records of the month each User is assigned to a User account, and will provide such records to Microsoft with its True-Up orders.

Customer acknowledges that (a) availability of its Office 365 GCC High tenant may follow several weeks after its initial order, and (a) the service components provided pursuant to its orders for "Suite" SKUs such as E1 and E3, as listed in the Office 365 GCC High, may differ from those components available in similar suites available in other forms of Office 365 Services.

The parties acknowledge that, as of the date this Agreement was executed, the Office 365 ProPlus "click-to-run" (C2R) feature is not yet available in Office 365 GCC High, notwithstanding anything to the contrary in the Use Rights. Accordingly, the following terms and conditions shall apply:

Until C2R functionality is made available, Customer may install up to two (2) local copies of Office Professional Plus for each User to whom E3 licenses are assigned, for the sole use of those assigned Users on Qualified Devices in Customer's Enterprise.

Once C2R functionality is made available (the "C2R release date," to be announced in the Office 365 Service Descriptions), Customer must cease installing additional local copies of Office Professional Plus, and shall as soon as practicable (but in no event later than 12 months following the C2R release date) replace each local copy that was installed pursuant to the preceding paragraph with a C2R-installed copy.

**Miscellaneous.**

**Notices.** You must send notices by mail, return receipt requested, to the address below.

<p><b>Notices should be sent to:</b></p> <p>Microsoft Corporation Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA Via Facsimile: (425) 936-7329</p>	<p><b>Copies should be sent to:</b></p> <p>Microsoft Corporation Legal and Corporate Affairs Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA Via Facsimile: (425) 936-7329</p>
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Customer agrees to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account



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administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not Customer actually receives the email.

**Assignment.** Neither Customer, Contractor nor Microsoft may assign this agreement either in whole or in part without the other party's prior written consent. Any prohibited assignment is void.

**C. Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.

**Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.

**No agency.** This agreement does not create an agency, partnership, or joint venture.

**No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.

**Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.

**Microsoft as an independent contractor.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's confidential information.

**Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.

**Entire agreement.** In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.

**Survival.** All provisions survive termination of this agreement except that requiring performance only during the term of the agreement.

**U.S. export jurisdiction.** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.

**Force majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.

**ADDITIONAL TERMS APPLICABLE WHEN THE CUSTOMER IS A U.S. FEDERAL AGENCY.**

No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s) acquired under this agreement shall apply in place of, or serve to modify any provision of this agreement, even if a user or



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authorized officer of Customer purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of this agreement, then the relevant term or condition of this agreement shall govern and supersede the purchase of such Product(s) to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein, contains a provision (1) allowing for the automatic termination of your license rights or Online Services; (2) allowing for the automatic renewal of services and/or fees; (3) requiring the governing law to be anything other than Federal law; and/or (4) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

### **Definitions.**

Any reference in this agreement to “day” will be a calendar day. “Acceptable Use Policy” is set forth in the Online Services Terms.

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“Azure Government Services” means one or more of the services or features Microsoft makes available to Enrolled Affiliate under this Enrollment and identified at <http://azure.microsoft.com/en-us/regions/#services>, which are Government Community Cloud Services.

“CJI” means Criminal Justice Information, as defined in FBI CJIS Policy.

“CJIS Covered State” means a state, as shown at <https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS> or another site Microsoft may provide, with which Microsoft and the applicable state have entered into a CJIS State Agreement.

“CJIS Covered Service” means, for any state-specific CJIS Amendment, the Microsoft Online Services that are listed as such in that amendment, and for which Microsoft’s CJIS representations apply.

“CJIS State Agreement” means an agreement between Microsoft and a Covered State’s CSA (or another entity to which the CSA has delegated its duties) containing terms and conditions under which the Covered State and Microsoft will comply with the applicable requirements of the CJIS Policy. Each CJIS State Agreement is consistent with the applicable state-specific CJIS Amendment, and includes Microsoft CJIS Security Addendum Certifications. For clarity, a CJIS State Agreement may be titled “CJIS Information Agreement” or “CJIS Management Agreement.”

“Community” means the community consisting of one or more of the following: (1) a Government, (2) a Customer using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which the Customer determines, and Microsoft agrees, that the use of Government Community Cloud Services is appropriate to meet the Customer’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.



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“Customer Agreement” means the binding agreement between the Contractor and Customer under which Customer orders Products from the Contractor and the Contractor binds Customer to the terms of the this agreement.

“Compliance Trust Center Page” means the compliance page of the Microsoft Trust Center, published by Microsoft at <https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx> or a successor site Microsoft later identifies.

“Consumption Offering”, “Commitment Offering”, or “Limited Offering” describe categories of Subscription offers and are defined in Section 2.

“Covered Entity” means any State/Local Entity in a Covered State with which you maintain a contractual relationship whose use of CJIS Covered Services is subject to CJIS Policy.

“CSA” means, for each CJIS Covered State, that state’s CJIS Systems Agency, as defined in FBI CJIS Policy. “Customer Data” is defined in the Online Services Terms.

“End User” means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services. With respect to ITAR Covered Services, End User means an individual that accesses the ITAR Covered Services. With respect to IRS 1075 Covered Services, End User means an individual that accesses the IRS 1075 Covered Services. “Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“FTI” is defined as in IRS Publication 1075.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Fix” means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“IRS 1075 Covered Services” means Azure Government services listed as being in the scope for IRS 1075 at <http://azure.microsoft.com/en-us/support/trust-center/compliance/irs1075/> or its successor site. Without limitation, IRS 1075 Covered Services do not include any other separately branded Online Services.

“IRS Publication 1075” means the Internal Revenue Services (IRS) Publication 1075 effective January 1, 2014, including updates (if any) released by the IRS during the term of the Enrollment.

“ITAR” means the International Traffic in Arms Regulations, found at 22 C.F.R. §§ 120 - 130.

“ITAR-controlled data” means Customer Data that is regulated by the ITAR as Defense Articles or Defense Services.



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“ITAR Covered Services” means, solely with respect to this Amendment, the (i) Office 365 GCC High services; and (ii) Azure Government services, listed as being in the scope for the ITAR at <https://www.microsoft.com/en-us/TrustCenter/Compliance/itar> or its successor site.

“Microsoft Trust Center Compliance Page” is Microsoft’s website accessible at <https://www.microsoft.com/en-us/TrustCenter/Compliance/> or a successor upon which Microsoft provides information about how each of its Online Services complies with, and/or is certified under, various government and industry control standards.

“Licensing Site” means <http://www.microsoft.com/licensing/contracts> or a successor site.

“Non-Microsoft Product” is defined in the Online Services Terms.

“Office 365 Service Descriptions” means, collectively and solely for this Amendment, the Service Descriptions for Office 365 High, published by Microsoft at <https://technet.microsoft.com/en-us/library/mt774581.aspx> (for the product superset, Office 365 US Government) and <https://technet.microsoft.com/en-us/library/mt774968.aspx> (for the product subset, Office 365 GCC High), or at successor sites Microsoft later identifies.

“Office 365 US Government” means the Government Community Cloud Service described by the Office 365 Service Descriptions

“Office 365 GCC High” means the Government Community Cloud Service described by the Office 365 Service Descriptions.

“Online Services” means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Government Community Cloud Services, Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

“Online Services Terms” means the additional terms that apply to Customer’s use of Online Services and attached hereto. The Online Services Terms in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the Online Services Terms applies to Enrolled Affiliate’s order.

“Previews” means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

“Product” means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews.

“Product Terms” means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is attached hereto. The Product Terms in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the Product Terms applies to Enrolled Affiliate’s order.

“SLA” means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site. The SLA in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the SLA applies to Enrolled Affiliate’s order.

“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer’s state and located within Customer’s state’ jurisdiction and geographic boundaries.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.



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“Subscription” means an enrollment for Online Services for a defined Term as established by your Reseller. “Technical Data” has the meaning provided in 22 C.F.R. § 120.

“Term” means the duration of a Subscription (e.g., 30 days or 12 months).

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights” means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

Cloud Reseller  
Agreement  
Terms & Conditions

Page 40 of 43 Microsoft Corporation (NAOC USGCC)

# Microsoft online subscription agreement

This Microsoft Online Subscription Agreement is between the Ordering Activity under GSA Schedule contracts("you" or "your"), and Microsoft Corporation ("Microsoft", "we", "us", or "our"). It consists of the terms and conditions below, as well as the Online Services Terms, the SLAs, and the Offer Details for your Subscription or renewal (together, the "agreement"). It is effective on the date we provide you with confirmation of your Subscription or the date on which your Subscription is renewed as applicable. Key terms are defined in Section 8.

## Use of Online Services.

**Right to use.** We grant you the right to access and use the Online Services and to install and use the Software included with your Subscription, as further described in this agreement. We reserve all other rights.

**Acceptable use.** You may use the Product only in accordance with this agreement. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Product, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of the Online Services. You may not rent, lease, lend, resell, transfer, or host the Product, or any portion thereof, to or for third parties except as expressly permitted in this agreement or the Online Services Terms.

**End Users.** You control access by End Users, and you are responsible for their use of the Product in accordance with this agreement. For example, you will ensure End Users comply with the Acceptable Use Policy.

**Customer Data.** You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the Online Services to you without violating the rights of any third party or otherwise obligating Microsoft to you or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to your use of the Product other than as expressly set forth in this agreement or as required by applicable law.

**Responsibility for your accounts.** You are responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Online Services. You must promptly notify our customer support team about any possible misuse of your accounts or authentication credentials or any security incident related to the Online Services.

**Preview releases.** We may make Previews available. **Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLAs and all limited**

**warranties provided in this agreement.** Previews may not be covered by customer support. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into general availability.

**Managed Services for Microsoft Azure.** You may use Microsoft Azure Services to provide a Managed Service Solution provided (1) you have the sole ability to access, configure, and administer the Microsoft Azure Services, (2) You have administrative access to the virtual OSE(s), if any, in the Managed Service Solution, and (3) the third party has administrative access only to its application(s) or virtual OSE(s). You are responsible for the third party's use of Microsoft Azure Services in accordance with the terms of this agreement. Your provision of Managed Services remains subject to the following limitations in the Online Services Terms:

you may not resell or redistribute the Microsoft Azure Services, and

you may not allow multiple users to directly or indirectly access any Microsoft Azure Services feature that is made available on a per user basis.

**Additional Software for use with the Online Services.** To enable optimal access to and use of certain Online Services, you may install and use certain Software in connection with your use of the Online Service as described in the Online Services Terms. We license Software to you; we do not sell it. Proof of your Software license is (1) this agreement, (2) any order confirmation, and (3) proof of payment. Your rights to access Software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.

## Purchasing services.

**Available Subscription offers** . The Portal provides Offer Details for available Subscription offers, which generally can be categorized as one or a combination of the following:

**Commitment Offering** . You commit in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis in advance of use as long as it does not violate 31 U.S.C. 3324. With respect to Microsoft Azure Services, additional or other usage (for example, usage beyond your commitment quantity) may be treated as a Consumption Offering. Committed quantities not used during the Term will expire at the end of the Term.

**Consumption Offering (also called Pay-As-You-Go)** . You pay based on actual usage in the preceding month with no upfront commitment. Payment is on a periodic basis in arrears.

**Limited Offering.** You receive a limited quantity of Online Services for a limited term without charge (for example, as a Trial Subscription) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to pricing, cancellation fees,

payment, and data retention may not apply.

### **Ordering.**

By ordering or renewing a Subscription, you agree to the Offer Details for that Subscription. Unless otherwise specified in those Offer Details, Online Services are offered on an "as available" basis. You may place orders for your Affiliates under this agreement and grant your Affiliates administrative rights to manage the Subscription, but Affiliates may not place orders under this agreement. You also may assign the rights granted under Section 1.a to a third party for use by that third party in your internal business. If you grant any rights to Affiliates or third parties with respect to Software or your Subscription, such Affiliates or third parties will be bound by this agreement and you agree to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.

Some offers may permit you to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.

**Pricing and payment.** Payments are due and must be made according to the Offer Details for your Subscription.

For Commitment Offerings, the price level may be based on the quantity of Online Services you ordered. Some offers may permit you to modify the quantity of Online Services ordered during the Term and your price level may be adjusted accordingly in accordance with the GSA Pricelist, but price level changes will not be retroactive. During the Term of your Subscription, prices for Online Services will not be increased, as to your Subscription, from those in the GSA Pricelist the time your Subscription became effective or was renewed, except where prices are identified as temporary in the Offer Details, or for Previews or Non- Microsoft Products. All prices are subject to change at the beginning of any Subscription renewal in accordance with the GSA Pricelist.

Reserved.

### **Renewal.**

Upon renewal of your Subscription, this agreement will terminate, and your Subscription will thereafter be governed, by the terms and conditions set forth in this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), on the date on which your Subscription is renewed (the "Renewal Terms"). If you do not agree to any Renewal Terms, you may decline to renew your Subscription.

For Commitment Offerings, a Subscription terminates upon expiration of the Term. .

For Consumption Offerings, your Subscription will terminate upon expiration of the term and subsequent Subscription terms will be purchased separately.

For Limited Offerings or Trial Subscriptions, renewal may not be permitted.

**Eligibility for Academic, Government and Nonprofit versions.** You agree that if you are purchasing an academic, government or nonprofit offer, you meet the respective eligibility requirements listed at the following sites:

For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at <http://go.microsoft.com/?linkid=9862882>;

For government offers, the requirements listed at <http://go.microsoft.com/?linkid=9862883>; and

For nonprofit offers, the requirements listed at <http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentType=19>.

**Taxes** .Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Microsoft shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

## Term, termination, and suspension.

**Agreement term and termination.** This agreement will remain in effect until the expiration, termination, or renewal of your Subscription, whichever is earliest.

**Subscription termination.** You may terminate a Subscription at any time during its Term; however, you must pay all amounts due and owing within thirty (30) days of receipt of the invoice.

**One-Month Subscription.** A Subscription having a one-month Term may be terminated anytime without any cancellation fee.

**Subscriptions of more than one-month** . If you terminate a Subscription to Microsoft Azure Services within 30 days of the date on which the Subscription became effective or was renewed, you must pay for the initial 30 days of the Subscription, but no payments will be due for the remaining portion of the terminated Subscription.



For all other Online Services, if you terminate a Subscription before the end of the Term, you you will receive a refund of any portion of the Subscription fee you have paid for the remainder of the Term; provided, however, no refunds will be provided for partially unused months.

**Suspension.** We may suspend an End User from use of the Online Services if: (1) it is reasonably needed to prevent unauthorized access to Customer Data; or an End User does not abide by the Acceptable Use Policy or violates other terms of this agreement.

We may temporarily suspend your use of the Online Services if you fail to respond to a claim of alleged infringement under Section 5 within a reasonable time; or you do not pay amounts due under this agreement.

For all other Subscriptions, a temporary suspension will apply to the minimum necessary part of the Online Services and will be in effect only while the condition or need exists. We will give notice before we temporarily suspend, except where we reasonably believe we need to suspend immediately. If you do not fully address the reasons for the suspension within 60 days after we temporarily suspend, we may bring dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Microsoft shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

## WARRANTIES.

### Limited warranty.

**Online Services.** We warrant that the Online Services will meet the terms of the SLA during the Term and perform substantially in accordance with the Online Service written materials accompanying it. Your only remedies for breach of this warranty are those in the SLA.

**Software.** We warrant for one year from the date you first use the Software that it will perform substantially as described in the applicable user documentation. If Software fails to meet this warranty we will, at our option and as your exclusive remedy, either (1) return the contract price paid for the Software or (2) repair or replace the Software.

**Limited warranty exclusions.** This limited warranty is subject to the following limitations:

any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;

this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;

this limited warranty does not apply to problems caused by a failure to meet minimum system requirements; and

this limited warranty does not apply to Previews or Limited Offerings.

**DISCLAIMER.** Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply to the fullest extent permitted under applicable law.

## Defense of claims.

### Defense.

We will defend you against any claims made by an unaffiliated third party that a Product infringes that third party's patent, copyright or trademark or makes unlawful use of its trade secret. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

Reserved.

**Limitations.** Our obligations in Section 5a won't apply to a claim or award based on: (i) any Customer Solution, Customer Data, Non-Microsoft Products, modifications you make to the Product, or services or materials you provide or make available as part of using the Product; (ii) your combination of the Product with, or damages based upon the value of, Customer Data, or a Non-Microsoft Product, data, or business process; (iii) your use of a Microsoft trademark without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim; (iv) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party; or (v) Products provided free of charge.

**Remedies.** If we reasonably believe that a claim under Section 5.a.(i) may bar your use of the Product, we will seek to: (i) obtain the right for you to keep using it; or (ii) modify or replace it with a functional equivalent and notify you to stop use of the prior version of the Product. If these options are not commercially reasonable, we may terminate your rights to use the Product and then refund any advance payments for unused Subscription rights.

**Obligations.** Each party must notify the other promptly of a claim under this Section. The party seeking protection must (i) give the other sole control over the defense and settlement of the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment or settlement. The parties' respective rights to defense and payment of judgments (or settlement the other consents to) under this Section 5 are in lieu of any common law or

statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

## Limitation of liability.

**Limitation.** The aggregate liability of each party for all claims under this agreement is limited to direct damages up to the contract price under this agreement for the Online Service during the 12 months before the cause of action arose; provided, that in no event will a party's aggregate liability for any Online Service exceed

the contract price for that Online Service during the Subscription. For Products provided free of charge, Microsoft's liability is limited to direct damages up to \$5,000.00 USD.

**EXCLUSION.** Neither party will be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible or reasonably foreseeable. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**Exceptions to limitations.** The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 5; or (2) violation of the other's intellectual property rights.

## Miscellaneous.

**Notices.** You must send notices by mail, return receipt requested, to the address below.

Notices should be sent to:	Copies should be sent to:
Microsoft Corporation Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA	Microsoft Corporation Legal and Corporate Affairs Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA
	Via Facsimile: (425) 936-7329

You agree to receive electronic notices from us, which will be sent by email to the account administrator you specify in the Portal. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the account administrator email address that you specify in the Portal is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not you actually receive the email.

**License Transfers and Assignment.** You or Microsoft may not assign this agreement either in whole or in part or transfer licenses without the other party's prior written consent.

## Reserved

**Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.

**Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.

**No agency.** This agreement does not create an agency, partnership, or joint venture.

**No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.

**Applicable law and venue.** This agreement is governed by the Federal laws of the United States.

**Entire agreement.** This agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) The Government Purchase Order, (2) the underlying GSA Schedule Contract, (3) this Microsoft Online Subscription Agreement, (4) the Online Services Terms, (5) the applicable Offer Details, and (6) any other documents in this agreement.

**Survival.** The terms in Sections 1, 2.e, 3.b, 4, 5, 6, 7, and 8 will survive termination or expiration of this agreement.

**U.S. export jurisdiction.** The Products are subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <https://www.microsoft.com/exporting/>.

**Force majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf. If you specify an entity, or you use an email address provided by an entity you are affiliated with (such as an employer) in connection with a Subscription purchase or renewal, that entity will be treated as the owner of the Subscription for purposes of this agreement.

**Government customers should consult with Microsoft.** Government customers should consult with Microsoft prior to acceptance. If you are a government customer, before accepting this agreement, you should consult with your Microsoft representative to assure full compliance with local laws and governmental procurement processes.

**Stamp tax.** Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Microsoft shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

# Definitions.

Any reference in this agreement to "day" will be a calendar day. "Acceptable Use Policy" is set forth in the Online Services Terms.

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 2.

"Customer Data" is defined in the Online Services Terms. "Customer Solution" is defined in the Online Services Terms.

"End User" means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services, or any user of a Customer Solution.

"Managed Service Solution" means a managed IT service you provide to a third party that consists of the administration of and support for Microsoft Azure Services.

"Microsoft Azure Services" means one or more of the Microsoft services and features identified at <https://azure.microsoft.com/en-us/services>, except where identified as licensed separately.

"Non-Microsoft Product" is defined in the Online Services Terms.

"Offer Details" means the pricing and related terms applicable to a Subscription offer, as published in the Portal.

"Online Services" means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Dynamics CRM Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

"Online Services Terms" means the terms that apply to your use of the Products available at <https://www.microsoft.com/licensing/onlineuserights>.

"Previews" means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

"Portal" means the Online Services' respective web sites that can be found at <https://www.microsoft.com/licensing/online-services/default.aspx>, <https://azure.microsoft.com/en-us/pricing/>, or at an alternate website we identify.

"Product" means any Online Service (including any Software).

"SLA" means the commitments we make regarding delivery and/or performance of an Online Service, as published

at <http://www.microsoftvolumelicensing.com/csla>, <https://azure.microsoft.com/en-us/support/legal/sla/>, or at an alternate site that we identify.

"Software" means Microsoft software we provide for installation on your device as part of your Subscription or to use with the Online Service to enable certain functionality.

"Subscription" means an enrollment for Online Services for a defined Term as specified on the Portal. You may purchase multiple Subscriptions, which may be administered separately and which will be governed by the terms of a separate Microsoft Online Subscription Agreement.

"Term" means the duration of a Subscription (e.g., 30 days or 12 months).



# Microsoft Volume Licensing License Agreement/Product Use Rights

April 2015

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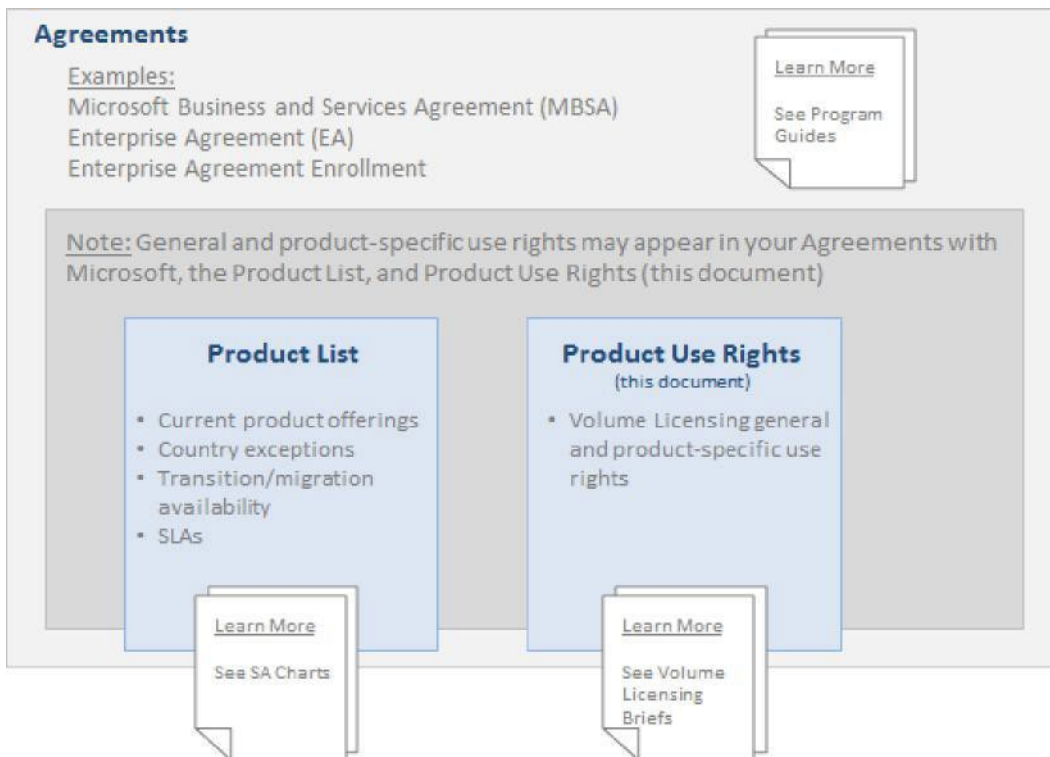


# Introduction

## USING THIS DOCUMENT

These License Agreement/Product Use Rights are an important part of the License between Microsoft and Microsoft Volume Licensing customers.

These License Agreement/Product Use Rights apply to the Microsoft Products that you order from the authorized Microsoft reseller or Government Partner under such party’s contract with you (your “Volume Licensing Agreement”). If you are an entity of the United States Government, these Microsoft License Agreement/Product Use Rights constitute an addendum to your Volume Licensing Agreement and govern your use of the Microsoft Products. For all other entities, these Microsoft License Agreement/Product Use Rights are incorporated into your Volume License Agreement and govern your use of the Microsoft Products. References to “Enterprise Agreement” or “Select Agreement” in these License Agreement/Product Use Rights refer to the volume licensing program agreement executed between Microsoft and your authorized Microsoft reseller or Government Partner. Any program terms that apply to you are expressly incorporated into your Volume Licensing Agreement.



## LICENSE TYPES

The type of License you acquire depends on what is available under your agreement and what you order. Some Products, such as Online Services, are available under Subscription Licenses only. Other Products are available under either perpetual or fixed-term licenses or on a subscription basis, depending on the Microsoft Volume Licensing Program under which they are licensed. See your Volume Licensing Agreement and the Microsoft Product List at <http://go.microsoft.com/?linkid=9839207> for more information about the License types available under your agreement and for a particular Product.

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HOW TO DETERMINE WHICH LICENSE TERMS APPLY TO A PRODUCT

*The License terms that apply to your use of a given licensed Product include the Universal License Terms, the General License Terms for the licensing model under which the Product is licensed, and any Product-specific License Terms.*

Universal License Terms

Universal License Terms apply to every Product licensed through Microsoft Volume Licensing (except where specifically noted in the General License Terms and/or Product-Specific License Terms).

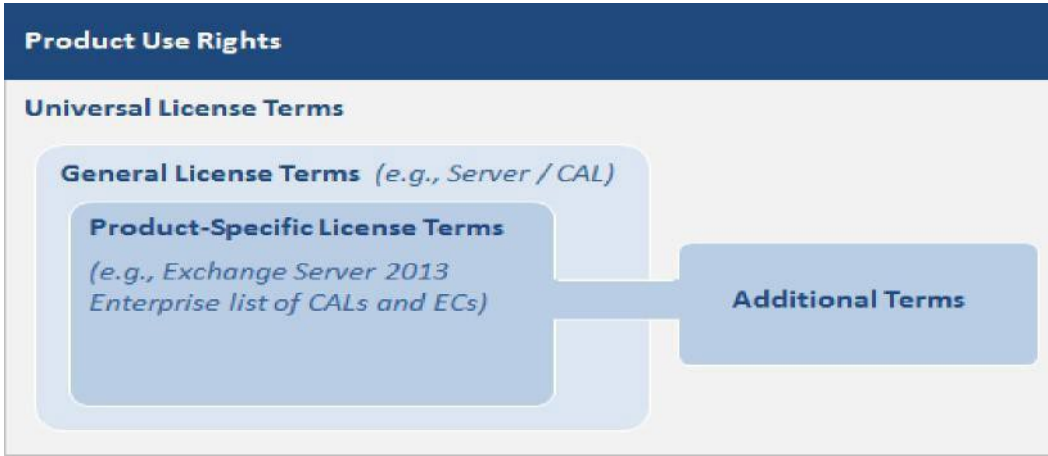
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**General License Terms**

General License terms apply to all Products licensed under a given Licensing Model (except where specifically noted in the Product-Specific License Terms).

**Product-Specific License Terms**

Product-Specific License Terms apply specifically to the Product or Products under which they are listed.



**LICENSING MODELS**

There are nine different Licensing Models used for acquiring licensed Products through Microsoft Volume Licensing:

<ul style="list-style-type: none"> <li>• Desktop Applications</li> </ul>	Servers: Server/CAL	Specialty Servers
<ul style="list-style-type: none"> <li>• Desktop Operating Systems</li> </ul>	Servers: Per Core	Developer Tools
<ul style="list-style-type: none"> <li>• Servers: Processor/CAL</li> </ul>	Management Servers	Online Services

Note that some Products may be available under more than one Licensing Model. Also, some Products use a combination of two or more Licensing Models and are included in the Combined Licensing Models section after the sections for each Licensing Model.

**Notices**

[Appendix 1](#) includes notices relevant to various Products as noted in the Product-Specific terms.

**Software Assurance Benefits**

[Appendix 2](#) contains License terms that apply to Software Assurance benefits. The Microsoft Volume Licensing Product List describes these benefits.

**Additional Software**

[Appendix 3](#) includes the additional software for the listed server Products.

**PRIOR VERSIONS AND PRODUCTS NO LONGER AVAILABLE WORLDWIDE**

These License Agreement/Product Use Rights cover the most recent version of Microsoft Products. Earlier versions of this

~~document containing License terms for earlier versions of Products are available at~~  
<http://www.microsoftvolumelicensing.com/userights/PURRetired.aspx>. You will also find some archived versions of the License Agreement/Product Use Rights at <http://www.microsoft.com/licensing/about-licensing/product-licensing.aspx>. If you cannot find the version you need, please contact your account manager or reseller.

### ***CLARIFICATIONS AND SUMMARY OF CHANGES***

We designed these License Agreement/Product Use Rights to help you License and manage your use of Microsoft Products. Below ~~are recent additions, deletions and other changes to the License Agreement/Product Use Rights. Also listed below, as necessary,~~ are clarifications of Microsoft licensing policy in response to common customer questions.

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Mgmt Servers	+ Specialty Servers	+ Dev Tools	+ Online Services	+ Combined Models	+ Appendices	+ Product Index

Additions	Deletions
☐ Skype for Business 2015	☐ Forefront Identity Manager 2010 R2
☐ Skype for Business Server 2015	☐ Lync 2013
	☐ Lync Server 2013

**Lync Online**

Skype for Business Online has replaced Lync Online.

**Management Servers**

Added to the General License Terms that use of a physical OSE to run hardware virtualization software, provide hardware virtualization services or run software to manage and service OSEs on a device, does not require a Management License,

**Windows Server 2012 R2**

Added Forefront Identity Manager 2010 User CAL, Enterprise Mobility Suite User SL and Microsoft Azure Active Directory Premium as fulfilling Additive CAL requirement for Forefront Identity Manager 2010 R2 functionality.

Added Forefront Identity Manager 2010 R2 External Connector as fulfilling Additive External Connector requirement for Forefront Identity Manager 2010 R2 functionality.

Added requirement for a CAL for management of identity information.

Clarified that no CAL is required for user only using Forefront Identity Manager synchronization service.

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## UNIVERSAL LICENSE TERMS

These license terms apply universally to your use of Microsoft software and Online Services licensed under your Volume Licensing Agreement.

We do not transfer any ownership rights in any licensed Product or Online Service, and we reserve all rights not expressly granted.

No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s), including Online Services available through Microsoft's Volume Licensing program shall apply in place of, or serve to modify any provision of this License Agreement/Product Use Rights, even if a user or authorized officer of you or your Affiliate purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoidance of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the Products that such provisions attach to) and any term or condition of this License Agreement/Product Use Rights, then the relevant term or condition of this License Agreement/Product Use Rights shall govern and supersede the purchase of such Product(s) to the extent of any such conflict.

If any document or provision referenced in a URL or otherwise incorporated into this License Agreement/Product Use Rights contains terms that (a) allow for the automatic termination of a License; (b) allow for the automatic renewal of fees; (c) require the governing law to be anything other than Federal law; (d) require you to indemnify Microsoft or any third party; and/or (e) otherwise violate applicable law, then such provision shall not apply.

### Definitions

Terms used in these License Agreement/Product Use Rights but not defined will have the definition provided in your Volume Licensing Agreement. The following definitions also apply:

**Additive CAL** means a CAL that must be used on conjunction with a base CAL.

**Additive External Connector License** means an External Connector License that must be used in conjunction with a base External Connector License.

**Affiliate** means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

**CAL** means client access License. There are two kinds of CALs: user and device. A user CAL allows access to the server software from any device by one user. A device CAL allows access to the server software from one device by any user.

**Client OSE** means an OSE running a client operating system.

**Clustered HPC Application** means high performance computing applications that solve complex computational problems, or a set of closely related computational problems in parallel. Clustered HPC applications divide a computationally complex problem into a set of jobs and tasks which are coordinated by a job scheduler, such as provided by Microsoft HPC Pack, or similar HPC middleware, which distributes these in parallel across one or more computers operating within an HPC cluster.

**Cluster Node** means a device that is dedicated to running Clustered HPC Applications or providing job scheduling services for Clustered HPC Applications.

**Core Factor** means a numerical value associated with a specific physical processor for purposes of determining the number of Licenses required to license all of the physical cores on a server.

**Core Infrastructure Server (CIS) software** means the set of individual Microsoft Products for which you are granted use, access or management rights under a particular edition of the CIS Suite License. CIS software includes the latest versions of those Products made available during the term of your Software Assurance coverage (and any prior version).

**Customer Data** means all data, including all text, sound, or image files and software that are provided to us by, or on behalf of, you through your use of the Online Service.

**Cycle Harvesting Node** means a device that is not dedicated to running Clustered HPC Applications or job scheduling services for Clustered HPC Applications.

**Enrollment** means the document that Government Partner submits to Microsoft under a Microsoft Volume Licensing program to place orders for you.

**Enterprise** means you and the Affiliates specifically designated in your Volume Licensing Agreement and the Enrollment.

**Enterprise Online Service** means any Online Service designated as an Enterprise Online Service in the Product List and chosen for you by the Government Partner under your Enrollment. Enterprise Online Services are treated as Online Services, except as otherwise noted.

**Enterprise Product** means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product List and chosen for you by the Government Partner. Enterprise Products must be licensed for all Qualified Devices and Qualified Users

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on an Enterprise-wide basis under a Microsoft Volume Licensing program. Enterprise Products are treated as Products, except as otherwise noted

**External Connector License** means a License attached to a Server that permits access to the server software by External Users.

**External Users** means users that are not either your or your Affiliates' employees, or your or your affiliates' onsite contractors or onsite agents.

**Fleet Applications** means software that uses MapPoint, and data from sensors used specifically with multiple vehicles to provide location information (such as GPS systems and triangulation devices).

**Hardware Thread** means either a Physical Core or a hyper-thread in a Physical Processor.

**High Performance Computing ("HPC") Workload** means a workload where the server software is used to run a Cluster Node and is used in conjunction with other software as necessary to permit security, storage, performance enhancement and systems management on a Cluster Node for the purpose of supporting the Clustered HPC Applications.

**Industry Device (also known as line of business device)** means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (e.g., a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g., a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

**Instance** means an image of software that is created by executing the software's setup or install procedure or by duplicating an existing Instance.

**License** means your right to download, install, access and use a Product. For certain Products, a License may be available on a fixed term or subscription basis ("Subscription License"). Licenses for Online Services will be considered Subscription Licenses.

**Licensed Device** means the single physical hardware system to which a License is assigned. For purposes of this definition, a hardware partition or blade is considered to be a separate device.

**Licensed Server** means the single Server to which a License is assigned. For purposes of this definition, a hardware partition or blade is considered to be a separate Server.

**Licensed User** means the single person to whom a License is assigned.

**Management License** means a License that permits management of one or more OSEs. There are two categories of Management Licenses: Server Management License and Client Management License. There are three types of Client Management Licenses: User, OSE and device. A User Management License permits management of any OSE accessed by one user; an OSE Management License permits management of one OSE accessed by any user; a device Management License (Core CAL or Enterprise CAL Suite) permits management of any OSE on one device.

**Managing an OSE** means to solicit or receive data about, configure, or give instructions to the hardware or software that is directly or indirectly associated with the OSE. It does not include discovering the presence of a device or OSE.

**Non-Microsoft Product** means any software, data, service, website or other Product licensed, sold or otherwise provided to you by an entity other than us, whether you obtained it via our Online Services or elsewhere.

**Online Service** means the Microsoft-hosted services identified in the Online Services section of the Product List.

**Operating System Environment (OSE)** means all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and instances of applications, if any, configured to run on the operating system Instance or parts identified above. There are two types of OSEs, physical and virtual. A physical hardware system can have one Physical OSE and/or one or more Virtual OSEs.

**Physical Core** means a core in a Physical Processor.

**Physical OSE** means an OSE that is configured to run directly on a physical hardware system. The operating system Instance used to run hardware virtualization software (e.g. Microsoft Hyper-V Server or similar technologies) or to provide hardware virtualization services (e.g. Microsoft virtualization technology or similar technologies) is considered part of the Physical OSE.

**Physical Processor** means a processor in a physical hardware system.

**Product** means all Products identified on the Product List, such as software, Online Services and other web-based services, including pre-release or beta versions. Products may be made available under programs that vary by region.

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**Product List** means the statement published by Microsoft from time to time on the World Wide Web at <http://www.microsoft.com/licensing/contracts>, or at a successor site that Microsoft identifies. The Product List includes any Product-specific conditions or limitations on the acquisition of Licenses for, or use of, Products.

**Qualified Device** means any device that is used by or for the benefit of your Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Professional locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure (“VDI”). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not managed (as defined in the Product List at the start of the applicable initial or renewal term of the Enrollment) as part of your Enterprise.

At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate’s Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

**Qualified User** means a person (e.g., employee, consultant, contingent staff, etc.) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product CAL or any Enterprise Online Services. It does not include a person who accesses server software or Online Services solely under a License identified in the Qualified User exemptions in the Product List.

**Reserved License** means for an Online Service identified as eligible for true-ups in the Product List, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

**Production Environment** means any Physical or Virtual OSE running a production workload or accessing production data, or any Physical OSE hosting one or more Virtual OSEs running production workloads or accessing production data.

**Qualifying Third Party Device** means a device that is not controlled, directly or indirectly, by you or your affiliates (e.g., a third party’s public kiosk).

**Running Instance** means an Instance of software that is loaded into memory and for which one or more instructions have been executed. (You “Run an Instance” of software by loading it into memory and executing one or more of its instructions.) Once running, an Instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.

**SL** means Subscription License.

**Server** means a physical hardware system capable of running server software. **Server Farm** means a single data center or two data centers each physically located:

- in a time zone that is within four hours of the local time zone of the other (Coordinated Universal Time (UTC) and not DST), and/or
- within the European Union (EU) and/or European Free Trade Association (EFTA).

**VDI Licensed Device** means a device to which you assign a VDI suite License and from which you access and remotely use virtual Client OSEs.

**VDI Host** means a device on which you host virtual Client OSEs running software you access and remotely use from VDI Licensed Devices.

**VDI Software** means the Microsoft software for which you are granted use, access or management rights under the VDI Suite License.

**Virtual Core** means the unit of processing power in a virtual hardware system. A Virtual Core is the virtual representation of one or more hardware threads.

**Virtual OSE** means an OSE that is configured to run on a virtual hardware system.

**Virtual Processor** means a processor in a virtual hardware system. Solely for licensing purposes under the Server: Per Processor Licensing Model, a virtual processor is considered to have the same number of threads and cores as each physical processor on the underlying physical hardware system.

**Web Workloads** (also referred to as “Internet Web Solutions”) are publicly accessible and consist solely of web pages, websites, web applications, web services, and/or POP3 mail serving. For clarity, access to content, information, and applications served by the software within an Internet Web Solution is not limited to your or your affiliates’ employees.

Software in Internet Web Solutions is used to run:

- web server software (for example, Microsoft Internet Information Services), and management or security agents (for example, System Center Operations Manager agent);
- database engine software (for example, Microsoft SQL Server) to support Internet Web Solutions.
- the Domain Name System (DNS) service to provide resolution of Internet names to IP addresses as long as that is not the sole function of that instance of the software.

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## Your Use Rights

If you comply with your Volume Licensing Agreement, you may use the software and Online Services as expressly permitted in these License Agreement/Product Use Rights.

### Rights to use other versions

For any permitted copy or instance, you may create, store, install, run or access in place of the version licensed, a copy or instance of a prior version, different permitted language version, or different available platform version (for example, 32 bit or 64 bit). You may use different versions of components only as permitted under the Product-Specific License Terms. The use of an earlier version under these downgrade rights does not extend the support lifecycle of the earlier version.

### Third Party Software

The software may contain third party proprietary programs that are licensed under separate terms that are presented to you. The software may also contain third party open source programs that Microsoft, not the third party, licenses to you under Microsoft's license terms. Notices, if any, for the third party open source programs are included for your information only.

### Pre-release Code

Pre-release code is subject to any specific terms that accompany it.

### Updates and Supplements

We may update or supplement the software you license. If so, you may use that update or supplement with the software, subject to any additional terms that accompany the update or supplement.

### No Commercial Hosting

You may not host the Products for commercial hosting services.

### Technical Limitations

You must comply with any technical limitations in the Products that only allow you to use them in certain ways. You may not work around them.

### Other Rights

Rights to access the software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.

### Documentation

Any person that has valid access to your computer or internal network may copy and use the documentation for your internal reference purposes. Documentation does not include electronic books.

### Outsourcing Software Management

You may install and use permitted copies of the software on Servers and other devices that are under the day-to-day management and control of third parties, provided all such Servers and other devices are and remain fully dedicated to your use. You are responsible for all of the obligations under your Volume Licensing Agreement regardless of the physical location of the hardware upon which the software is used.

### License Reassignment

Most, but not all, Licenses may be reassigned from one device or user to another. The general rules governing License reassignment are described below, along with some special rules for certain Products and License types.

#### LIMITATIONS ON LICENSE REASSIGNMENT

Except as permitted below, you may not reassign Licenses on a short-term basis (within 90 days of the last assignment), nor may you reassign Licenses for Rental Rights, or Software Assurance separately from the underlying License to which the Software Assurance is attached.

#### CONDITION ON LICENSE REASSIGNMENT

When you reassign a License from one device or user to another, you must remove the software or block access from the former device or from the former user’s device.

**SPECIAL CONSIDERATIONS FOR CERTAIN PRODUCTS AND LICENSE TYPES**

**CALs, Management Licenses and User/Device Subscription Licenses (SLs).** You may reassign a CAL, Management License or user or device SL on a short-term basis, to cover a user’s absence or the unavailability of a device that is out of service. Reassignment of these Licenses for any other purpose or timeframe must be permanent. This right does not apply to

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Enterprise Mobility Suite Add-on User SLs, Enterprise Mobility Suite User SLs, Windows desktop operating system User SLs, or Window Virtual Desktop Access (VDA) Licenses or User SLs.

**Early Reassignment Due to Hardware Failure.** You may reassign sooner than within 90 days of the last assignment if you retire the Licensed Device or server due to permanent hardware failure. This right applies to: all server licenses (other than CALs and Management Licenses), Enterprise Mobility Suite and Enterprise Mobility Suite Add-on User SLs, Windows Virtual Desktop Access Subscription Licenses, VDI suites, and Visual Studio Load Test Virtual User Pack 2010.

**Reassignment of Software Assurance Related Rights.** Licenses that are granted or acquired in connection with Software Assurance coverage (e.g., Windows Thin PC, MDOP, User SLs for Software Assurance) generally must be reassigned as and when the qualifying License and Software Assurance are reassigned.

**Subscription Licenses for the Windows desktop operating system.** You may reassign your Windows (VDA) Subscription Licenses and Software Assurance for the Windows desktop operating system User SLs, subject to the general limitation against short-term reassignment and assignment rules stated in the Product List.

**Reassignment of Software Assurance for Windows per Device and Windows Industry operating systems.** You may reassign Software Assurance coverage and the underlying Windows Enterprise Upgrade License or Windows Industry Enterprise Upgrade License to a replacement device, but not on a short-term basis, and only if that replacement device is licensed for a qualifying operating system as required in the Product List; provided, however, you must remove any related desktop operating system upgrades from the former device. Reassignment of a Windows Enterprise Upgrade License or Windows Industry Enterprise Upgrade License may only be done if the upgrade License is covered by active Software Assurance.

**License Mobility within Server Farms and Server Re-partitioning.** You may reassign certain server licenses on a short-term basis under License Mobility within Server Farms rights and Server Repartitioning.

#### Product Activation

Some products and are protected by technological measures and require activation and a Volume License Product key to install or access them. Activation associates the use of the software with a specific device. For information about when activation or a product key is required, see the Product Activation section on <http://www.microsoft.com/licensing/activation>. You are responsible for both the use of product keys assigned to you and activation of Products using your Key Management Service (KMS) machines. Volume License product keys are confidential and subject to the confidentiality provision in your Volume Licensing Agreement with Microsoft. You may not disclose product keys to third parties at any time, even after your Volume Licensing Agreement with Microsoft terminates or expires and notwithstanding any time limitation to the contrary.

#### KMS AND MULTIPLE ACTIVATION KEY (MAK) ACTIVATION

During Multiple Activation Key (MAK) activation, the software will send information about the software and the device to Microsoft. During Key Management Service (KMS) host activation, the software will send information about the KMS host software and the host device to Microsoft. KMS client devices activated using KMS do not send information to Microsoft. However, they require periodic reactivation with your KMS host. The information sent to Microsoft during MAK or KMS host activation includes:

- the version, language and product key of the software
- the Internet protocol address of the device
- information derived from the hardware configuration of the device.

For more information, see <http://www.microsoft.com/licensing/existing-customers/product-activation.aspx>. By using the software, you consent to the transmission of this information. Before you activate, you have the right to use the version of the software installed during the installation process. Your right to use the software after the time specified in the installation process is limited unless it is activated. This is to prevent its unlicensed use. You are not licensed to continue using the software after that time if you do not activate it. If the device is connected to the Internet, the software may automatically connect to Microsoft for activation. You can also activate the software manually by Internet or telephone. If you do so, Internet and telephone service charges may apply. Some changes to your computer components or the software may require you to reactivate the software. The software will remind you to activate it until you do.

#### PROPER USE OF KMS

You may not provide unsecured access to your KMS machines over an uncontrolled network such as the Internet.

**UNAUTHORIZED USE OF MAK OR KMS KEYS**

Microsoft may take any of these actions related to unauthorized use or disclosure of MAK or KMS keys: prevent further activations, deactivate, or otherwise block the product key from activation or validation. Key deactivation may require the customer to acquire a new product key from Microsoft.

**Additional Functionality/Optional Service**

We may provide additional functionality for or an optional add-on service to the Products. Other License terms or use rights, and fees may apply.

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Mgmt		-+		<u>Specialty Servers</u>	-+	<u>Dev Tools</u>	-+	<u>Online Services</u>	-+	<u>Combined Models</u>	-+	<u>Product Index</u>

**Using More than One Product or Functionality Together**

You need a license for each Product and separately licensed functionality used on a device or by a user. For example, if you use Office on Windows, you need Licenses for both Office and Windows. Likewise, to access Remote Desktop Services in Windows Server you need both a Windows Server CAL and a Remote Desktop Services CAL.

**Font Components**

While you run the software or use an Online Service provided by Microsoft, you may use the fonts included with or installed by that software or Online Service, respectively, to display and print content. You may only embed fonts in content as permitted by the embedding restrictions in the fonts; and temporarily download them to a printer or other output device to print content.

**Windows Software Components**

The software includes one or more of the following Windows Software Components: Microsoft .NET Framework, Microsoft Data Access Components, Powershell software and certain .dlls related to Microsoft Build, Windows Identity Foundation, Windows Library for JavaScript, Debghelp.dll, and Web Deploy technologies. All these are part of Windows software. Except as provided in Benchmark Testing below, the license terms for Microsoft Windows apply to your use of these components.

**Benchmark Testing****SOFTWARE**

You must obtain Microsoft's prior written approval to disclose to a third party the results of any benchmark test of the server software or additional software that comes with it. This applies to Products in the Microsoft Servers or Microsoft Developer Tools Licensing Models (see Table of Contents). This does not apply to the .NET Framework (see below) or to Windows Server. It, however, does apply to SQL Technology, in any, licensed with these Products.

**MICROSOFT .NET FRAMEWORK**

The software may include one or more components of the .NET Framework (“.NET Components”). If so, you may conduct internal benchmark testing of those components. You may disclose the results of any benchmark test of those components, provided that you comply with the conditions set forth at <http://go.microsoft.com/fwlink/?LinkID=66406>. Notwithstanding any other agreement you may have with Microsoft, if you disclose such benchmark test results, Microsoft shall have the right to disclose the results of benchmark tests it conducts of your Products that compete with the applicable .NET Component, provided it complies with the same conditions set forth at <http://go.microsoft.com/fwlink/?LinkID=66406>.

**Products That Include SQL Server Technology**

If your edition of the software includes a SQL Server database software Product licensed under the Product-Specific license terms (“SQL Server Database”) you may run that SQL Server Database in one or more physical or virtual operating system environments on any of your servers to support the software. You may also use the same instances of SQL Server Database to support other Products that include any version of SQL Server Database. You do not need SQL Server CALs for such use.

You may not share that instance to support any Product that is not licensed with SQL Server Database.

If your edition of the software includes SQL Server-branded components other than a SQL Server Database, such components are licensed to you under the terms of their respective License s. Such License s may be found:

- in the “legal”, “License s” or similarly named folder in the installation directory of the software, and may be contained in standalone license agreements or appended to the software’s license agreement; or
- through the software’s unified installer.

If you do not agree to a SQL Server-branded component’s license terms, you may not use the component.

**SQL Server Reporting Services Map Report Item**

Power View and SQL Reporting Services Map Item both include use of Bing Maps, including geocodes, within Power View or SQL Reporting Services Map Item. Your use of Bing Maps is also governed by the Bing Maps End User Terms of Use available at:

<http://go.microsoft.com/?linkid=9710837> and the Bing Maps Privacy Statement available at: <http://go.microsoft.com/fwlink/?LinkID=248686>.

## Multiplexing

Hardware or software you use to pool connections, reroute information, reduce the number of devices or users that directly access or use the Product, or reduce the number of operating system environments (or OSEs), devices or users the Product directly manages, (sometimes referred to as “multiplexing” or “pooling”), does not reduce the number of License s of any type that you need.

## System Center Packs

The license terms for the applicable System Center Products apply to your use of Management Packs, Configuration Packs, Process Packs and Integration Packs included with the software.

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## Distributable Code

The software or Online Service may include code that you are permitted to distribute in programs you develop if you comply with the terms below.

### RIGHT TO USE AND DISTRIBUTE

The code and text files listed below are “Distributable Code.” These License Agreement/Product Use Rights may provide rights to other Distributable Code.

**REDIST.TXT Files:** You may copy and distribute the object code form of code listed in REDIST.TXT files.

**Sample Code:** You may modify, copy, and distribute the source and object code form of code marked as “sample.”

**OTHER-DIST.TXT Files:** You may copy and distribute the object code form of code listed in OTHER-DIST.TXT files.

**Third Party Distribution:** You may permit distributors of your programs to copy and distribute the Distributable Code as part of those programs.

**Silverlight Libraries:** Copy and distribute the object code form of code marked as “Silverlight Libraries”, Silverlight “Client Libraries” and Silverlight “Server Libraries”;

**Additional License Terms for Products in the Developer Tools Section of these License Agreement/Product Use Rights:** The software may also contain the following Distributable Code. You may:

**REDIST.TXT Files:** Copy and distribute files listed in the REDIST list located at <http://go.microsoft.com/fwlink/?LinkId=286955>;

**Sample Code:** Modify, copy, and distribute source and object code form of code marked as “Code Snippet”;

**Image Library:** Copy and distribute images and animations in the Image Library as described in the software documentation. You may also modify that content. If you modify the content, it must be for use that is consistent with the permitted use of the unmodified content.

**Templates, Site Templates and Blend Site Templates for Visual Studio:** Modify, copy, deploy and distribute the source and object code form of templates and code marked as “site templates”;

**Fonts and Blend Fonts for Visual Studio:** Distribute unmodified copies of the Buxton Sketch font, SketchFlowPrint font and SegoeMarker font;

**Styles and Blend Styles for Visual Studio:** Copy, modify and distribute the object code form of code identified as “XStyles”;

**Icons:** Distribute unmodified copies of code marked as “icons”;

**ASP.NET MVC and Web Tooling Extensions:** Modify, copy and distribute or deploy any .js files contained in the [ASP.NET](#) Model View Controller, [ASP.NET](#) Web Pages or in the Web Tooling Extensions as part of your [ASP.NET](#) programs;

**Visual Studio LightSwitch Project Templates:** Modify, copy and distribute or deploy the .js files contained in the Visual Studio LightSwitch project templates as part of your LightSwitch programs.

**Windows Library for JavaScript.** Copy and use the Windows Library for JavaScript, without modification, in your programs that you develop for your internal use or in programs that you develop and distribute to third parties. The following also applies to your programs that work in conjunction with the Windows Library for JavaScript. The Windows Library for JavaScript files helps your programs implement the Windows design template and UI look and feel. You may distribute programs containing the Windows Library for JavaScript only through the Windows Store and not by any other means.

**Setup Program:** Distribute distributable code included in a setup program only as part of that setup program. You may not modify it.

**EXTENSIBILITY KIT - Files for Microsoft Commerce Server 2009 Standard and Enterprise Editions:** Copy and distribute the source and object code form of the code marked as “Extensibility Kit”; and

**Access Runtime Files.** Copy and distribute the object code form of SETUP.EXE, ACCESSRT.MSI, and ACCESSRT.CAB files from a licensed copy of Microsoft Office Professional Plus 2013 or Microsoft Office Access 2010 software. You and your end users may only use these files to provide database features for your non-database management programs.

### DISTRIBUTION REQUIREMENTS

For any Distributable Code you distribute, you must:

add significant primary functionality to it in your programs;

for any Distributable Code having a filename extension of .lib, distribute only the results of running such Distributable Code through a linker with your program;

distribute Distributable Code included in a setup program only as part of that setup program without modification;

require distributors and external end users to agree to terms that protect it at least as much as your Volume Licensing Agreement,

including these License Agreement/Product Use Rights and the Product List; and display your valid copyright notice on your programs.

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## DISTRIBUTION LIMITATIONS

You may not:

alter any copyright, trademark or patent notice in the Distributable Code;

use Microsoft's trademarks in your programs' names or in a way that suggests your programs come from or are endorsed by Microsoft;

distribute Distributable Code, to run on a platform other than Microsoft operating systems, run-time technologies, or application platforms, except that JavaScript, CSS and HTML files included for use in websites and web applications (as opposed to Windows Library for JavaScript files) may be distributed to run any platform;

include Distributable Code in malicious, deceptive or unlawful programs; or

modify or distribute the source code of any Distributable Code so that any part of it becomes subject to an Excluded License. An Excluded License is one that requires, as a condition of use, modification or distribution, that the code be disclosed or distributed in source code form, or that others have the right to modify it.

## Software Plus Services

Microsoft may provide services with products through software features that connect with Microsoft or service provider computer systems over the Internet. It may change or cancel the services at any time. You may not use the services in any way that could harm them or impair anyone else's use of them. You may not use the services to try to gain unauthorized access to any service, data, account or network by any means.

## Creating and Storing Instances

You may create and store any number of instances of the software on any of your servers or storage media solely to exercise your right to run instances of the software under your server licenses or your Windows Enterprise license terms.

## No Separation of Software

You may not separate the software for use in more than one OSE under a single License, unless expressly permitted. This applies even if the OSEs are on the same physical hardware system.

## Additional Terms

## Licenses for Products

**Products.** Unless otherwise specified elsewhere in these License Agreement / Product Use Rights, use of any Product that you license is governed by the License Agreement / Product Use Rights specific to each Product and version and by the terms of your Volume Licensing Agreement.

**Fixes.** Fixes are licensed according to the License terms applicable to the Product to which those Fixes relate. If the Fixes are not provided for a specific Product, any other use terms Microsoft provides with the Fixes will apply, and if no use terms are provided, you shall have a non-exclusive, perpetual, fully paid-up License to use and reproduce the Fixes solely for your internal use. You may not modify, change the file name of, or combine any Fixes with any non-Microsoft computer code, except as expressly permitted by Microsoft.

**Reservation of rights.** All rights not expressly granted are reserved.

Upon Microsoft's acceptance of the Government Partner Enrollment on your behalf, you have the following rights during the term of the applicable Enrollment. These rights apply to the Licenses obtained under an Enrollment and are not related to any order or fulfillment of software media. The ability to run current or later versions of a Product licensed under your Volume Licensing Agreement could be affected by minimum system requirements or other factors (e.g., hardware or other software).

## General.

For Enterprise and Enterprise Subscription Enrollments: You may use the number of Licenses ordered for the latest version of a Product, and may use prior versions as permitted in these License Agreement/Product Use Rights, so long as Microsoft receives timely orders and

payments from Government Partner for all required Licenses for such Products and you comply with applicable License terms. The Licenses obtained under an Enrollment are not related to any order or fulfillment of software media.

For Select Enrollments and Select Plus Affiliate Registrations: At any time after the effective date of the Enrollment or after your registration has been accepted by us, you may run for your own benefit as many available Products you choose, provided that you submit orders for all copies of Licenses in the month in which those copies are first run by you and the Government Partner submits orders on your behalf to Microsoft for such Licenses.

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**Use by Affiliates.** You may sublicense the right to use the Products to any of your agency Affiliates included in your Enterprise, but Affiliate recipient of Licenses may not sublicense these rights and its use must be consistent with the License terms contained in these License Agreement/ Product Use Rights.

**Special rule for Enterprise Products.** So long you place annual true-up orders as required and the Government submits such orders to Microsoft as required on your behalf under an Enterprise Enrollment (but not under an Enterprise Subscription Enrollment), you may use the latest version (or any prior version) of each Enterprise Product on each of your Qualified Desktops as permitted in the License Agreement/Product Use Rights. In addition, for CALs, each Qualified Desktop (or, for CALs that are User-based Licenses, each Qualified User) covered by the Enrollment may access and use the associated server software.

**When Licenses become perpetual.** All perpetual Licenses acquired under your Microsoft Volume Licensing Agreement remain subject to the terms of these License Agreement/Product Use Rights and such terms survive expiration or termination of your Microsoft Volume Licensing Agreement or an Enrollment. If you obtain perpetual rights as provided in this Section, then you will have perpetual Licenses to use the Products ordered in the latest version available (or any prior version) as of the date of expiration, termination, or renewal.

The right to run any Product licensed under an Enterprise Enrollment is temporary until:

the Government Partner has paid for a License in full and the applicable initial Enrollment or renewal term during which the License was ordered must have expired or been terminated as permitted in the Microsoft Volume Licensing Agreement.

you are otherwise eligible for perpetual Licenses upon early termination as provided in the Enterprise Agreement.

Thereafter, you will have perpetual Licenses to run the Products ordered in the latest version available (or any prior version) as of the date of expiration, termination, or renewal of the Enterprise Enrollment. The number of perpetual Licenses will be equal to:

For Enterprise Products other than CALs that are User-based Licenses, the total number of Qualified Desktops covered by the Enrollment;

For CALs that are User-based Licenses, the total number of Qualified Users covered by the Enrollment; and

For each Additional Product, the total number of Licenses ordered during the applicable initial Enrollment term or renewal term.

Subscription (Online Services) Licenses are not perpetual under any circumstances.

In the case of early termination of an Enrollment because you terminate your contract with the Government Partner for which the Enrollment was placed (“Early Termination”) then Government Partner on behalf of you and at your direction will have the following options for Licenses, excluding Subscription Licenses:

Government Partner may immediately pay to Microsoft the total remaining amount due, including all installments, in which case, you will have perpetual rights for all Licenses Government Partner has ordered for you; or

Government Partner may pay only amounts due as of the termination date, in which case you will have perpetual Licenses (including the latest version of Products ordered under Software Assurance coverage in an initial or renewal term) for (1) all copies of Products for which payment has been made in full and (2) a proportional number of copies of Products it has ordered for which payment has been made. Your election of an option above must be documented in writing with the Government Partner.

The right to run any Product licensed under an Enterprise Subscription Enrollment is temporary unless and until a Government Partner elects on your behalf and at your direction to obtain perpetual Licenses under the buy-out option, if a buy-out option is available, and pays for the License in full.

When Licenses become perpetual under a Select Enrollment and Select Plus Affiliate Registrations:

License only. Your right to run copies of any Product for which a Government Partner orders on your behalf is temporary until the Government Partner has paid for that License in full. Thereafter, you will have a perpetual License to run the number of copies ordered in the version ordered.

License and Software Assurance (“L&SA”) or Software Assurance. Your right to run copies of any Product for which Government Partner orders L&SA or Software Assurance on your behalf is temporary until:

o The Government Partner has paid all installments of the price for such coverage and the applicable initial Enrollment (or Order in the case of Select Plus) or renewal term during which such Product Licenses were ordered has expired or been renewed, or

you are otherwise eligible for perpetual Licenses as provided in the Government Partner's Select or Select Plus Agreement with Microsoft.

Thereafter, you will have perpetual Licenses to run the Products ordered in the latest versions available as of the date of expiration, renewal, or termination (or any prior version) for the number of copies ordered or renewed.

In cases of Early Termination. In the case of Early Termination you will be entitled to perpetual Licenses only if the Government Partner pays to Microsoft all amounts due and payable as of the termination date.

Subscription (Online Services) Licenses are not perpetual under any circumstances.

**Perpetual Licenses through Software Assurance.** Any perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which that Software Assurance coverage was ordered. All perpetual Licenses acquired under your Volume Licensing Agreement remain subject to the terms of your Volume Licensing Agreement and the applicable License Agreement/Product Use Rights. (References to perpetual Licenses do not apply to Licenses through Software Assurance under an Enterprise Subscription Enrollment.)

## True-Up.

**True-Up Order.** Unless expressly stated otherwise in your Volume Licensing Agreement, you must submit an annual true-up order that accounts for changes since the initial order or last true-up order, including: (1) any increase in licenses, including any increase in Qualified Devices or Qualified Users and Reserved Licenses; (2) Transitions (if permitted); or (3) Subscription License quantity reduction (if permitted). Microsoft, at its discretion, may validate the true-up data submitted through a formal Product deployment assessment using an approved Microsoft partner.

**Enterprise Products.** You must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

**Additional Products.** For Products that have been previously ordered, you must determine the Additional Products used and order the License difference (if any).

**Online Services.** For Online Services identified as eligible for true-up orders in the Product List, you, through Government Partner, may first reserve the additional Licenses prior to use. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Government Partner. Reserved Licenses will be invoiced retroactively for the prior year based upon the month in which they were reserved.

**Transitions.** You must report all Transitions. Transitions may result in an increase in Licenses to be included on the true-up order and a reduction of Licenses for prior orders. Reductions in Licenses will be effective at end of the Transition Period. Associated invoices will also reflect this change. For Licenses paid upfront Microsoft will issue a credit for the remaining months of Software Assurance or Subscription Licenses that were reduced as part of the Transition.

**True-up due date.** The true-up order must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The third-year anniversary true-up order is due within 30 days prior to the Expiration Date. You, through Government Partner, may true-up more often than at each Enrollment anniversary date except for Subscription License reductions.

**Late true-up.** If the true-up order is not received when due:

Microsoft will invoice Government Partner for all Reserved Licenses not previously ordered.

Transitions and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

**Subscription License reductions.** You, through Government Partner, may reduce the quantity of Subscription Licenses at the enrollment anniversary date on a prospective basis if permitted in the Product List as follows:

For Subscription Licenses part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form. Step-up Licenses do not count towards this total count.

For Enterprise Online Services not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

For Additional Products available as Subscription Licenses, you, through Government Partner may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.



Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

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**Update statement.** An update statement must be submitted instead of a true-up order if, as of the initial order or last true-up order, your Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by your authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due within 30 days prior to the Expiration Date.

### **For Application Platforms Enrollments only, notwithstanding anything to the contrary:**

**License Agreement/Product Use Rights.** For Application Platform Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to your use of that Product during the term.

Baseline Licenses are superseded. Baseline Licenses (as defined below) are superseded and replaced by the Licenses granted under the Application Platform Enrollment.

Transitions. The following requirements apply to Transitions:

Licenses with active Software Assurance or Subscription Licenses may be Transitioned at any time if permitted in the Product List. While you may Transition any time, you will not be able to reduce Licenses or associated Software Assurance prior to the end of the Transition Period.

If a Transition is made back to a License that had active Software Assurance as of the date of Transition, then Software Assurance will need to be re-ordered for all such Licenses on a prospective basis following the Transition Period. Software Assurance coverage may not exceed the quantity of perpetual Licenses for which Software Assurance was current at the time of any prior Transition. Software Assurance may not be applied to Licenses transferred by you.

If a device-based License is Transitioned to a user-based License, all users of the device must be licensed as part of the Transition.

If a user-based License is Transitioned to a device-based License, all devices accessed by the user must be licensed as part of the Transition.

**Effect of Transition on Licenses.** Transition will not affect your rights in perpetual Licenses paid in full.

New version rights will be granted for perpetual Licenses covered by Software Assurance up to the end of the Transition Period.

For L&SA not paid in full at the end of the Transition Period, you will have perpetual Licenses for a proportional amount equal to the amounts paid for the Transitioned Product as of the end of the Transition Period.

For L&SA not paid in full or granted a perpetual License in accordance with the above or Subscription Licenses, all rights to Transitioned Licenses cease at the end of the Transition Period.

**Customer Data.** Upon expiration or termination of a License for Online Services, you, through Government Partner must tell Microsoft whether you want Microsoft to:

disable your account and then delete your Customer Data (“Data Deletion”); or

retain your Customer Data in a limited function account for at least 90 days after expiration or termination of the License for such Online Service (the “Retention Period”) so that you may extract its Customer Data.

If Government Partner indicates that you want Data Deletion, you will not be able to extract your Customer Data. If Government Partner indicates you want a Retention Period, you will be able to extract your Customer Data through Microsoft’s standard processes and tools, and Government Partner will reimburse Microsoft if there are any applicable costs to the extent permitted by applicable law. If you do not indicate either Data Deletion or a Retention Period, Microsoft will retain your Customer Data in accordance with the Retention Period.

Following the expiration of the Retention Period, Microsoft will disable your account and then delete your Customer Data.

You agree that, other than as described above, Microsoft has no obligation to continue to hold, export or return your Customer Data. You agree Microsoft has no liability whatsoever for deletion of your Customer Data pursuant to these terms.

**How to Know which License Agreement/Product Use Rights Apply.**

License Agreement/Product Use Rights. Microsoft publishes License Agreement/Product Use Rights for each version of each Product. Use of any Product that Government Partner licenses from Microsoft on your behalf is governed by License

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Agreement/Product Use Rights specific to each Product and version and by the terms of the Microsoft Volume Licensing Agreement under which Government Partner licensed the Product, unless specifically agreed by Microsoft in writing. The latest version of the License Agreement/Product Use Rights is available at <https://www.explore.ms> or at a successor site or by some other reasonable means. Government Partner will provide you with a copy of the applicable License Agreement/Product Use Rights upon request.

License Agreement/Product Use Rights for current and future versions of Products.

The License Agreement/Product Use Rights in effect on the effective date of an Enrollment will apply to your use of then- current versions of each Product (excluding Online Services). For future versions, the License Agreement/Product Use Rights in effect when those future versions are first released will apply. In both cases, subsequent changes made by Microsoft to the License Agreement/Product Use Rights for a particular version will not apply to your use of that version, unless you choose to have such changes apply. The use rights for Online Services and the process for updating them as the Online Services evolve are detailed in the Online Services Section of these License Agreement / Product Use Rights.

License Agreement/Product Use Rights for earlier versions (downgrade).

If you run an earlier version of a Product than the version that was current on the Enrollment effective date, the License Agreement/Product Use Rights for the version licensed, not the version being run, will apply. However, if the earlier version includes components that are not part of the licensed version, any License Agreement/Product Use Rights specific to those components will apply to your use of those components.

Licenses purchased on a non-perpetual basis. Any reference in this License Agreement/Product Use Rights to a right to run Products on a perpetual basis applies to Licenses acquired under your Volume Licensing Agreement for non-perpetual Licenses only if you elect to obtain perpetual Licenses subject to any applicable terms in your Volume Licensing Agreement permitting the acquisition of perpetual Licenses.

Microsoft or your reseller or Government Partner will provide you with a copy of the applicable License Agreement/Product Use Rights or we will make them available either by publication on the World Wide Web at a site we identify or by some other reasonable means. You acknowledge that you and your Affiliates have access to the World Wide Web.

## **Transferring and reassigning Licenses.**

**Transferring Licenses to third parties.** You may transfer fully-paid perpetual Licenses

if you are an agency of the U.S. Government, to another agency of the U.S. Government or to an unaffiliated third party in connection with (i) a privatization of the government agency or of an operating division of you or one of your Affiliates, (ii) a reorganization, or (iii) a consolidation; or

if you are an agency of a state or local government to: (a) any other government agency, department, instrumentality, division, unit or other office of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you; (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of your state and located within your state's jurisdiction and geographic boundaries; and (iii) any other entity expressly authorized by the laws of your state to purchase under state contracts, or (b) an unaffiliated third party in connection with a privatization of an affiliate of agency as set forth in (a) above or of an operating division of you or one of your Affiliates as set forth in (a) above, a reorganization, or a consolidation.

To do so, you must complete and send to Microsoft a transfer notice in a form which can be obtained from <http://microsoft.com/licensing/contracts> before the transfer. All other transfers require Microsoft’s prior written consent. Guidance on what types of transfers are permissible can be found at <http://microsoft.com/licensing/contracts>. No License transfer will be valid unless you provide to the transferee, and the transferee accepts in writing, the applicable License Agreement/Product Use Rights, use restrictions, limitations of liability, and the transfer restrictions described in this document. Any transfer not made in compliance with this section will be void. The resale of Licenses, including any transfer by you or your Affiliate with a primary purpose to enable the transfer of those Licenses to an unaffiliated third party, is expressly prohibited.

**Certain transfers not permitted.**

You may not transfer any of the following:

Licenses on a short-term basis (90 days or less).

temporary rights to use Products.

Software Assurance coverage or benefits.

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perpetual Licenses for any version of any Product acquired through Software Assurance separately from the underlying perpetual Licenses for which that Software Assurance coverage was ordered.

an upgrade License for a desktop operating system Product separately from the underlying desktop operating system License or from the computer system on which the Product is first installed.

full version desktop operating system Licenses, unless transferred with the sale of the device for which it operates.

Online Services Products.

any Licenses for resale to unaffiliated third parties.

Internal reassignment of Licenses and Software Assurance.

Licenses and Software Assurance must be assigned to a single user or device within your Enterprise. Licenses may be reassigned as described in these License Agreement/Product Use Rights.

## Restrictions on use.

You shall not:

separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in this License Agreement/Product Use Rights; reverse engineer, decompile or disassemble any Product or Fix, except where applicable law permits it despite this limitation;

distribute, sublicense, rent, lease, lend or host any Product or Fix, except as expressly agreed to by Microsoft in writing, these License Agreement/Product Use Rights, or in a separate written agreement.

US. Export jurisdiction. Products and Fixes are subject to U.S. export jurisdiction. You must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments as applicable. For additional information, see <http://www.microsoft.com/exporting>.

## Warranties.

**Limited Product warranty.** We warrant that:

Online Services will perform in accordance with the applicable Service Level Agreement; and

Products other than Online Services will perform substantially as described in the applicable Microsoft user documentation.

**Limited warranty term.** The limited warranty for:

Online Services is for the duration of your use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement; and

Products other than Online Services is one year from the date you first use the Product.



**Limited warranty exclusions.** This limited warranty is subject to the following limitations:

any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;

the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement or the License Agreement/Product Use Rights, or resulting from events beyond our reasonable control;

the limited warranty does not apply to components of Products that you are permitted to redistribute;

the limited warranty does not apply to free, trial, pre-release, or beta Products; and

the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.

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**Remedies for breach of limited warranty.** If we fail to meet any of the above limited warranties and you notify us within the warranty period, then we will:

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for Products other than Online Services, at its option either (1) return the price paid or (2) repair or replace the Product.

These are your only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

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**Microsoft's agreement to protect.** For any claims made by an unaffiliated third party against you that any Product or Fix that is made available by us for a fee infringes that party's patent, copyright or trademark or makes intentional unlawful use of its Trade Secret, we will pay the amount of any resulting adverse final judgment (or settlement to which we consent) subject to the terms of this Section G. This section provides your exclusive remedy for these claims. Trade Secret means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

**Limitations on defense obligation.** Our obligations will not apply to the extent that the claim or award is based on:

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modify the Product or Fix, or replace it with a functional equivalent, to make it non-infringing, in which case you will immediately cease use of the allegedly infringing Product or Fix after receiving notice from us.

**Your specific remedy in case of injunction.** If, as a result of an infringement claim, your use of a Product or Fix that is made available by us for a fee is enjoined by a court of competent jurisdiction, we will, at our option, either

procure the right to continue its use, or

replace it with a functional equivalent, or

modify it to make it non-infringing, or

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**Obligations of protected party.** You must notify us promptly in writing of a claim subject to the subsection titled “Microsoft’s agreement to protect” and allow Microsoft to assist in your defense or settlement, to the extent permitted by applicable law. We will not be bound by any settlement to which we do not agree to in writing. Microsoft must notify you promptly in writing of a claim subject to the subsection titled “Your agreement to protect.” To the extent permitted by applicable law, you must provide reasonable assistance in defending the claim. We will reimburse you for reasonable out of pocket expenses that it incurs in providing assistance.

Notwithstanding the foregoing, Microsoft’s rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

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liability for damages caused by either party’s gross negligence or willful misconduct, or that of its employees or agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between “gross negligence” and “negligence,” “gross negligence” as used in this subsection shall mean “recklessness”);

liability for personal injury or death caused by our negligence or that of our employees or agents or for fraudulent misrepresentation; and

violation by either party of the other party’s intellectual property rights. For Online Services, these

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Our and your obligations and/or claims under the section titled "Defense of infringement, misappropriation, and third party claims"; and violation by either party of the other party's intellectual property rights.

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**EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS LICENSE AGREEMENT/PRODUCT USE RIGHTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."**

This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this License Agreement/Product Use Rights after a fine or penalty is imposed pursuant to a final determination by the appropriate governing authority under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

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**Right to verify compliance.** You must keep records relating to the Products you and your Affiliates use or redistribute. We have the right to verify compliance with the License Agreement/Product Use Rights, at our expense, during the term of the applicable Enrollment (or if your Agreement with Government Partner does not have Enrollments, then during the term of that government contract) and for a period of one year thereafter.

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**Privacy.** We and you will comply with all applicable privacy and data protection laws and regulations. You may choose to provide personal information to us on behalf of third parties (including, your contacts, resellers, distributors, and administrators) as part of your Microsoft Volume Licensing Agreement. You represent and warrant that you have and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with us for the purpose of allowing us or our agents to facilitate your Microsoft Volume Licensing Agreements.

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**Access 2013**

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### **Excel 2013**

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## Project Professional 2013

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The software may not be accessed remotely, except for technical support purposes using Remote Assistance or similar technologies.

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### **Skype for Business 2015**

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You must permanently assign each license to a single device.

You may install one copy of the software on the Licensed Device or within a local virtual hardware system on the Licensed Device.

You may use the software on up to two processors.

Local use is permitted for any user.

Remote use is permitted for the primary user of the Licensed Device and for any other user from another Licensed Device or a Windows VDA Licensed Device.

Only one user may access and use the software at a time.

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An unlimited number of connections are allowed for KMS activation or similar technology.

**VALIDATION**

Validation verifies that the software has been activated and is properly licensed. It also verifies that no unauthorized changes have been made to the validation, licensing, or activation functions of the software. Validation may also check for certain malicious or unauthorized software related to such unauthorized changes. A validation check confirming that you are properly licensed permits you to continue to use the software, certain features of the software or to obtain additional benefits. You are not permitted to circumvent validation. This is to prevent unlicensed use of the software. For more information, see <http://windows.microsoft.com/en-US/windows/help/genuine/faq>.

The software will from time to time perform a validation check of the software. The check may be initiated by the software or Microsoft. To enable the activation function and validation checks, the software may from time to time require updates or additional downloads of the validation, licensing or activation functions of the software. The updates or downloads are required for the proper functioning of the software and may be downloaded and installed without further notice to you. During or after a validation check, the software may send information about the software, the computer and the results of the validation check to Microsoft. This information includes, for example, the version and product key of the software, any unauthorized changes made to the validation, licensing or activation functions of the software, any related malicious or unauthorized software found and the Internet protocol address of the computer. Microsoft does not use the information to identify or contact you, except that Microsoft may use and share the information to prevent unlicensed use of the software. By using the software, you consent to the transmission of this information. For more information about validation and what is sent during or after a validation check, see <http://windows.microsoft.com/en-US/windows/genuine/privacy-statement>.

If, after a validation check, the software is found to be counterfeit, improperly licensed, a non-genuine Windows product, or include unauthorized changes, the functionality and experience of using the software will be affected, for example:

Microsoft may repair the software, remove, quarantine or disable any unauthorized changes that may interfere with the proper use of the software, including circumvention of the activation or validation functions of the software, or check and remove malicious or unauthorized software known to be related to such unauthorized changes, or provide notices that the software is improperly licensed or a non-genuine Windows product, and you may receive reminders to obtain a properly licensed copy of the software, or need to follow Microsoft's instructions to be licensed to use the software and reactivate, and you may not be able to obtain certain updates or upgrades from Microsoft.

Introduction      -+ Universal Terms -+ Desktop Apps -+ Desktop OS      -+ Processor/CAL -+ Server/CAL      -+ Per Core

### ICONS, IMAGES, AND SOUNDS

While the software is running, you may access and use its icons, images, sounds, and media only from the licensed computer. You may not share the sample images, sounds and media provided with the software or use them for any other purpose.

### ADOBE FLASH PLAYER

The software may include a version of Adobe Flash Player. You agree that your use of the Adobe Flash Player is governed by the license terms for Adobe Systems Incorporated at <http://go.microsoft.com/fwlink/?linkid=248532>. Adobe and Flash are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.

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## ***PRODUCT-SPECIFIC LICENSE TERMS***

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## Rental Rights for Windows

The license terms that apply to your use of this product are the following:

### **Additional Terms:**

Rental Rights modify your right to use qualifying software<sup>1</sup> under an existing license.

Rental Rights waive the prohibition against renting, leasing or lending the software.

You must permanently assign Rental Rights to each device on which you license the software, if you want to rent the device.

You must require users to accept the license terms for the software in writing or electronically.

You must notify users that Microsoft offers no warranty to the software, will not defend users against any third party claims or be liable for any damages arising from use of the software.

6. .

The software may not be used in a virtual environment.

The software may not be accessed remotely, except for technical support purposes using Remote Assistance or similar technologies.

Rental Rights expire with the underlying license, or upon reassignment of the underlying license or permanent failure of Licensed Device.

<sup>1</sup> See the Product List for qualifying software for Rental Rights.

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## **Windows 8.1 Pro and Enterprise**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

See Applicable Notices: **Data Transfer, H.264/AVC, VC-1, and MPEG-4 Part 2, Potentially Unwanted Software (Notice I)** (See [Appendix 1](#))

### **Additional Terms:**

### WINDOWS APPS

Windows apps (such as Mail, Calendar, and People) are apps that are developed by Microsoft, included with Windows, and licensed to you under this agreement. You can access each Windows app from its corresponding tile in Start. Some of the Windows apps provide an access point to online services, and the use of those services is sometimes governed by separate terms and privacy policies. You can view these terms and policies by looking at the app's settings. Unless other terms are displayed to you or presented in the app's settings, you agree the services that you access from the Windows apps are governed by the Microsoft Services Agreement at



<http://go.microsoft.com/fwlink/?linkid=246338> or for Windows apps that access Xbox services, the <http://xbox.com/legal/livetou>. We continuously work to improve the services and we may we change the services at any time. The services may not be available in certain countries. You may choose to uninstall any Windows app at any time, and you may also choose to reinstall any Windows app by downloading it from the Windows Store. Some Windows apps include advertising. You may choose to opt out of personalized advertising by visiting <http://choice.live.com>.

FOR WINDOWS 8.1, WINDOWS 8.1 K, WINDOWS 8.1 KN:

Windows 8.1 and Windows 8.1 K include Windows Media Player and related technologies identified by the Korean Fair Trade Commission (KFTC) and a link to the Windows Live Messenger Download. Windows 8.1 KN does not include Windows Media Player or related technologies identified by the KFTC. Please see the Microsoft Product List at

[Introduction](#)      → [Universal Terms](#) → [Desktop Apps](#) → [Desktop OS](#) → [Processor/CAL](#) → [Server/CAL](#) → [Per Core](#)

<http://go.microsoft.com/?linkid=9839207> for details about which language versions and media fulfillment options are available for each of these editions.

#### WINDOWS 8.1 K

The KFTC requires that the software contain links to a Media Player Center Web site and a Messenger Center Web site which have links to third party sites to enable you to download and install third party media players and instant messaging software. The third party sites are not under the control of Microsoft, and Microsoft is not responsible for the software or content of any third party sites, any links contained in third party sites, or any changes or updates to the third party software or sites. The inclusion of any link on the Media Player Center Web site or Messenger Center Web site does not imply an endorsement by Microsoft of the third party software, the site or its contents.

**Additional Disclaimer of Warranties:** Microsoft provides no warranty whatsoever with respect to the third party software referred to above.

#### WINDOWS 8.1 KN

**Inapplicable Windows Media Player Use Rights:** The Windows digital rights management technology and Windows Media Player terms do not apply when running this software.

**Notice Regarding the Absence of Windows Media Player:** The software does not include Windows Media Player (as defined by the Korean Fair Trade Commission) or Windows Media Player related technologies such as Windows Media Center. As a result, you will need software from Microsoft or a third party in order to play or create audio CDs, media files and video DVDs, organize content in a media library, create playlists, convert audio CDs to media files, view artist and title information of media files, view album art of music files, transfer music to personal music players, or record and playback TV broadcasts.

**Additional Disclaimer of Warranties:** Microsoft provides no warranty whatsoever with respect to Windows media functionality, despite anything to the contrary in your Volume Licensing Agreement.

#### WINDOWS 8.1 N

**Inapplicable Windows Media Player Use Rights:** The Windows digital rights management technology and Windows Media Player terms do not apply when running this software.

**Notice Regarding the Absence of Windows Media Functionality:** The software does not include Windows Media Player (as defined by the European Commission) or Windows Media Player related technologies such as Windows Media Center. As a result, you will need software from Microsoft or a third party in order to play or create audio CDs, media files and video DVDs, organize content in a media library, create playlists, convert audio CDs to media files, view artist and title information of media files, view album art of music files, transfer music to personal music players, or record and playback TV broadcasts.

**Additional Disclaimer of Warranties:** Microsoft provides no warranty whatsoever with respect to Windows media functionality, despite anything to the contrary in your Volume Licensing Agreement.

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## Windows Embedded 8.1 Industry Pro and Enterprise

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The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

See Applicable Notices: **Data Transfer, Visual and Audio Code Standards, Potentially Unwanted Software** (Notice I) (See [Appendix 1](#))

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Introduction → Universal Terms → Desktop Apps → Desktop OS → **Processor/CAL** → Server/CAL → Per Core

**SERVERS: PROCESSOR/CAL (PROCESSOR LICENSE + CAL + OPTIONAL EXTERNAL CONNECTOR)**

Windows Server 2012 R2 Datacenter	34
Windows Server 2012 R2 Standard	35

[Table of Contents](#) / [Universal Terms](#)**GENERAL LICENSE TERMS****DEFINED TERMS IN THIS LICENSE MODEL (SEE UNIVERSAL LICENSE TERMS, DEFINITIONS)**

CAL, External Connector License, HPC Workload, Instance, Licensed Server, OSE, Physical OSE, Running Instance, Server, Server Farm, Virtual OSE and Web Workload

**SERVER LICENSES**

You have the rights below for each server you properly license.

You must assign each license to a single Server.

One license is required for every two Physical Processors on the Server.

For Standard licenses, you may use one Running Instance of server software in the Physical OSE and, for each license assigned, one Running Instance in up to two Virtual OSEs on the Licensed Server.

For Standard licenses, if all permitted Virtual OSE Instances are used, you may use the Instance in the Physical OSE only to host and manage the Virtual OSEs.

For Datacenter licenses, the number of Virtual OSEs is unlimited, and use in the Physical OSE is not limited to hosting and management.

Provided that, prior to repartitioning, each hardware partition is fully licensed, and, subsequent to repartitioning, the total number of licenses and Physical Processors remains the same, license reassignment is permitted anytime (i) Physical Processors are reallocated from one licensed hardware partition to another, (ii) two or more partitions are created from one licensed hardware partition, or (iii) one partition is created from two or more licensed hardware partitions.

You may use additional software listed in [Appendix 3](#) in conjunction with your use of server software.

As a one-time alternative to assigning base CALs per user or per device, a number of base CALs may be dedicated to an Instance of the server software on a single Server (per server mode) to permit up to the same number of users or devices to concurrently access that Instance.

**ACCESS LICENSES**

You must assign each CAL to a user or device, as appropriate, and each External Connector License to a Licensed Server.

CALs or External Connector Licenses are required for access to server software.

CALs and External Connector Licenses permit access to the corresponding version (including earlier versions used under downgrade rights) or earlier versions of server software.

CALs are not required for access by another Licensed Server or for up to 2 users or devices to administer the software.

CALs are not required to access server software running a Web or HPC Workload.

CALs not required for access in a Physical OSE used solely for hosting and managing Virtual OSEs.

Your CALs and External Connector Licenses only permit access to your Licensed Servers (not a third party's).

**Additional Licensing Requirements and/or Use Rights****LICENSE MOBILITY -- ASSIGNING EXTERNAL CONNECTOR LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You may reassign External Connector Licenses for which you have active Software Assurance to any of your Servers located within the same Server Farm as often as needed. You may reassign External Connector Licenses from one Server farm to another, but not on a short-term basis (i.e., not within 90 days of the last assignment).

**Validation**

The software will from time to time update or require download of the validation feature of the software. Validation verifies that the software has been activated and is properly licensed. Validation also permits you to use certain features of the software, or to obtain additional benefits. For more information, see <http://go.microsoft.com/fwlink/?linkid=39157>.

Introduction      -+ Universal Terms -+ Desktop Apps -+ Desktop OS      -+ **Processor/CAL** -+      Server/CAL      -+      Per Core

Mgmt Servers      -+      Specialty Servers -+ Dev Tools -+ Online Services -+ Combined Models -+ Appendices -+ Product Index

During a validation check, the software will send information about the software and device to Microsoft. This information includes the version and product key of the software, and the Internet protocol address of the device. Microsoft does not use the information to identify or contact you, except that Microsoft may use and share the information to prevent unlicensed use of the software. By using the software, you consent to the transmission of this information. For more information about validation and what is sent during a validation check, see <http://go.microsoft.com/fwlink/?linkid=96551>. If the software is not properly licensed, the functionality of the software may be affected. For example, you may:

- need to reactivate the software, or
- receive reminders to obtain a properly licensed copy of the software,
- or you may not be able to obtain certain updates or upgrades from Microsoft.

You may only obtain updates or upgrades for the software from Microsoft or authorized sources. For more information on obtaining updates from authorized sources, see <http://go.microsoft.com/fwlink/?linkid=96552>.

**Data Storage Technology**

The server software may include data storage technology called Windows Internal Database or Microsoft SQL Server Desktop Engine for Windows. Components of the server software use these technologies to store data. You may not otherwise use or access these technologies under these License Agreement/Product Use Rights.

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***PRODUCT-SPECIFIC LICENSE TERMS***

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**Windows Server 2012 R2 Datacenter**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: <b>Yes</b> (See <a href="#">Appendix 2</a> )	Additional Software: <b>Yes</b> (See <a href="#">Appendix 3</a> )
See Applicable Notices: <b>Data Transfer, MPEG-4, VC-1</b> (See <a href="#">Appendix 1</a> )	License Mobility Within Server Farms: <b>No</b> (Except for External Connector

*licenses; See General License Terms)*

External User Access: **CALs or External Connector**

**BASE CALs**



**You need:**

- Windows Server 2012 CAL, **or**
- Core CAL Suite<sup>1</sup>, **or**
- Core CAL Bridge for Office 365<sup>1</sup>, **or**
- Core CAL Bridge for Office 365 User SL, **or**
- Core CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Core CAL Bridge for Office 365 and Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365 User SL, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365 and Microsoft Intune<sup>1</sup>, **or**
- Enterprise Mobility Suite User SL<sup>2</sup>

<sup>1</sup> with active Software Assurance on or after the date the software is first available for download through Volume Licensing

<sup>2</sup> Only the full User SL satisfies the access requirement

**ADDITIVE CALS**

Product or Functionality:

List of CALs:

- Microsoft Application Virtualization for Remote Desktop Services • Windows Server 2012 Remote Desktop Services User SL
- Windows Server 2012 R2 Rights Management Services Services CAL, **or**
- Azure Rights Management User SL, **or**

- Windows Server 2012 Remote Desktop Services CAL, **or**
- Windows Server 2012 Active Directory Rights Management



Azure Rights Management A User SL, **or**  
 Enterprise CAL Suite<sup>1</sup>, **or**  
 Enterprise CAL Bridge for Office 365<sup>1</sup>, **or**  
 Enterprise CAL Bridge for Office 365 User SL, **or**  
 Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**  
 Enterprise CAL Bridge for Office 365 and Microsoft Intune<sup>1</sup>,

**or**

Enterprise Mobility Suite User SL  
<sup>1</sup> with active Software Assurance on or after the date the software is first available for download through Volume Licensing

Windows Server 2012 Remote Desktop Services CAL, **or**  
 Windows Server 2012 Remote Desktop Services User SL

Windows Server 2012 R2 Remote Desktop Services functionality or Windows Server 2012 R2 for purposes of hosting a graphical user interface (using the Windows Server 2012 R2 Remote Desktop Services functionality or other technology)

Forefront Identity Manager 2010 R2 functionality are not available), **or**

- Forefront Identity Manager 2010 R2 User CAL (device CALs

Enterprise Mobility Suite User SL, **or**  
 Microsoft Azure Active Directory Premium

**BASE EXTERNAL CONNECTORS**

Windows Server 2012 External Connector

**ADDITIVE EXTERNAL CONNECTORS**

Product or Functionality:

List of External Connector Licenses:

Microsoft Application Virtualization for Remote Desktop External Services

- Windows Server 2012 Remote Desktop Services Connector

Windows Server 2012 R2 Rights Management Services Management Services External Connector

- Windows Server 2012 Active Directory Rights

Windows Server 2012 R2 Remote Desktop Services External functionality or Windows Server 2012 R2 for purposes of hosting a graphical user interface (using the Windows Server 2012 R2 Remote Desktop Services functionality or other technology)

- Windows Server 2012 Remote Desktop Services Connector

Forefront Identity Manager 2010 R2 functionality

- Forefront Identity Manager 2010 R2 External Connector

**Additional Terms:**

DOWN-EDITION RIGHTS

You may Run an Instance of Windows Server Enterprise, Standard, Essentials, Web, HPC or any earlier version of the qualifying editions in place of Datacenter in any of the OSEs.

CERTIFICATE AND IDENTITY MANAGEMENT

A CAL is also required for any person for whom the software issues or manages identity information.

SYNCHRONIZATION SERVICE

A CAL is not required for users only using the Forefront Identity Manager synchronization service.

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Windows Server 2012 R2 Standard

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#)) Additional Software: **Yes** (See [Appendix 3](#))

See Applicable Notices: **Data Transfer, MPEG-4, VC-1** (See [Appendix 1](#)) License Mobility Within Server Farms: **No** (Except for External Connector

*licenses; See General License Terms)*

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	Servers	– Services	– Models			

External User Access: **CALs or External Connector**

**BASE CALs**

**You need:**

- Windows Server 2012 CAL, **or**
- Core CAL Suite<sup>1</sup>, **or**
- Core CAL Bridge for Office 365<sup>1</sup>, **or**
- Core CAL Bridge for Office 365 User SL, **or**
- Core CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Core CAL Bridge for Office 365 and Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365 User SL, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365 and Microsoft Intune<sup>1</sup>, **or**
- Enterprise Mobility Suite User SL<sup>2</sup>

- <sup>1</sup> with active Software Assurance on or after the date the software is first available for download through Volume Licensing
- <sup>2</sup> Only the full User SL satisfies the access requirement

**ADDITIVE CALs**

Product or Functionality:

List of CALs:

- Microsoft Application Virtualization for Remote Desktop Services • Windows Server 2012 Remote Desktop Services User SL
- Windows Server 2012 R2 Rights Management Services Management Services CAL, **or**
- Azure Rights Management User SL, **or**
- Azure Rights Management A User SL, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365 User SL, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365 and Microsoft Intune<sup>1</sup>, **or**
- Enterprise Mobility Suite User SL

- Windows Server 2012 Remote Desktop Services CAL, **or**
- Windows Server 2012 Active Directory Rights

<sup>1</sup> with active Software Assurance on or after the date the software is first available for download through Volume Licensing

Windows Server 2012 R2 Remote Desktop Services functionality or Windows Server 2012 R2 for purposes of hosting a graphical user interface (using the Windows Server 2012 R2 Remote Desktop Services functionality or other technology)

Windows Server 2012 Remote Desktop Services CAL, **or**  
Windows Server 2012 Remote Desktop Services User SL

Forefront Identity Manager 2010 R2 functionality  
CALs are not available), **or**

- Forefront Identity Manager 2010 R2 User CAL (device

Enterprise Mobility Suite User SL, **or**  
Microsoft Azure Active Directory Premium

**BASE EXTERNAL CONNECTORS**

Windows Server 2012 External Connector

**ADDITIVE EXTERNAL CONNECTORS**

Product or Functionality:

List of External Connector Licenses:

Microsoft Application Virtualization for Remote Desktop External Services

- Windows Server 2012 Remote Desktop Services Connector

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Windows Server 2012 Rights Management Services

- Windows Server 2012 Active Directory Rights Management Services External Connector

Windows Server 2012 R2 Remote Desktop Services

- Windows Server 2012 Remote Desktop Services External Connector

functionality or Windows Server 2012 R2 for purposes of hosting

a graphical user interface (using the Windows Server 2012 R2 Remote Desktop Services functionality or other technology)

Forefront Identity Manager 2010 R2 functionality

- Forefront Identity Manager 2010 R2 External Connector

**Additional Terms:**

**DOWN-EDITION RIGHTS**

You may Run an Instance of Windows Server Enterprise, Essentials, Web, HPC or any earlier version of the qualifying editions in place of Standard in any of the OSEs.

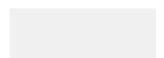
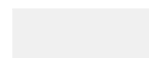
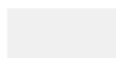
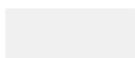
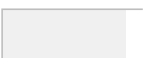
**CERTIFICATE AND IDENTITY MANAGEMENT**

A CAL is also required for any person for whom the software issues or manages identity information.

**SYNCHRONIZATION SERVICE**

A CAL is not required for users only using the Forefront Identity Manager synchronization service.

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<u>MgmtServers</u>	-	<u>Specialty Servers</u>	-	<u>Dev Tools</u>	-	<u>Online Services</u>	-	<b>Combined Models</b>	-	<u>Appendices</u>	-	<u>ProductIndex</u>



**SERVERS: SERVER / CAL (SERVER LICENSE + CAL + OPTIONAL EXTERNAL CONNECTOR)**

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**GENERAL LICENSE TERMS**

**DEFINED TERMS IN THIS LICENSE MODEL (SEE UNIVERSAL LICENSE TERMS)**

CAL, External Connector License, External User, Instance, Licensed Server, OSE, Physical OSE, Running Instance, Server, Server Farm and Virtual OSE

**SERVER LICENSES**

You have the rights below for each license you acquire.

You must assign each license to a single Server.

For each license, you may use one Running Instance of server software on the Licensed Server in either a Physical or Virtual OSE.

You may use the additional software listed in [Appendix 3](#) in conjunction with your use of server software. [ACCESS](#)

**LICENSES**

Except as described here and noted in the Product-specific license terms, all server software access requires CALs.

Requirements for External User access vary by product, as noted in the Product-specific license terms.

Depending on the product and the functionality being accessed, External User access is permitted under CALs, External Connector Licenses or the software license assigned to the Server.

You must assign each CAL to a user or device, as appropriate, and each External Connector License to a Licensed Server.

CALs and External Connector Licenses permit access to the corresponding version (including earlier versions used under downgrade rights) or earlier versions of server software.

CALs are not required for access by another Licensed Server or for up to 2 users or devices to administer the software.

Your CALs and External Connector Licenses permit access only to your Licensed Servers (not a third party's).

**Additional Licensing Requirements and/or Use Rights**

**LICENSE MOBILITY -- ASSIGNING SERVER AND EXTERNAL CONNECTOR LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

For products designated as having License Mobility, you may reassign Server and External Connector Licenses to any of your Servers located within the same Server Farm as often as needed. Some products may require Software Assurance for these rights. You may reassign Server and External Connector Licenses from one server farm to another, but not on a short-term basis (i.e., not within 90 days of the last assignment).

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## PRODUCT-SPECIFIC LICENSE TERMS

# Exchange Server 2013 Enterprise

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms)

External User Access: **Licensed with Server** (Access to Additional

Functionality requires both Base and Additive CALs)

### BASE CALs

**You need:**

- Exchange Server 2013 Standard CAL, **or**
- BackOffice CAL<sup>1</sup>, **or**
- Core CAL Suite<sup>1</sup>, **or**
- Core CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Core CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**
- Core CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Exchange Online Plan 1 User SL, **or**
- Exchange Online Plan 1G User SL, **or**
- Exchange Online Plan 2 User SL, **or**
- Exchange Online Plan 2A User SL, **or**
- Exchange Online Plan 2G User SL, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**

- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Office 365 Enterprise E1, E3 or E4 User SL, **or**
- Office 365 Enterprise E3-E4 without ProPlus User SL, **or**
- Office 365 Nonprofit E3 User SL, **or**
- Office 365 Education E3-E4 User SL, **or**
- Office 365 Government E1, E3 or E4 User SL, **or** Office 365 Government E3-E4 without ProPlus User SL
- <sup>1</sup> with active Software Assurance coverage on October 1, 2012, or later
- <sup>2</sup> with active Software Assurance on or after the date the software is first available for download through Volume Licensing

### ADDITIVE CALs

**Additional Functionality:**

- Unified Messaging
- In-Place Archive
- In-Place Holds (Indefinite, Query-based, and Time-based)
- Advanced Mobile Policies
- Information Protection and Compliance
- Custom Retention Policies
- Per User/Distribution List Journaling
- Site Mailboxes – Compliance
- Data Loss Prevention

**Required Additive CAL:**

- Exchange Server 2013 Enterprise CAL, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Exchange Online Plan 2 User SL, **or**
- Exchange Online Plan 2A User SL, **or**
- Exchange Online Plan 2G User SL, **or**
- Office 365 Enterprise E3-E4 User SL, **or**
- Office 365 Enterprise E3-E4 without ProPlus User SL, **or**
- Office 365 Nonprofit E3 User SL, **or**
- Office 365 Education E3-E4 User SL, **or**
- Office 365 Government E3-E4 User SL, **or**

- Office 365 Government E3-E4 without ProPlus User SL

1 with active Software Assurance coverage on October 1, 2012, or later

2 with active Software Assurance on or after the date the software is first available for download through Volume Licensing

**Additional Terms:**

Introduction → Universal Terms → Desktop Apps → Desktop OS → Processor/CAL → Server/CAL → Per Core

Mgmt Servers → Specialty Servers → Dev Tools → Online Services → Combined Models → Appendices → Product Index

Microsoft Volume Licensing License Agreement/Product Use Rights ( April 2015) 40

You do not need CALs for any user or device that accesses your Instances of the server software without being directly or indirectly authenticated by Active Directory or Skype for Business Server.

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

[Table of Contents / Universal Terms](#)

**Exchange Server 2013 Standard**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms)

External User Access: **Licensed with Server** (Access to Additional

Functionality requires both Base and Additive CALs)

**BASE CALs**

**You need:**

- Exchange Server 2013 Standard CAL, **or**
- BackOffice CAL<sup>1</sup>, **or**
- Core CAL Suite<sup>1</sup>, **or**
- Core CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Core CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**
- Core CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Exchange Online Plan 1 User SL, **or**
- Exchange Online Plan 1G User SL, **or**
- Exchange Online Plan 2 User SL, **or**
- Exchange Online Plan 2A User SL, **or**
- Exchange Online Plan 2G User SL, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**

- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Office 365 Enterprise E1, E3, or E4 User SL, **or**
- Office 365 Enterprise E3-E4 without ProPlus User SL, **or**
- Office 365 Nonprofit E3 User SL, **or**
- Office 365 Education E3-E4 User SL, **or**
- Office 365 Government E1, E3 or E4 User SL, **or** Office 365 Government E3-E4 without ProPlus User SL

<sup>1</sup> with active Software Assurance coverage on October 1, 2012, or later

<sup>2</sup> with active Software Assurance on or after the date the software is first available for download through Volume Licensing

**ADDITIVE CALs**

**Additional Functionality:**

- Unified Messaging
- In-Place Archive
- In-Place Holds (Indefinite, Query-based, and Time-based)
- Advanced Mobile Policies
- Information Protection and Compliance
- Custom Retention Policies
- Per User/Distribution List Journaling
- Site Mailboxes – Compliance
- Data Loss Prevention

**Required Additive CAL:**

- Exchange Server 2013 Enterprise CAL, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Exchange Online Plan 2 User SL, **or**
- Exchange Online Plan 2A User SL, **or**
- Exchange Online Plan 2G User SL, **or**
- Office 365 Enterprise E3-E4 User SL, **or**
- Office 365 Enterprise E3-E4 without Pro Plus User SL, **or**
- Office 365 Nonprofit E3 User SL, **or**
- Office 365 Education E3-E4 User SL, **or**
- Office 365 Government E3-E4 User SL, **or**
- Office 365 Government E3-E4 without Pro Plus User SL

<sup>1</sup> with active Software Assurance coverage on October 1, 2012, or later

2 with active Software Assurance on or after the date the software is first available for download through Volume Licensing

[Introduction](#) → [Universal Terms](#) → [Desktop Apps](#) → [Desktop OS](#) → [Processor/CAL](#) → [Server/CAL](#) → [Per Core](#)

[Mgmt Servers](#) → [Specialty Servers](#) → [Dev Tools](#) → [Online Services](#) → [Combined Models](#) → [Appendices](#) → [Product Index](#)

Microsoft Volume Licensing License Agreement/Product Use Rights ( April 2015) 41

**Additional Terms:**

You do not need CALs for any user or device that accesses your Instances of the server software without being directly or indirectly authenticated by Active Directory or Skype for Business Server.

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

[Table of Contents / Universal Terms](#)

**Microsoft Dynamics AX 2012 R3 Server**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms)

External User Access: **Licensed with Server**

**BASE CALs**

Functionality:

Required CAL:

Self-Serve based limited access to Microsoft Dynamics AX 2012 R3 Server

• Microsoft Dynamics AX 2012 R3 Self-Serve CAL

**ADDITIVE CALs**

Additional Functionality:

Required Additive CAL:

Task use limited access to Microsoft Dynamics AX 2012 R3 Server (Additive to Self-Serve CAL)

Microsoft Dynamics AX 2012 R3 Task Use Additive CAL

Additional Functionality:

Required Additive CAL:

Functional use limited access to Microsoft Dynamics AX 2012 R3 Server (Additive to Task Use CAL)

Microsoft Dynamics AX 2012 R3 Functional Use Additive CAL

Additional Functionality:

Required Additive CAL:

Enterprise use access to Microsoft Dynamics AX 2012 R3 Server (Additive to Functional Use CAL)

Microsoft Dynamics AX 2012 R3 Enterprise Use Additive CAL

**Additional Terms:**

**MODIFICATION RIGHT**

The software may include plug-ins, runtime, and other components identified in printed or online documentation that allow you to extend its functionality. You may modify or create derivative works of these components and use those derivative works, but solely internally with the software.

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

[Table of Contents / Universal Terms](#)



### Microsoft Dynamics AX 2012 R3 Store Server

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms)

External User Access: **Licensed with Server**

### BASE CALs

<i>Functionality:</i>	<i>Required CAL:</i>					
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Self-Serve based limited access to Microsoft Dynamics AX 2012 R3 Store Server

• Microsoft Dynamics AX 2012 R3 Self-Serve CAL

**ADDITIVE CALs**

Additional Functionality:

Required Additive CAL:

Task use limited access to Microsoft Dynamics AX 2012 R3 Store Server (Additive to Self-Serve CAL)

Microsoft Dynamics AX 2012 R3 Task Use Additive CAL

Additional Functionality:

Required Additive CAL:

Functional use limited access to Microsoft Dynamics AX 2012 R3 Store Server (Additive to Task Use CAL)

Microsoft Dynamics AX 2012 R3 Functional Use Additive CAL

Additional Functionality:

Required Additive CAL:

Enterprise use access to Microsoft Dynamics AX 2012 R3 Store Server (Additive to Functional Use CAL)

Microsoft Dynamics AX 2012 R3 Enterprise Use Additive CAL

**Additional Terms:**

**MODIFICATION RIGHT**

The software may include plug-ins, runtime, and other components identified in printed or online documentation that allow you to extend its functionality. You may modify or create derivative works of these components and use those derivative works, but solely internally with the software.

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

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**Microsoft Dynamics CRM 2015 Server**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms [Appendix 1](#))

See Applicable Notices: **Data Transfer, Bing Maps, and Yammer** (See [Appendix 1](#))

External User Access: **Licensed with Server; CALs required for access through Microsoft Dynamics CRM 2015 Clients**

**BASE CALs**

Functionality:

Required CAL:

Essential use access to Microsoft Dynamics CRM Server 2015

Microsoft Dynamics CRM 2015 Essential CAL, **or**  
 Microsoft Dynamics CRM Online Essential (User SL), **or**  
 Microsoft Dynamics CRM Online Basic (User SL), **or**

Microsoft Dynamics CRM Online Professional (User SL),  
or

Microsoft Dynamics CRM Online Enterprise (User SL)

**ADDITIVE CALS**

**Additional Functionality:**

Basic use access to Microsoft Dynamics CRM Server 2015 (Additive Essential CAL)

**Required Additive CAL:**

Microsoft Dynamics CRM 2015 Basic Use Additive CAL,  
or  
Microsoft Dynamics CRM Online Basic (User SL), or  
Microsoft Dynamics CRM Online Professional (User SL),  
or  
Microsoft Dynamics CRM Online Enterprise (User SL)

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**Additional Functionality:**

Professional use access to Microsoft Dynamics CRM Server 2015  
(additive to Basic Use Additive CAL)

**Required Additive CAL:**

Microsoft Dynamics CRM 2015 Professional Use Additive CAL, **or**  
Microsoft Dynamics CRM Online Professional (User SL),  
**or**  
Microsoft Dynamics CRM Online Enterprise (User SL)

**Additional Terms:**

**FAIL-OVER RIGHTS**

For any OSE in which you Run Instances of the server software, you may run up to the same number of passive fail-over Instances in a separate OSE for temporary support. You may Run the passive fail-over Instances on a Server other than the Licensed Server.

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

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**Microsoft Office Audit and Control Management Server 2013**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **No**

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms)

External User Access: **Licensed with Server**

**BASE CALs**

There are no separate Microsoft Office Audit and Control Management Server 2013 CALs; the SharePoint Server 2013 Enterprise CAL provides you rights to access Microsoft Office Audit and Control Management Server 2013. Each SharePoint Server 2013 Enterprise CAL requires a SharePoint Server 2013 Standard CAL. You need the following to access Microsoft Office Audit and Control Management Server 2013:

- SharePoint Server 2013 Standard CAL and SharePoint Server 2013 Enterprise CAL, **or**
- Enterprise CAL Suite<sup>1</sup> **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>2</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Office 365 Enterprise E3-E4 User SL, **or**
- Office 365 Enterprise E3-E4 without ProPlus User SL, **or**
- Office 365 Nonprofit E3 User SL, **or**
- SharePoint Online Plan 2 User SL

<sup>1</sup> with active Software Assurance coverage on October 1, 2012, or later

<sup>2</sup> with active Software Assurance on or after the date the software is first available for download through Volume Licensing

**Additional Terms:**

**CAL WAIVER FOR USERS ACCESSING PUBLICLY AVAILABLE CONTENT**

CALs are not required to access content, information, and applications that you make publicly available to users over the Internet (i.e., not restricted to Intranet or Extranet scenarios).

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

[Table of Contents / Universal Terms](#)

### Project Server 2013

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **No** Additional Software: **Yes (See Appendix 3)**

<a href="#">Introduction</a>	→	<a href="#">Universal Terms</a>	→	<a href="#">Desktop Apps</a>	→	<a href="#">Desktop OS</a>	→	<a href="#">Processor/CAL</a>	→	<a href="#">Server/CAL</a>	→	<a href="#">Per Core</a>
<a href="#">Mgmt Servers</a>	→	<a href="#">Specialty Servers</a>	→	<a href="#">Dev Tools</a>	→	<a href="#">Online Services</a>	→	<a href="#">Combined Models</a>	→	<a href="#">Appendices</a>	→	<a href="#">Product Index</a>
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**BASE CALs**

You need:

- Project Server 2013 CAL, **or**
- Project Lite User SL, **or**
- Project Online User SL, **or**
- Project Pro for Office 365 User SL

**Additional Terms:**

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

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**SharePoint Server 2013**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **No**

Additional Software: **Yes (See Appendix 3)**

License Mobility Within Server Farms: **Yes (See General Terms)**

External User Access: **Licensed with Server**

**BASE CALs**

**You need:**

- SharePoint Server 2013 Standard CAL, **or**
- Core CAL Suite<sup>1</sup>, **or**
- Core CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Core CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**
- Core CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Office 365 Enterprise E1, E3, or E4 User SL, **or**
- Office 365 Enterprise E3-E4 without ProPlus User SL, **or**
- Office 365 Nonprofit E3 User SL, **or**
- Office 365 Education E3-E4 User SL, **or**
- Office 365 Government E1, E3, or E4 User SL, **or**
- Office 365 Government E3-E4 without ProPlus User SL, **or**

- SharePoint Online Plan 1 User SL, **or**
  - SharePoint Online Plan 1G User SL, **or**
  - SharePoint Online Plan 2 User SL, **or**
  - SharePoint Online Plan 2A User SL, **or**
  - SharePoint Online Plan 2G User SL
- <sup>1</sup> with active Software Assurance coverage on October 1, 2012, or later
- <sup>2</sup> with active Software Assurance on or after the date the software is first available for download through Volume Licensing

**ADDITIVE CALs**

**Additional Functionality:**

- Business Connectivity Services Line of Business Webparts
- Office 2013 Business Connectivity Services Client Integration
- Access Services
- Enterprise Search
- E-discovery and Compliance
- InfoPath Forms Services
- Excel Services, PowerPivot, PowerView

**Required Additive CAL:**

- SharePoint Server 2013 Enterprise CAL, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Office 365 Enterprise E3-E4 User SL, **or**
- Office 365 Enterprise E3-E4 without ProPlus User SL, **or**

- Visio Services
- PerformancePoint Services
- Custom Analytics Reports
- Office 365 Nonprofit E3 User SL, **or**
- Office 365 Education E3-E4 User SL, **or**
- Office 365 Government E3-E4 User SL, **or**

Introduction → Universal Terms → Desktop Apps → Desktop OS → **Processor/CAL** → Server/CAL → Per Core

Mgmt Servers → Specialty Servers → Dev Tools → Online Services → Combined Models → Appendices → Product Index

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Advanced Charting  
User SL,

- Office 365 Government E3-E4 without ProPlus

**or**

SharePoint Online Plan 2 User SL, **or**  
SharePoint Online Plan 2A User SL, **or**  
SharePoint Online Plan 2G User SL

<sup>1</sup> with active Software Assurance coverage on October 1, 2012, or later

<sup>2</sup> with active Software Assurance on or after the date the software is first available for download through Volume Licensing

**Additional Terms:**

**CAL WAIVER FOR USERS ACCESSING PUBLICLY AVAILABLE CONTENT**

CALs are not required to access content, information, and applications that you make publicly available to users over the Internet (i.e., not restricted to Intranet or Extranet scenarios).

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

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**Skype for Business Server 2015**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: <b>No</b>	Additional Software: <b>Yes</b> (See <a href="#">Appendix 3</a> )
License Mobility Within Server Farms: <b>Yes</b> (See General Terms)	See Applicable Notices: <b>Recording Notice, VC-1</b> (See <a href="#">Appendix 1</a> )
Included Technologies: <b>Windows Software Components</b> (See <a href="#">Universal License Terms</a> )	External User Access: <b>Licensed with Server</b>

**BASE CALs**

**You need:**

- Skype for Business Server 2015 Standard CAL, **or**
- Core CAL Suite<sup>1</sup>, **or**
- Core CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Core CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**
- Core CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Skype for Business Online Plan 1 or 1G User SL, **or**
- Skype for Business Online Plan 2, 2A or 2G User SL, **or**

- Office 365 Enterprise E1, E3, or E4 User SL, **or**
  - Office 365 Enterprise E3-E4 without ProPlus User SL, **or**
  - Office 365 Nonprofit E3 User SL, **or**
  - Office 365 Education E3-E4 User SL, **or**
  - Office 365 Government E1, E3, or E4 User SL, **or**
- Office 365 Government E3-E4 without ProPlus User SL  
<sup>1</sup> with active Software Assurance coverage on October 1, 2012, or later  
<sup>2</sup> with active Software Assurance on or after the date the software is first available for download through Volume Licensing

**ADDITIVE CALs**

**Additional Functionality:**

- Audio, Video and Web Conferencing
- Desktop Sharing
- Room Systems
- Multiple HD Video Streams

**Required Additive CAL:**

- Skype for Business Server 2015 Enterprise CAL, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite<sup>2</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, **or**
- Skype for Business Online Plan 2, 2A or 2G User SL , **or**

Introduction → Universal Terms → Desktop Apps → Desktop OS → Processor/CAL → Server/CAL → Per Core

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Office 365 Enterprise E1, E3, or E4 User SL, **or**  
 Office 365 Enterprise E3-E4 without ProPlus User SL, **or**  
 Office 365 Nonprofit E3 User SL, **or**  
 Office 365 Education E3-E4 User SL, **or**  
 Office 365 Government E1, E3 or E4 User SL, **or**  
 Office 365 Government E3-E4 without ProPlus User SL, **or**  
 Live Meeting Standard User SL, **or**  
 Live Meeting Professional User SL  
<sup>1</sup> with active Software Assurance coverage on October 1, 2012, or later  
<sup>2</sup> with active Software Assurance on or after the date the software is first available for  
 download through Volume Licensing

**Required Additive CAL:**

Skype for Business Server 2015 Plus CAL, **or**  
 Office 365 Enterprise E4 User SL, **or**  
 Office 365 Enterprise E4 without ProPlus User SL, **or**  
 Office 365 Education E4 User SL, **or**  
 Office 365 Government E4 User SL, **or**  
 Office 365 Government E4 without ProPlus User SL

**Additional Functionality:**

Voice Telephony  
 Call Management

**Additional Terms:**

**UNAUTHENTICATED ACCESS**

You do not need CALs for any user or device that accesses your Instances of the server software without being directly or indirectly authenticated by Active Directory or Skype for Business Server.

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

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**SQL Server 2014 Business Intelligence**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: <b>Yes</b> (See <a href="#">Appendix 2</a> )	Additional Software: <b>Yes</b> (See <a href="#">Appendix 3</a> )
License Mobility Within Server Farms: <b>Yes</b> (See General Terms)	See Applicable Notices: <b>Automatic Updates</b> (See <a href="#">Appendix 1</a> )
Included Technologies: <b>Windows Software Components</b> (See <a href="#">Universal License Terms</a> )	External User Access: <b>CALs</b>

**BASE CALs**

You need:

SQL Server 2014 CAL

**Additional Terms:**

**RUNNING INSTANCES OF THE SERVER SOFTWARE**

For each server license, software may be Run in only one Physical or Virtual OSE at a time, but you may use any number of Running Instances of the server software in that OSE.

**DOWN-EDITION RIGHTS**

In place of any permitted Instance, you may use an Instance of the 2014 or any earlier version of Standard or any version of Workgroup or Small Business.

[LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS](#)

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only for licenses with active Software Assurance.

<a href="#">Introduction</a>	—+ <a href="#">Universal Terms</a>	—+ <a href="#">Desktop Apps</a>	—+ <a href="#">Desktop OS</a>	—+ <a href="#">Processor/CAL</a>	—+ <a href="#">Server/CAL</a>	—+ <a href="#">Per Core</a>
<a href="#">Mgmt Servers</a>	—+ <a href="#">Specialty Servers</a>	—+ <a href="#">Dev Tools</a>	—+ <a href="#">Online Services</a>	—+ <a href="#">Combined Models</a>	—+ <a href="#">Appendices</a>	—+ <a href="#">Product Index</a>
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[CAL WAIVER FOR BATCH JOBS](#)

You do not need CALs for any user or device that accesses your instances of the server software solely through a batching process. “Batching” is an activity that allows a group of tasks occurring at different times to be processed all at the same time.

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## SQL Server 2014 Enterprise

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms)

See Applicable Notices: **Automatic Updates** (See [Appendix 1](#))

Included Technologies: **Windows Software Components** (See [Universal License Terms](#))

External User Access: **CALs**

### Additional Terms:

New server licenses for SQL Server 2014 Enterprise (Server/CAL) are not available. Existing Software Assurance customers upgrading to the 2014 version should refer to the April 2014 License Agreement/Product Use Rights for their license terms.

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## SQL Server 2014 Standard

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms)

See Applicable Notices: **Automatic Updates** (See [Appendix 1](#))

Included Technologies: **Windows Software Components** (See [Universal License Terms](#))

External User Access: **CALs**

### BASE CALs

#### You need:

- SQL Server 2014 CAL

### Additional Terms:

#### RUNNING INSTANCES OF THE SERVER SOFTWARE

For each server license, software may be run in only one Physical or Virtual OSE at a time, but each you may use any number of Running Instances of the server software in that OSE.

#### DOWN-EDITION RIGHTS

In place of any permitted Instance, you may use an Instance of any version of Workgroup or Small Business. [LICENSE](#)

#### MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector

Licenses and Using Software within and across Server Farms” only for licenses with active Software Assurance.

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## Visual Studio Team Foundation Server 2013 with SQL Server 2014 Technology

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms)

External User Access: **CALs**

Included Technologies: **SQL Server Technology, Windows Software Components** (See [Universal License Terms](#))

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## **BASE CALs**

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<u>Mgmt Servers</u>	-+		-+	<u>Specialty Servers</u>	-+	<u>Dev Tools</u>	-+	<u>Online Services</u>	-+	<u>Combined Models</u>	-+	<u>Appendices</u>	-+	<u>Product Index</u>

You need:

Visual Studio Team Foundation Server 2013 CAL

### ADDITIVE CALs

**Additional Functionality:**

Request and Manage Feedback  
 Test Management  
 Agile Portfolio Management  
 Work Item Char Authoring  
 Release Management  
 Team Rooms

**Required Additive License (i.e. Additive CAL equivalent):**

Visual Studio Test Professional 2013 with MSDN, **or**  
 Visual Studio Premium 2013 with MSDN, **or**  
 Visual Studio Ultimate 2013 with MSDN, **or**  
 MSDN Platforms

### Additional Terms:

#### USAGE NOT REQUIRING A CLIENT ACCESS

LICENSE A CAL is not required:

To view, edit, or enter work items.

To access Team Foundation Server Reporting.

For accessing Visual Studio Online via a Team Foundation Server 2013 Proxy.

For providing approvals to stages as part of the Release Management pipeline.

For accessing Visual Studio Team Foundation Server through a pooled connection from another integrated application or service.

#### VISUAL STUDIO TEAM FOUNDATION SERVER BUILD SERVICES

If you have one or more Licensed Users of Visual Studio Ultimate with MSDN, Visual Studio Premium with MSDN, or Visual Studio Professional with MSDN, then you may also install the Visual Studio software and permit access and use of it as part of Team Foundation Server 2013 Build Services by your Licensed Users and Licensed Devices of Team Foundation Server 2013.

#### LICENSE TERMS FOR MICROSOFT SHAREPOINT FOUNDATION 2013

The software is accompanied by Microsoft SharePoint Foundation 2013 which is licensed to you under its own terms. A copy of those separate license terms are located in the “Licenses” folder.

#### THIRD PARTY SOFTWARE

Additional legal notices and license terms applicable to portions of the software are set forth in the ThirdPartyNotices file accompanying the software. In addition to any terms and conditions of any third party license identified in the ThirdPartyNotices file, the disclaimer of warranty and limitation on and exclusion of damages provisions of your Volume Licensing Agreement shall apply to all of the software.

#### TECHNICAL LIMITATIONS

You may not reverse engineer, decompile or disassemble the software, or otherwise attempt to derive the source code for the software except, and solely to the extent: (i) permitted by applicable law, despite this limitation; or (ii) required to debug changes to any libraries licensed under the GNU Lesser General Public License which may be included with and linked to by the software.

#### LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only for licenses with active Software Assurance.

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### Windows MultiPoint Server 2012 Premium

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:



Self-Hosting of Applications Allowed: **No**

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **No**  
Unwanted Software (Notice I) (See [Appendix 1](#))

See Applicable Notices: **Data Transfer, MPEG-4, VC-1, Potentially**

**External User Access:** CALs

**BASE CALs**

**You need:**

Windows MultiPoint Server 2012 CAL

with active Software Assurance on or after the date Windows Server 2012 is first available for download through Volume Licensing

[Introduction](#) → [Universal Terms](#) → [Desktop Apps](#) → [Desktop OS](#) → [Processor/CAL](#) → [Server/CAL](#) → [Per Core](#)

[Mgmt Servers](#) → [Specialty Servers](#) → [Dev Tools](#) → [Online Services](#) → [Combined Models](#) → [Appendices](#) → [Product Index](#)

**And:**

Windows Server 2012 CAL, **or**  
 Core CAL Suite<sup>1</sup>, **or**  
 Core CAL Bridge for Microsoft Intune<sup>1</sup>, **or**  
 Core CAL Bridge for Office 365<sup>1</sup>, **or**  
 Core CAL Bridge for Office 365 User SL, **or**  
     Core CAL Bridge for Office 365 and Microsoft  
 Intune<sup>1</sup>, **or**  
 Enterprise CAL Suite<sup>1</sup>, **or**  
 Enterprise CAL Bridge for Office 365<sup>1</sup>, **or**  
 Enterprise CAL Bridge for Office 365 User SL, **or**  
 Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**  
     Enterprise CAL Bridge for Office 365 and  
 Microsoft Intune<sup>1</sup>, **or**  
 Enterprise Mobility Suite User SL<sup>2</sup>

<sup>2</sup> Only the full User SL satisfies the access requirement

**ADDITIVE CALs**

**Product or Functionality:**

Windows Server 2012 Rights Management Services

**List of CALs:**

Windows Server 2012 Active Directory Rights Management Services CAL,  
**or**  
 Enterprise CAL Suite<sup>1</sup>, **or**  
 Enterprise CAL Bridge for Office 365<sup>1</sup>, **or**  
 Enterprise CAL Bridge for Office 365 User SL, **or**  
 Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**  
 Enterprise CAL Bridge for Office 365 and Microsoft Intune<sup>1</sup>, **or**  
 Enterprise Mobility Suite User SL  
<sup>1</sup> with active Software Assurance on or after September 1, 2012

**Additional Terms:**

**RUNNING INSTANCES OF THE SOFTWARE**

You have the corresponding rights below for each server license you acquire and assign. You may run on the licensed server at any one time:

- One instance of the server software in the physical OSE<sup>1</sup>, and
- One instance of the server software in one virtual OSE

<sup>1</sup> If you Run the maximum permitted number of Instances (physical and virtual), the Instance of the server software Running in the Physical OSE may be used only to host and manage Virtual OSEs.

**ACCESS LICENSES**

CALs are not required to access server software running a Web or HPC Workload.  
 CALs not required for access in a Physical OSE used solely for hosting and managing Virtual OSEs.

**VALIDATION**

The software will from time to time update or require download of the validation feature of the software. Validation verifies that the software has been activated and is properly licensed. Validation also permits you to use certain features of the software, or to obtain additional benefits. For more information, see <http://go.microsoft.com/fwlink/?linkid=39157>.

During a validation check, the software will send information about the software and device to Microsoft. This information includes the version and product key of the software, and the Internet protocol address of the device. Microsoft does not use the information to identify or contact you, except that Microsoft may use and share the information to prevent unlicensed use of the software. By using the software, you consent to the transmission of this information. For more information about validation and what is sent during a validation check, see

<http://go.microsoft.com/fwlink/?linkid=96551>. If the software is not properly licensed, the functionality of the software may be affected. For example, you may:

- need to reactivate the software, or
- receive reminders to obtain a properly licensed copy of the software,
- or you may not be able to obtain certain updates or upgrades from Microsoft.

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 [Universal Terms](#) → 
 [Desktop Apps](#) → 
 [Desktop OS](#) → 
 [Processor/CAL](#) → 
 [Server/CAL](#) → 
 [Per Core](#)

[Mgmt Servers](#) → 
 [Specialty Servers](#) → 
 [Dev Tools](#) → 
 [Online Services](#) → 
 [Combined Models](#) → 
 [Appendices](#) → 
 [Product Index](#)

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updates from authorized sources, see <http://go.microsoft.com/fwlink/?linkid=96552>.

**WINDOWS MULTIPPOINT SERVER 2012 CONNECTOR**

You may install and use the Windows Server 2012 MultiPoint Connector software on any device that is licensed to access Windows Server 2012. You may use this software only to access the MultiPoint Server software. If you access the server software from this device solely to use the MultiPoint Dashboard you do not need a MultiPoint Server CAL.

**DATA STORAGE TECHNOLOGY**

The server software may include data storage technology called Windows Internal Database or Microsoft SQL Server Desktop Engine for Windows. Components of the server software use these technologies to store data. You may not otherwise use or access these technologies under these License Agreement/Product Use Rights.

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**Windows MultiPoint Server 2012 Standard**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: <b>No</b>	Additional Software: <b>Yes</b> (See <a href="#">Appendix 3</a> )
License Mobility Within Server Farms: <b>No</b>	See Applicable Notices: <b>Data Transfer, MPEG-4, VC-1, Potentially Unwanted Software</b> (Notice I) (See <a href="#">Appendix 1</a> )

**External User Access: CALs**

**BASE CALs**

- You need:
- 1 with active Software Assurance on or after the date Windows Server 2012 is first available for download through Volume Licensing
- Windows MultiPoint Server 2012 CAL
- And:
- 2 Only the full User SL satisfies the access requirement
- Windows Server 2012 CAL, **or**
- Core CAL Suite<sup>1</sup>, **or**
  - Core CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
  - Core CAL Bridge for Office 365<sup>1</sup>, **or**
  - Core CAL Bridge for Office 365 User SL, **or**
  - Core CAL Bridge for Office 365 and Microsoft Intune<sup>1</sup>, **or**
  - Enterprise CAL Suite<sup>1</sup>, **or**
  - Enterprise CAL Bridge for Office 365<sup>1</sup>, **or**
  - Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
  - Enterprise CAL Bridge for Office 365 User SL, **or**
  - Enterprise CAL Bridge for Office 365 and Microsoft Intune<sup>1</sup>, **or**
  - Enterprise Mobility Suite User SL<sup>2</sup>

**ADDITIVE CALs**

**Product or Functionality:**

Windows Server 2012 Rights Management Services

**List of CALs:**

- Windows Server 2012 Active Directory Rights Management Services CAL, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365 User SL, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365 and Microsoft Intune<sup>1</sup>,
- or**
- Enterprise Mobility Suite User SL
- <sup>1</sup> with active Software Assurance on or after September 1, 2012

**Additional Terms:**

Introduction → Universal Terms → Desktop Apps → Desktop OS → Processor/CAL → Server/CAL → Per Core

Mgmt Servers → Specialty Servers → Dev Tools → Online Services → Combined Models → Appendices → Product Index

## RUNNING INSTANCES OF THE SOFTWARE

You have the corresponding rights below for each server license you acquire and assign. You may run on the licensed server at any one time:

- One Instance of the server software in the Physical OSE<sup>1</sup>, and
- One Instance of the server software in one Virtual OSE

<sup>1</sup> If you Run the maximum permitted number of Instances (physical and virtual), the Instance of the server software Running in the Physical OSE may be used only to host and manage Virtual OSEs.

## ACCESS LICENSES

CALs are not required to access server software running a Web or HPC Workload.  
CALs not required for access in a Physical OSE used solely for hosting and managing Virtual OSEs.

## VALIDATION

The software will from time to time update or require download of the validation feature of the software. Validation verifies that the software has been activated and is properly licensed. Validation also permits you to use certain features of the software, or to obtain additional benefits. For more information, see <http://go.microsoft.com/fwlink/?linkid=39157>.

-  
During a validation check, the software will send information about the software and device to Microsoft. This information includes the version and product key of the software, and the Internet protocol address of the device. Microsoft does not use the information to identify or contact you, except that Microsoft may use and share the information to prevent unlicensed use of the software. By using the software, you consent to the transmission of this information. For more information about validation and what is sent during a validation check, see <http://go.microsoft.com/fwlink/?linkid=96551>. If the software is not properly licensed, the functionality of the software may be affected. For example, you may:

- need to reactivate the software, or
- receive reminders to obtain a properly licensed copy of the software,
- or you may not be able to obtain certain updates or upgrades from Microsoft.

You may only obtain updates or upgrades for the software from Microsoft or authorized sources. For more information on obtaining updates from authorized sources, see <http://go.microsoft.com/fwlink/?linkid=96552>.

## WINDOWS MULTIPPOINT SERVER 2012 CONNECTOR

You may install and use the Windows Server 2012 MultiPoint Connector software on any device that is licensed to access Windows Server 2012. You may use this software only to access the MultiPoint Server software. If you access the server software from this device solely to use the MultiPoint Dashboard you do not need a MultiPoint Server CAL.

## DATA STORAGE TECHNOLOGY

The server software may include data storage technology called Windows Internal Database or Microsoft SQL Server Desktop Engine for Windows. Components of the server software use these technologies to store data. You may not otherwise use or access these technologies under these License Agreement/Product Use Rights.

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**GENERAL LICENSE TERMS**

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**DEFINED TERMS IN THIS LICENSE MODEL (SEE UNIVERSAL LICENSE TERMS)**

Core Factor, Hardware Thread, Instance, Licensed Server, OSE, Physical Core, Physical OSE, Physical Processor, Running Instances, Server, Server Farm, Virtual Core, and Virtual OSE

You have the rights below for each server you properly license.

**Server Licenses**

You must assign each license to a single Server.

You may license by Physical Cores on a Server or by individual Virtual OSE.

You may use additional software listed in [Appendix 3](#) in conjunction with your use of server software.

**LICENSING BY PHYSICAL CORE ON A SERVER**

The number of licenses required equals the number of Physical Cores on the Licensed Server multiplied by the applicable Core Factor located at <http://go.microsoft.com/fwlink/?LinkID=229882>.

You may use any number of Running Instances of the server software in the Physical OSE on the Licensed Server.

For enterprise and parallel data warehouse editions, you may use any number of Running Instances of the server software on the Licensed Server in a number of Physical and/or Virtual OSEs equal to the number of licenses assigned to it.

For each additional enterprise edition license that you assign, you may use Running Instances of the server software in one additional OSE on the Licensed Server.

**LICENSING BY INDIVIDUAL VIRTUAL OSE**

The number of licenses required equals the number of Virtual Cores in each Virtual OSE in which you will Run the server software, subject to a minimum of four licenses per Virtual OSE.

If any Virtual Core is at any time mapped to more than one hardware thread, you need a license for each additional hardware thread.

You may use any number of Running Instances of the software in any Virtual OSE for which you have assigned the required number of licenses.

**Additional Licensing Requirements and/or Use Rights**

**LICENSE MOBILITY -- ASSIGNING CORE LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You may reassign licenses for which you have active Software Assurance coverage to any of your Servers located within the same Server Farm as often as needed. You may reassign licenses from one server farm to another, but not on a short-term basis (i.e., not within 90 days of the last assignment).

***PRODUCT-SPECIFIC LICENSE TERMS***

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**BizTalk Server 2013 R2 Branch**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **No**

Additional Software: **Yes** (See [Appendix 3](#))

Introduction    → Universal Terms → Desktop Apps → Desktop OS → **Processor/CAL** → Server/CAL → Per Core

License Mobility Within Server Farms: **Yes** (See General Terms)

Included Technologies: **Windows Software Components** (See [Universal License Terms](#))

See Applicable Notices: **Data Transfer** (See [Appendix 1](#))

**Additional Terms:**

**OFFICE WEB COMPONENT**

You may use the component only to view and print copies of static documents, text and images created with the software and you do not need separate licenses for copies of the component.

**LIMITATIONS ON USE**

You may Run Instances of the software on Licensed Servers only at the endpoint of your internal network (or edge of your organization) to connect business events or transactions with activities processed at that endpoint; provided, the Licensed Server may not:

- act as the central node in a “hub and spoke” networking model,
- centralize enterprise-wide communications with other servers or devices; or automate business processes across divisions, business units, or branch offices.

You may not use the server software, including the Master Secret Server, on a server that is part of a networked cluster or in an operating system environment that is part of a networked cluster of OSEs on the same server.

[Table of Contents / Universal Terms](#)

**BizTalk Server 2013 R2 Enterprise**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms)

Included Technologies: **Windows Software Components** (See [Universal License Terms](#))

See Applicable Notices: **Data Transfer** (See [Appendix 1](#))

**Additional Terms:**

**OFFICE WEB COMPONENT**

You may use the component only to view and print copies of static documents, text and images created with the software and you do not need separate licenses for copies of the component.

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**BizTalk Server 2013 R2 Standard**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms)

Included Technologies: **Windows Software Components** (See [Universal License Terms](#))

See Applicable Notices: **Data Transfer** (See [Appendix 1](#))

**Additional Terms:**

OFFICE WEB COMPONENT

You may use the component only to view and print copies of static documents, text and images created with the software and you do not need separate licenses for copies of the component.

LIMITATIONS ON USE

You may not use the server software, including the Master Secret Server, on a server that is part of a networked cluster or in an operating system environment that is part of a networked cluster of OSEs on the same server.

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<u>Mgmt Servers</u>	→	<u>Specialty Servers</u>	→	<u>Dev Tools</u>	→	<u>Online Services</u>	→	<u>Combined Models</u>	→	<u>Appendices</u>	→	<u>Product Index</u>
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## Microsoft Dynamics AX 2012 R3 Standard Commerce Server Core

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

**License Mobility Within Server Farms:** Yes (See [General Terms](#))

### Additional Terms:

#### MODIFICATION RIGHT

The software may include plug-ins, runtime, and other components identified in printed or online documentation that allow you to extend its functionality. You may modify or create derivative works of these components and use those derivative works, but solely internally with the software.

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## SQL Server 2012 Parallel Data Warehouse Core

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **No**  
(See [License Terms](#))

Included Technologies: **Windows Software Components** (See [Universal License Terms](#))

### Additional Terms:

#### THIRD PARTY SOFTWARE

Additional legal notices and license terms applicable to portions of the software are set forth in the ThirdPartyNotices file accompanying the software. In addition to any terms and conditions of any third party license identified in the ThirdPartyNotices file, the disclaimer of warranty and limitation on and exclusion of damages provisions of your Volume Licensing Agreement shall apply to all of the software.

#### FAIL-OVER SERVERS

The Parallel Data Warehouse (PDW) Appliance is a single unit made up of two or more compute nodes (Licensed Servers) all controlled by a single PDW control virtual machine (Virtual OSE). Technology is built in to the appliance which allows the software to fail-over to another compute node on the appliance. You do not need additional licenses for the software running in fail-over OSEs as executed by the PDW Appliance technology.

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## SQL Server 2014 Enterprise Core

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

~~License Mobility Within Server Farms: **Yes** (See [General Terms](#))~~

~~Included Technologies: **Windows Software Components** (See [Universal License Terms](#))~~

See Applicable Notices: **Automatic Updates** (See [Appendix 1](#))

### Additional Terms:

#### DOWN-EDITION RIGHTS

In place of any permitted Instance, you may use an Instance of either the 2008 R2 version of Datacenter, the 2008 R2 or any earlier version of Enterprise, or the 2014 or any earlier version of Business Intelligence, Standard, Workgroup, or Small Business.

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### SQL Server 2014 Standard Core

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

<u>Introduction</u>	+ <u>Universal Terms</u>	+ <u>Desktop Apps</u>	+ <u>Desktop OS</u>	+ <u>Processor/CAL</u>	+ <u>Server/CAL</u>	+ <u>Per Core</u>
Mgmt Servers	+ Specialty Servers	+ Dev Tools	+ Online Services	+ Combined Models	+ Appendices	+ Product Index
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Self-Hosting of Applications Allowed: **Yes** (See [Appendix 2](#))

Additional Software: **Yes** (See [Appendix 3](#))

License Mobility Within Server Farms: **Yes** (See General Terms)

Included Technologies: **Windows Software Components** (See [Universal License Terms](#))

See Applicable Notices: **Automatic Updates** (See [Appendix 1](#))

**Additional Terms:**

**DOWN-EDITION RIGHTS**

In place of any permitted instance, you may use an instance of either the 2012 or earlier version of Standard, or any version of Workgroup or Small Business.

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Mgmt Servers      + Specialty Servers + Dev Tools + Online Services + Combined Models + Appendices + Product Index

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***GENERAL LICENSE TERMS***

**DEFINED TERMS IN THIS LICENSE MODEL (SEE UNIVERSAL LICENSE TERMS, DEFINITIONS)**

Instance, Licensed Server, Managing an OSE, OSE, Physical OSE, Running Instances, Server Farm and Virtual OSE

Management Licenses permit Management of OSEs by the corresponding version of the software or earlier versions. Management License version determines the version of applicable license terms (including use under downgrade rights notwithstanding terms to the contrary).

**SERVER MANAGEMENT LICENSES:**

You have the rights below for each Server you properly license.

Server Management Licenses are required for OSEs running server operating systems.

You must assign one license for every two processors on the managed Server.

The licenses assigned to the managed Server must be the same edition.

For standard edition licenses, you may use the software to Manage up to two OSEs per license on the managed Server.

For standard edition licenses, you may also Manage the Physical OSE on the managed Server if it is used solely to host and Manage a Virtual OSE.

For standard edition licenses, you may assign additional standard licenses to your managed Server and Manage two additional OSEs per license.

For datacenter edition licenses, you may use the software to Manage an unlimited number of OSEs on the managed Server.

**CLIENT MANAGEMENT LICENSES:**

Client Management Licenses are required for all other OSEs.

You may use the software to Manage your OSEs (number permitted and users and devices covered per license depends on license type assigned).

Management of an OSE accessed by more than one user requires an OSE Client Management License or User Client Management Licenses for each user.

**MANAGEMENT LICENSES ARE NOT REQUIRED FOR:**

OSEs in which there are no Running Instances of software.

Any of your network infrastructure devices functioning solely for the purpose of transmitting network data and not running Windows Server software.

Conversion of OSEs from Physical to Virtual.

Any device solely monitored or managed for hardware components' status with respect to system temperature, fan speed, power on/off, system reset or CPU availability.

The physical OSE on your server when it is being used solely to run hardware virtualization software, provide hardware virtualization services, and run software to manage and service OSEs on that device.

**NO COPYING OR DISTRIBUTING DATA SETS**

You may not copy or distribute any data set (or any portion of a data set) included in the software.

Introduction - Universal Terms - Desktop Apps - \_\_\_\_\_ Desktop OS - Processor/CAL - Server/CAL - Per Core

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## ***PRODUCT-SPECIFIC LICENSE TERMS***

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# System Center 2012 R2 Client Management Suite

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

**License Mobility Within ServerFarms:** No

See Applicable Notices: **Data Transfer, Bing Maps** (See [Appendix 1](#))  
**Components** (See [Universal License Terms](#))

**Self-Hosting of Applications Allowed:** Yes (See [Appendix 2](#))

Included Technologies: **SQL Server Technology, Windows Software**

### **CLIENT MANAGEMENT LICENSES**

You need:

- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365 User SL, **or**
- Enterprise CAL Bridge for Office 365 and Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Microsoft Intune<sup>1</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, **or**
- System Center 2012 R2 Client Management Suite (User or OSE Client ML)

<sup>1</sup> with active Software Assurance coverage on or after the date the software is first available for download through Volume Licensing

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# System Center 2012 R2 Configuration Manager

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

**License Mobility Within ServerFarms:** No

See Applicable Notices: **Data Transfer, Bing Maps** (See [Appendix 1](#))  
**Components** (See [Universal License Terms](#))

**Self-Hosting of Applications Allowed:** Yes (See [Appendix 2](#))

Included Technologies: **SQL Server Technology, Windows Software**

### **CLIENT MANAGEMENT LICENSES**

You need:

- Core CAL Suite<sup>1</sup>, **or**
- Core CAL Bridge for Office 365<sup>1</sup>, **or**
- Core CAL Bridge for Office 365 User SL, **or**
- Enterprise CAL Suite<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365<sup>1</sup>, **or**
- Enterprise CAL Bridge for Office 365 User SL, **or**
- Microsoft Intune User SL, **or**
- Enterprise Mobility Suite User SL<sup>2</sup>

System Center 2012 R2 Configuration Manager (User or OSE Client ML)

<sup>1</sup> with active Software Assurance coverage on or after the date the software is first available for download through Volume Licensing

<sup>2</sup> Only the full User SL satisfies the access requirement

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**System Center 2012 R2 Datacenter**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

~~License Mobility Within Server Farms: No~~ ~~Self-Hosting of Applications Allowed: Yes (See Appendix 2)~~

~~Introduction~~ ~~→ Universal Terms~~ ~~→ Desktop Apps~~ ~~→ Desktop OS~~ ~~→ Processor/CAL~~ ~~→ Server/CAL~~ ~~→ Per Core~~

~~Mgmt Servers~~ ~~→ Specialty Servers~~ ~~→ Dev Tools~~ ~~→ Online Services~~ ~~→ Combined Models~~ ~~→ Appendices~~ ~~→ Product Index~~

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See Applicable Notices: **Data Transfer, Bing Maps** (See [Appendix 1](#)) Included Technologies: **SQL Server Technology, Windows Software Components** (See [Universal License Terms](#))

**SERVER MANAGEMENT LICENSES**

Required Server Management Licenses:

- System Center 2012 R2 Datacenter

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**System Center 2012 R2 Standard**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

**License Mobility Within ServerFarms:** No

**Self-Hosting of Applications Allowed:** Yes (See [Appendix 2](#))

See Applicable Notices: **Data Transfer, Bing Maps** (See [Appendix 1](#)) Included Technologies: **SQL Server Technology, Windows Software Components** (See [Universal License Terms](#))

**SERVER MANAGEMENT LICENSES**

Required Server Management Licenses:

System Center 2012 R2 Standard

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**SPECIALTY SERVERS (SERVER LICENSE)**

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**GENERAL LICENSE TERMS**

**DEFINED TERMS IN THIS LICENSE MODEL (SEE UNIVERSAL LICENSE TERMS)**

Instance, Licensed Server, OSE, Physical OSE, Running Instance, Server Farm and Virtual OSE. You have the rights below for each server license you acquire.

**SERVER LICENSES**

You must assign each license to a single Server. For each license, you may use one Running Instance of server software on the Licensed Server in either a Physical or Virtual OSE. You may use the additional software listed in [Appendix 3](#) in conjunction with your use of server software.

**Additional Licensing Requirements and/or Use Rights**

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

For products designated as having License Mobility, you may reassign licenses to any of your Servers located within the same Server Farm as often as needed. Some products may require Software Assurance for these rights. You may reassign licenses from one server farm to another, but not on a short-term basis (i.e., not within 90 days of the last assignment).

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**PRODUCT-SPECIFIC LICENSE TERMS**

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**Forefront Identity Manager 2010 - Windows Live Edition**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **No**

Additional Software: **Yes** (See [Appendix 3](#))

**See Applicable Notices:** *No*

**License Mobility Within Server**

**Farms:** *No*

**Additional Terms:**

You may use the software to import identity data, and changes to those data, from one or more connected data sources and to facilitate the synchronization and transfer of those data, between your connected data sources and the Microsoft Passport Network / Windows Live ID service (“Service”). You may not use the software for any other purpose. For example, you may not use the software to synchronize or facilitate transfer of data from one of your connected data sources to another. Your use of the Service remains subject to any and all applicable terms of use and these rights do not change or supplement such terms.

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### Microsoft Dynamics CRM Workgroup Server 2015

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **No**

Additional Software: **Yes** (See [Appendix 3](#))

See Applicable Notices: **Data Transfer, Bing Maps, and Yammer** (See [Appendix 1](#))

License Mobility Within Server Farms: **No**

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Servers

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## System Center Virtual Machine Manager 2008 R2 Workgroup Edition

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

**License Mobility Within ServerFarms:** No

No

Additional Software: **Yes** (See [Appendix 3](#))

**Self-Hosting of Applications Allowed:**

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## Windows Server 2012 R2 Essentials

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **No**

Additional Software: **Yes** (See [Appendix 3](#))

See Applicable Notices: **Data Transfer, MPEG-4, VC-1, Potentially**

License Mobility Within Server Farms: **No**

**Unwanted Software** (Notice 1) (See [Appendix 1](#))

### Additional Terms:

#### LIMITATIONS ON USE

At any one time, you may Run an instance of the server software in  
 One Physical OSE, and  
 One Virtual OSE.

You must run the server software within a domain where the Server's Active Directory is configured:

As the domain controller (a single server which contains all the flexible single master operations (FSMO) roles),

As the root of the domain forest,

Not to be a child domain, and

To have no trust relationship with any other domains.

If both permitted Instances are running, the Instance in the Physical OSE may be used only to run hardware virtualization software, provide hardware virtualization services, or run software to manage and service operation system environments on the licensed server. That Instance does not need to meet the requirements in (2) above. That is the only configuration that does not require the Instance to be a domain controller.

30 days after the initial installation of the server software, the software will from time to time verify that Active Directory is configured as above. If the configuration verification fails, the following will occur:

Failure warnings will be presented to the server administrator. The failure warnings are also viewable in the health alert section in the Windows Server 2012 R2 Essentials Dashboard.

On the 22<sup>nd</sup> day of continued non-compliance, the server will shut down until the administrator reboots the server;

Once rebooted, the server can be run for another 21 days before it shuts down again. This will continue until you have corrected your configuration. During any 21 day period, you are able to make the necessary corrections to your configuration to become compliant with these license terms.

Once you have corrected your configuration, the warnings and automatic shutdowns will cease.

#### USING THE SERVER SOFTWARE

A User Account is a unique user name with its associated password created through the Windows Server 2012 R2 Essentials Console.

You may use up to 25 user accounts. Each user account permits a named user to access and use the server software on that server. You

may reassign a user account from one user to another provided that the reassignment does not occur within 90 days of the last assignment.

[WINDOWS SERVER 2012 R2 ESSENTIALS CONNECTOR](#)

You may install and use the Windows Server 2012 R2 Essentials Connector software on no more than 50 devices at any one time. You may use this software only with the server software.

[WINDOWS SERVER 2012 R2 ACTIVE DIRECTORY RIGHTS MANAGEMENT SERVICES ACCESS](#)

You must acquire a Windows Server 2012 R2 Active Directory Rights Management Services CAL for each User Account through which a user directly or indirectly accesses the Windows Server 2012 R2 Active Directory Rights Management Services functionality.

<a href="#">Introduction</a>	→	<a href="#">Universal Terms</a>	→	<a href="#">Desktop Apps</a>	→	<a href="#">Desktop OS</a>	→	<a href="#">Processor/CAL</a>	→	<a href="#">Server/CAL</a>	→	<a href="#">Per Core</a>
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## VALIDATION

The software will from time to time update or require download of the validation feature of the software. Validation verifies that the software has been activated and is properly licensed. Validation also permits you to use certain features of the software, or to obtain additional benefits. For more information, see <http://go.microsoft.com/fwlink/?linkid=39157>.

During a validation check, the software will send information about the software and device to Microsoft. This information includes the version and product key of the software, and the Internet protocol address of the device. Microsoft does not use the information to identify or contact you, except that Microsoft may use and share the information to prevent unlicensed use of the software. By using the software, you consent to the transmission of this information. For more information about validation and what is sent during a validation check, see <http://go.microsoft.com/fwlink/?linkid=96551>.

If the software is not properly licensed, the functionality of the software may be affected. For example, you may:

- need to reactivate the software, or
- receive reminders to obtain a properly licensed copy of the software, or

you may not be able to obtain certain updates or upgrades from Microsoft.

You may only obtain updates or upgrades for the software from Microsoft or authorized sources. For more information on obtaining updates from authorized sources, see <http://go.microsoft.com/fwlink/?linkid=96552>.

## DATA STORAGE TECHNOLOGY

The server software may include data storage technology called Windows Internal Database or Microsoft SQL Server Desktop Engine for Windows. Components of the server software use these technologies to store data. You may not otherwise use or access these technologies under these License Agreement/Product Use Rights.

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**DEVELOPER TOOLS (USER LICENSE)**

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The Licensed User may run the software on Microsoft Azure Platform Services

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Except as provided here, the General License terms of the Developer Tools Licensing Model of these License Agreement/Product Use Rights applies to the use of the software. Despite the rights granted above, the Licensed User may not run Office Professional Plus or System Center Virtual Machine Manager for production use and may not run Windows Server or Windows Desktop operating system software for any use on third party shared servers.

The right to run software on Microsoft Azure Platform Services expires with the expiration of your MSDN subscription.

**ADDITIONAL REQUIREMENTS**

To run software on Microsoft Azure Platform Services you must:

Activate your MSDN subscription by linking your Microsoft account to the MSDN subscription.

Deploy your licenses only with Microsoft Azure Platform Services.

Agree that you will remain responsible for the obligations under your Volume Licensing Agreement with regards to software deployed and managed on your behalf on Microsoft Azure Platform Services.

**ACCEPTANCE TESTING AND FEEDBACK**

Your end users may access the software to perform acceptance tests or to provide feedback on your programs.



SUPERSEDING USE TERMS

Your use of software development kits (SDKs), driver development kits (DDKs), feature packs, agents, remote tools, and patterns and practices releases that come with separate license terms is subject to those separate license terms.

WINDOWS SERVER 2012 R2 REMOTE DESKTOP SERVICES

Up to 200 anonymous users at a time may use the Remote Desktop Services feature of the Windows Server software to access online demonstrations of your programs.

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Mgmt                      -+ Specialty Servers -+ Dev Tools -+ Online Services -+ Combined Models -+ Appendices -+ Product Index

**WINDOWS DESKTOP OPERATING SYSTEM**

Notices, validation, and terms applicable to regional versions of Windows operating system under the Desktop Operating Systems Licensing Model are applicable to Windows desktop operating system when used under a MSDN subscription.

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The software for the product contains Microsoft .NET Framework software and may contain PowerShell software. See the license terms for Windows Software Components in the Universal License Terms.

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**PRODUCT-SPECIFIC LICENSE TERMS**

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**BizTalk Server 2013 R2 Developer**

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**MSDN Operating Systems**

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**MSDN Platforms**

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**SQL Server 2014 Developer**

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**Additional Terms:**

**DEMONSTRATION**

In addition to the Licensed User, any person that has access to your internal network may install and use copies of the software to demonstrate use of your programs with the software.

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**SQL Server 2012 Parallel Data Warehouse Developer**

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**Visual Studio Premium 2013 with MSDN**

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<b>Mgmt Servers</b>	-+ <a href="#">Specialty Servers</a>	-+ <a href="#">Dev Tools</a>	-+ <a href="#">Online Services</a>	-+ <a href="#">Combined Models</a>	-+ <a href="#">Appendices</a>	-+ <a href="#">Product Index</a>
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See Applicable Notices: **Data Transfer, Bing Maps, Location Framework, Mapping APIs, Microsoft Accounts in Visual Studio, H.264/MPEG-4 AVC and/or VC-1** (See [Appendix 1](#))

Included Technologies: **Windows Software Components and SQL Server Technology** (See [Universal License Terms](#))

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You may not reverse engineer, decompile or disassemble the software, or otherwise attempt to derive the source code for the software except, and solely to the extent: (i) permitted by applicable law, despite this limitation; or (ii) required to debug changes to any libraries licensed under the GNU Lesser General Public License which may be included with and linked to by the software.

**MICROSOFT SHAREPOINT, WINDOWS SOFTWARE DEVELOPMENT KIT (WINDOWS SDK) AND MICROSOFT OFFICE COMPONENTS**

The software is accompanied by Microsoft SharePoint software, including SharePoint Windows Identity Foundation Extensions, Microsoft Office Software, including Office Primary Interop Assemblies and Windows SDKs, which are all licensed to you under their own terms. The license terms for these software components are located in the "Licenses" folder of the software installation directory. If you do not agree to the license terms for these software components, you may not use them.

**MICROSOFT ADVERTISING SDK**

If you pass precise location data or other user related data (e.g., user identifier, profile data, behaviorally tracked user data, etc.) to the Microsoft Advertising SDK for Windows Phone, then your program must (a) notify users that it will be collecting and using user related information and providing this information to Microsoft for Microsoft's advertising use, and (b) explicitly obtain affirmative user consent (e.g. the user must click an "Accept" or continue "Install" button) for this upon download of the software and/or application. In addition, you agree to: (a) comply with certification and other requirements for Windows Phone; (b) comply with Microsoft's privacy and other policies in your collection and use of any user data; (c) not collect or use any user identifier created or provided to you by Microsoft for any purpose other than passing such identifier to a Microsoft advertising service as part of your use of the service; and

(d) provide in your privacy policy and/or terms of use a link that provides users with the ability to opt out of Microsoft interest based advertising at the following location <https://choice.live.com/AdvertisementChoice/>.

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[Mgmt Servers](#)    [+ Specialty Servers](#)   [+ Dev Tools](#)   [+ Online Services](#)   [+ Combined Models](#)   [+ Appendices](#)   [+ Product Index](#)

### MICROSOFT SYSTEM CENTER VIRTUAL MACHINE MANAGER (SCVMM)

Visual Studio Premium with MSDN customers may install and run SCVMM with the Visual Studio Premium software for the purpose of creating, deploying and managing lab environment(s). A lab environment is a virtual operating system environment used solely for the purpose of developing and testing your programs. You do not need management licenses for that use. No other production use rights of SCVMM are given under this license, such as managing virtualized production servers.

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### Visual Studio Professional 2013

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(d) provide in your privacy policy and/or terms of use a link that provides users with the ability to opt out of Microsoft interest based advertising at the following location <https://choice.live.com/AdvertisementChoice/>.

**EXTENSION AND PACKAGE MANAGER FEATURES**

The software includes the Extension Manager, New Project Dialog, Web Platform Installer, Microsoft NuGet-Based Package Manager, and Microsoft [ASP.NET](#) Web Pages package manager features, each of which enables you to obtain software applications or packages through the Internet from other sources. Those software applications and packages are offered and distributed in some cases by third parties and in some cases by Microsoft, but each such application or package is under its own license terms. Microsoft is not distributing or licensing any of the third-party applications or packages to you. You acknowledge and

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**Included Technologies: Windows Software Components and SQL Server Technology** (See [Universal License Terms](#))  
 (See [Appendix 1](#))

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agree: that you are obtaining the applications or packages from such third parties and under separate license terms applicable to each application or package including any license terms or embedded notices applicable to software dependencies that may be included in the package; and that Microsoft makes no representations, warranties or guarantees regarding any aspect of any such third-party applications or packages.

#### SYSTEM CENTER – VIRTUAL MACHINE MANAGER (SCVMM)

Visual Studio Test Professional with MSDN customers may install and run SCVMM with the Visual Studio Test Professional software for the purpose of creating, deploying and managing lab environment(s). A lab environment is a virtual operating system environment used solely for the purpose of developing and testing your programs. You do not need management licenses for that use. No other production use rights of SCVMM are given under this license, such as managing virtualized production servers.

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### Visual Studio Ultimate 2013 with MSDN

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

See Applicable Notices: [Data Transfer](#), [Bing Maps](#), [Location Framework](#), [Mapping APIs](#), [Microsoft Accounts in Visual Studio](#), [H.264/MPEG-4 AVC and/or VC-1](#) (See [Universal License Terms](#)) (See [Appendix 1](#)) Included Technologies: [Windows Software Components and SQL Server Technology](#) (See [Universal License Terms](#))

#### Additional Terms:

##### THIRD PARTY SOFTWARE

Additional legal notices and license terms applicable to portions of the software are set forth in the ThirdPartyNotices file accompanying the software. In addition to any terms and conditions of any third party license identified in the ThirdPartyNotices file, the disclaimer of warranty and limitation on and exclusion of damages provisions of your Volume Licensing Agreement shall apply to all of the software.

##### BUILDSERVER.TXT FILE

BuildServer Lists can be found at <http://go.microsoft.com/fwlink/?LinkId=286955>. You may install copies of the files listed in it, onto your build machines. You may do so solely for the purpose of compiling, building, verifying and archiving your programs or to run quality or performance tests as part of the build process on your build machines. We may list additional files at <http://go.microsoft.com/fwlink/?LinkId=286955> to use for this same purpose.

##### UTILITIES

Utilities Lists can be found at <http://go.microsoft.com/fwlink/?LinkId=286955>. The software contains certain components identified in that list. The components contained in the software vary by edition. You may copy and install the Utilities you receive with the software on to other third party machines. You may use the Utilities only to debug and deploy your programs and databases you develop with the software. You must delete all the Utilities installed onto a device when you finish debugging your program, but no later than 30 days after you install them on that device.

##### TECHNICAL LIMITATIONS

You may not reverse engineer, decompile or disassemble the software, or otherwise attempt to derive the source code for the software except, and solely to the extent: (i) permitted by applicable law, despite this limitation; or (ii) required to debug changes to any libraries licensed under the GNU Lesser General Public License which may be included with and linked to by the software.

##### MICROSOFT SHAREPOINT, WINDOWS SDK AND MICROSOFT OFFICE COMPONENTS:

The software is accompanied by Microsoft SharePoint software, including SharePoint Windows Identity Foundation Extensions, Microsoft Office Software, including Office Primary Interop Assemblies and Windows SDKs, which are all governed by their own license terms. . The license terms for these software components are located in the “Licenses” folder of the software installation directory.

##### MICROSOFT ADVERTISING SDK

If you pass precise location data or other user related data (e.g., user identifier, profile data, behaviorally tracked user data, etc.) to the Microsoft Advertising SDK for Windows Phone, then your program must (a) notify users that it will be collecting and using user related

information and providing this information to Microsoft for Microsoft’s advertising use, and (b) explicitly obtain affirmative user consent (e.g. the user must click an “Accept” or continue “Install” button) for this upon download of the software and/or application. In addition, you agree to: (a) comply with certification and other requirements for Windows Phone; (b) comply with Microsoft’s privacy and other policies in your collection and use of any user data; (c) not collect or use any user identifier created or provided to you by Microsoft for any purpose other than passing such identifier to a Microsoft advertising service as part of your use of the service; and

(d) provide in your privacy policy and/or terms of use a link that provides users with the ability to opt out of Microsoft interest based advertising at the following location <https://choice.live.com/AdvertisementChoice/>.

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#### EXTENSION AND PACKAGE MANAGER FEATURES

The software includes the Extension Manager, New Project Dialog, Web Platform Installer, Microsoft NuGet-Based Package Manager, and Microsoft [ASP.NET](#) Web Pages package manager features, each of which enables you to obtain software applications or packages through the Internet from other sources. Those software applications and packages are offered and distributed in some cases by third parties and in some cases by Microsoft, but each such application or package is under its own license terms. Microsoft is not distributing or licensing any of the third-party applications or packages to you. You acknowledge and agree: that you are obtaining the applications or packages from such third parties and under separate license terms applicable to each application or package including any license terms or embedded notices applicable to software dependencies that may be included in the package; and that Microsoft makes no representations, warranties or guarantees regarding any aspect of any such third-party applications or packages.

#### OFFICE PROFESSIONAL PLUS 2013

The Licensed User may also install and use one copy of Office Professional Plus 2013 on one device for production use. Except as provided here, the Desktop Applications section of these License Agreement/Product Use Rights applies to the Licensed User's use of this software.

#### SYSTEM CENTER – VIRTUAL MACHINE MANAGER (SCVMM)

Visual Studio Ultimate with MSDN customers may install and run SCVMM with the Visual Studio Ultimate software for the purpose of creating, deploying and managing lab environment(s). A lab environment is a virtual operating system environment used solely for the purpose of developing and testing your programs. You do not need management licenses for that use. No other production use rights of SCVMM are given under this license, such as managing virtualized production servers.

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**ONLINE SERVICES (USER OR DEVICE SUBSCRIPTION LICENSE, SERVICES SUBSCRIPTION LICENSE, AND/OR ADD-ON SUBSCRIPTION LICENSE)**

All terms of service for Online Services are published in the Microsoft Online Services Terms (OST) document, at <http://go.microsoft.com/?linkid=9840733> and are incorporated into these License Agreement/Product Use Rights by this reference. The OST describes the process for updating the terms of service that apply to Online Services.

To the extent a Product or other offering consists of Online Services and another product, the Online Services will be governed by the terms in the OST and all other products will be governed by these License Agreement/Product Use Rights.

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## Combined Licensing Models

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### **GENERAL LICENSE TERMS**

The product suites covered under this section include the rights to use multiple products. The licenses for these product suites provide rights to use software on a server and to manage software running on that server. The same software is also available under individual software and management licenses as described in other sections of these License Agreement/Product Use Rights. You are entitled to the use of the products included in the suite only as permitted in this section.

By acquiring a license for one of the product suites, you are acquiring a single license that may be assigned to a single device or server. You are not acquiring a set of individual software and management licenses for the individual products included in the product suite.

**DEFINED TERMS IN THIS LICENSE MODEL (SEE UNIVERSAL LICENSE TERMS)**

CAL, CIS Software, Client OSE, External Connector License, Instance, Licensed Server, Management License, Managing an OSE, OSE, Physical OSE, Physical Processor, Qualifying Third Party Device, Server, VDI Host, VDI Licensed Device, VDI Software and Virtual OSE

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### **PRODUCT-SPECIFIC LICENSE TERMS**

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## Core Infrastructure Server (CIS) Suite Datacenter

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

**Additional Terms:**

**APPLICABLE USE RIGHTS**

Your access and use of CIS software is governed by the applicable license terms for the individual products comprising the CIS software as modified by these license terms. Despite anything to the contrary in the license terms for the individual Microsoft products comprising the CIS software, one CIS Suite license is required for every two physical processors. You need to license each Physical Processor on each Server on which you Run CIS Software.

**CIS SOFTWARE INCLUDED**

- Windows Server Datacenter
- System Center Datacenter

**Windows Server Datacenter:** You may use any number of Running Instances of the Windows Server Datacenter in any number of OSEs on each Licensed Server.

**Management Licenses:** For purposes of applying the license terms for System Center Datacenter to your use of the CIS Software, you are deemed to have assigned to the licensed server System Center Datacenter licenses equal to the number of CIS Suite Datacenter licenses assigned to the server.

**ADDITIONAL TERMS**

Despite anything to the contrary in your volume license agreement and the Universal License Terms in these License Agreement/Product Use Rights about upgrading and downgrading components separately, you may run a prior version or a lower edition of any of the individual products included in the CIS Suite as permitted in the license terms for that product in the License Agreement/Product Use Rights.

All other requirements to acquire and assign External Connector Licenses, CALs and Management Licenses to users or devices for access and management, as set forth in the License Agreement/Product Use Rights, remain in full force and effect.

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## Core Infrastructure Server (CIS) Suite Standard

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The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

### Additional Terms:

#### APPLICABLE USE RIGHTS

Your access and use of CIS software is governed by the applicable license terms for the set of individual Microsoft products comprising the CIS software as modified by these license terms. Despite anything to the contrary in the license terms for the individual Microsoft products comprising the CIS software, one license is required for every two physical processors. You need to license each Physical Processor on each Server on which you run CIS Software.

#### CIS SOFTWARE INCLUDED

Windows Server Standard  
System Center Standard

**Windows Server Standard:** For each license of CIS Suite Standard that you assign to a Server, you may Run on the Licensed Server, at any one time:

One Instance of Windows Server Standard in one Physical OSE  
One Instance of Windows Server Standard each in up to two Virtual OSEs

If you use the maximum permitted number of Running Instances (physical and virtual), the Instance Running in the Physical OSE may be used only to host and manage the Virtual OSEs.

**Management Licenses:** For purposes of applying the license terms for System Center Standard to your use of the CIS software, you are deemed to have assigned to the licensed server System Center Standard licenses equal to the number of CIS Suite Standard licenses assigned to the server.

#### ADDITIONAL TERMS

Despite anything to the contrary in your Volume Licensing Agreement and the Universal License Terms in these License Agreement/Product Use Rights about upgrading and downgrading components separately, you may run a prior version or a lower edition of any of the individual products included in the CIS Suite as permitted in the license terms for that product in the License Agreement/Product Use Rights. All other requirements to acquire and assign External Connector Licenses, CALs and Management Licenses to users or devices for access and management, as set forth in the License Agreement/Product Use Rights, remain in full force and effect.

## Virtual Desktop Infrastructure (VDI) Suite

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The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

### Additional Terms:

#### SUBSCRIPTION LICENSE

VDI suite licenses are subscription licenses. The right to use software under a Subscription License expires upon expiration or termination of the enrollment or Volume Licensing Agreement under which you acquired the license. Despite anything to the contrary in your Volume Licensing Agreement, your right to use or access software or Manage OSEs under a VDI suite license ends when that license expires.

#### ROAMING USE RIGHTS

Except as provided below, the single primary user of the VDI Licensed Device may remotely access the virtual Client OSEs from any Qualifying Third Party Device without acquiring a separate VDI suite license for that device. Despite anything in your Volume Licensing

Agreement to the contrary, Qualified Desktops do not include any Qualifying Third Party Device from which your users access and use the software and any enterprise products solely under Roaming Use Rights.

When the primary user is on your or your affiliates' premises, Roaming Use Rights are not applicable. The limitations against accessing Windows Server software to host a graphical user interface (using RDS functionality or other technology) continue to apply when the Roaming Use Rights are invoked. You may not permit access to the virtual Client OSEs from the VDI Licensed Device and a third party device at the same time. All access under the Roaming Use Rights must be for work-related purposes.



The primary user's right to access the virtual Client OSEs under the Roaming Use Rights terminates when the corresponding rights on the VDI Licensed Device expire, there is a change in the primary user status or when the primary user leaves your organization. At that time, you must ensure that that user is no longer accessing the virtual Client OSEs under Roaming Use Rights.

**APPLICABLE USE RIGHTS**

Your access and use of VDI software and management of virtual Client OSEs accessed by your VDI Licensed Device are governed by the license terms for VDI software, as modified by these license terms. VDI suite licenses are per device only. The prohibition against separation of software components stated in your Volume Licensing Agreement does not apply to your use of VDI software.

**SOFTWARE RIGHTS**

The VDI Suite provides rights to use or access any version of the following VDI software during the term of your enrollment or Volume Licensing Agreement:

- Windows Server Remote Desktop Services ("RDS")
- System Center – Virtual Machine Manager ("VMM")

**REMOTE DESKTOP SERVICES**

You may directly or indirectly access RDS from your VDI Licensed Device except as follows. You may not access Windows Server software to host a graphical user interface (using RDS functionality or other technology) either:

- directly from your VDI Licensed Device or
- indirectly through a virtual OSE on your VDI host.

Despite anything to the contrary in the license terms for Windows Server, you do not need an RDS CAL for either the VDI Licensed Device or the VDI host to permit this access. You must, however, acquire and assign a base Windows Server CAL to both devices or to the accessing user.

**SYSTEM CENTER – VIRTUAL MACHINE MANAGER**

You may use VMM under your VDI suite license to manage, at any one time, up to four virtual Client OSEs in which software you are using remotely from your VDI Licensed Device is running. Those virtual OSEs may be on up to four different VDI hosts. You may not manage OSEs that are not on VDI hosts.

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## APPENDIX 1: NOTICES

### BING MAPS

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The Product includes use of Bing Maps. Any content provided through Bing Maps, including geocodes, can only be used within the product through which the content is provided. Your use of Bing Maps is governed by the Bing Maps End User Terms of Use available at <http://go.microsoft.com/?linkid=9710837> and the Bing Maps Privacy Statement available at <http://go.microsoft.com/fwlink/?LinkID=248686>.

### LOCATION FRAMEWORK

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The software may contain a location framework component that enables support of location services in programs. In addition to the other limitations in your Volume Licensing Agreement, you must comply with all applicable local laws and regulations when using the location framework component or the rest of the software.

### MAPPING APIS

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The software may include application programming interfaces that provide maps and other related mapping features and services that are not provided by Bing (the “Additional Mapping APIs”). These Additional Mapping APIs are subject to additional terms and conditions and may require payment of fees to Microsoft and/or third party providers based on the use or volume of use of such APIs. These terms and conditions will be provided when you obtain any necessary product keys to use such Additional Mapping APIs or when you review or receive documentation related to the use of such Additional Mapping APIs.

### MICROSOFT ACCOUNTS IN VISUAL STUDIO

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If you are running the software on Windows 8.1, Windows 8, or Windows 7 with sign-in assistant, or any other version of Windows that supports providing a Microsoft Account directly to the software and you are signed into a Microsoft Account in those versions of Windows, you may automatically be signed into the software and [VisualStudio.com](http://VisualStudio.com) services accessed by the software using the same Microsoft Account. This allows you to access services within the software and roam the software’s settings without being asked to re-enter your Microsoft Account credentials each time you start the software. For more information about signing into the software and the services available therein with a Microsoft Account, see the privacy statement <http://go.microsoft.com/fwlink/?LinkId=286720>.

### NOTICE OF AUTOMATIC UPDATES TO PREVIOUS VERSIONS OF SQL SERVER

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If the software is installed on servers or devices running any supported editions of SQL Server prior to SQL Server 2012 (or components of any of them) this software will automatically update and replace certain files or features within those editions with files from this software. This feature cannot be switched off. Removal of these files may cause errors in the software and the original files may not be recoverable. By installing this software on a server or device that is running such editions you consent to these updates in all such editions and copies of SQL Server (including components of any of them) running on that server or device.

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### NOTICE OF DATA TRANSFER

The product contains one or more software features that connect to Microsoft or service provider computer systems over the Internet. These features are identified in the Data Transfer Notices document at <http://microsoft.com/licensing/contracts>. Microsoft provides

services with products through these features. You will not always receive a separate notice when a feature connects. In some cases, you may switch off a feature or not use it.

**Computer Information**

The features use Internet protocols, which send to the appropriate systems computer information, such as your Internet protocol address, the type of operating system, browser and name and version of the software you are using, and the language code of the device where you installed the software.

**Use of Information**

Microsoft does not use the information to identify or contact you. Microsoft uses this information to make services available to you when you use the software. Microsoft may use the computer information, accelerator information, search suggestions information, error reports, Malware reports and URL filtering reports to improve our software and services. We may also share it with others, such as hardware and software vendors. They may use the information to improve how their products run with Microsoft software.

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## Consent for Data Transfer

By using these software features, you consent to the transmission of computer information, such as your Internet protocol address, the type of operating system, browser and name and version of the software you are using, and the language code of the device where you run the software.

## NOTICE ABOUT THE H.264/AVC VISUAL STANDARD, THE VC-1 VIDEO STANDARD, AND THE MPEG-4 PART 2 VISUAL STANDARD

This software may include H.264/AVC, VC-1, and MPEG-4 Part 2 visual compression technology. MPEG LA, L.L.C. requires this notice: ~~THIS PRODUCT IS LICENSED UNDER THE AVC, THE VC-1, THE MPEG-4 PART 2 VISUAL PATENT PORTFOLIO LICENSES FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE ABOVE (“VIDEO STANDARDS”) AND/OR (ii) DECODE AVC, VC-1, MPEG-4 PART 2 VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE SUCH VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE.~~ ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C. SEE [www.mpegla.com](http://www.mpegla.com) per For clarification purposes, this notice does not limit or inhibit the use of the software for normal business uses that are personal to that business which do not include (i) redistribution of the software to third parties, or (ii) creation of content with the VIDEO STANDARDS compliant technologies for distribution to third parties.

### ***POTENTIALLY UNWANTED SOFTWARE (NOTICE I)***

~~If turned on, Windows Defender will search your computer for many types of malicious software (“malware”), including viruses, worms, bots, rootkits, “spyware,” “adware” and other potentially unwanted software. If you choose the recommended security settings when you first start using the software, such malware and other potentially unwanted software rated “high” or “severe” will automatically be removed. This removal may result in other software on your computer ceasing to work or your breaching a license to use that software.~~

It is possible that software that is not unwanted may be removed or disabled. If you use Windows Defender and Windows Update, Windows Defender is regularly updated through Windows Update.

### ***POTENTIALLY UNWANTED SOFTWARE (NOTICE II)***

~~The software will search your computer for low to medium severity Malware, including but not limited to, spyware, and other potentially unwanted software (“Potentially Unwanted Software”). The software will only remove or disable low to medium severity Potentially Unwanted Software if you agree. Removing or disabling this Potentially Unwanted Software may cause other software on your computer to stop working, and it may cause you to breach a license to use other software on your computer, if the other software installed this Potentially Unwanted Software on your computer as a condition of your use of the other software. You should read the license agreements for other software before authorizing the removal of this Potentially Unwanted Software.~~

By using the software, it is possible that you or the system will also remove or disable software that is not Potentially Unwanted Software.

### ***RECORDING NOTICE***

~~The laws of some jurisdictions require notice to or the consent of individuals prior to intercepting, monitoring and/or recording their communications and/or restrict collection, storage, and use of personally identifiable information. You agree to comply with all applicable laws and to obtain all necessary consents and make all necessary disclosures before using the online service and/or the recording feature(s).~~

## ***NOTICE ABOUT THE VISUAL AND AUDIO CODEC STANDARDS***

The Windows Embedded 8.1 Industry software may include visual and audio encoding and decoding technology. It is not licensed for any implementation or distribution in any commercial product or service. You are responsible for determining and securing license rights to include the technology in any commercial products and services that you develop or use with the software.

## ***YAMMER***

The software connecting Microsoft Dynamics CRM with Yammer will enable certain data to be shared between the two services. At the direction of you or your end users, the following data will be transmitted to Yammer through Microsoft Dynamics CRM: (i) posts; (ii) links to CRM records; (iii) information contained in the description field of the CRM records; and (vi) any other activity or content

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you or your end users share with Yammer. Yammer’s Terms of Use are available at <https://www.yammer.com/about/terms/>. Its Privacy Statement is available at <https://www.yammer.com/about/privacy/> apply to Customer Data sent to Yammer.

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**APPENDIX 2: SOFTWARE ASSURANCE BENEFITS**

These benefits require Software Assurance coverage, and in some cases Software Assurance Membership. Please see the Product List for details and a complete list of Software Assurance benefits. Except as noted below, these benefits expire when your Software Assurance coverage ends.

**Desktop Applications -- E-Learning**

The Desktop Applications section of the License Agreement/Product Use Rights provides your license terms for eLearning Training Kits. However, you may not have more users than you have E-Learning licenses.

**Microsoft Desktop Optimization Pack (MDOP) for Software Assurance**

See Applicable Notices: Data Transfer, Potentially Unwanted Software (Notice II)

~~Active Software Assurance for the Windows Desktop Operating System, Active Software Assurance for Windows Industry, or an~~ active VDA license provides you with eligibility to acquire licenses for MDOP. These licenses are an optional and separate purchase from Software Assurance. See the Product List for details and other eligibility options. MDOP includes the following:

- Microsoft Application Virtualization for Windows Desktops (App-V)
- Microsoft Advanced Group Policy Management (AGPM)
- Microsoft Diagnostics and Recovery Toolset (DaRT)
- Microsoft Enterprise Desktop Virtualization (MED-V)
- Microsoft BitLocker Administration and Monitoring (MBAM)
- Microsoft User Experience Virtualization (UE-V)

If you invoke this benefit, you have the rights below for each MDOP for Software Assurance license you acquire. See [Universal License Terms, Definitions](#) for meanings of "Qualifying Third Party Device."

**INSTALLATION AND USE RIGHTS**

The "Licensed Device" is the device to which you have assigned your corresponding qualifying license (and Active Software Assurance coverage, if applicable).

You may install and use the software on the Licensed Device. Some functionality in the software is designed to manage software on the Licensed Device. You may use that functionality on other devices solely to manage software running on the Licensed Device.

You may also use the following components to manage software on servers within your domain, so long as the desktops within that domain are licensed for MDOP:

AGPM Da RT

UE- V

**REMOTE ACCESS**

You may access and use the MDOP for Software Assurance software running on the Licensed Device remotely from another device as described below.

**Primary user<sup>1</sup>:** The single primary user of a device may access and use the software remotely from any other device. No other person may use the software under the same license at the same time, except to provide support services.

**Non-primary users:** Any user may access and use the software remotely from a separately Licensed Device.

**Remote assistance:** You may allow other devices to access the software to provide you with support services. You do not need additional licenses for this access.

<sup>1</sup> as that term is defined in the Desktop Operating Systems section [ROAMING](#)

**USE RIGHTS**

Except as provided below, the single primary user of the Licensed Device may use the MDOP for Software Assurance software on a Qualifying Third Party Device (See [Universal License Terms, Definitions](#)) to support permitted use or remote access of your licensed software on that Qualifying Third Party Device.

Despite anything in your Volume Licensing Agreement to the contrary, Qualified Desktops do not include any Qualifying Third Party Device from which your users access and use the software and any (other) enterprise product solely under Roaming Use Rights.

When the primary user is on your or your affiliates' premises, Roaming Use Rights are not applicable.

These rights are granted subject to the limitation on the number of users in the "Primary User" section, and all use must be for work-related purposes.

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The primary user's right to use the MDOP for Software Assurance software under these Roaming Use Rights terminates when either the corresponding rights on the Licensed Device expire or there is a change in the primary user status. At that time, you must ensure that that user is no longer using the MDOP for Software Assurance software under the Roaming Use Rights.

#### **BENCHMARK TESTING**

You must obtain Microsoft's prior written approval to disclose to a third party the results of any benchmark test of the MDOP for Software Assurance software.

#### **TERM OF LICENSE**

You may not access or use the software after your corresponding Windows Software Assurance coverage, Windows Software Assurance coverage, Windows Virtual Desktop Access subscription license, or MDOP license expires.

### **Microsoft Dynamics CRM 2015 Professional Use Additive CAL – Unified Service Desk**

Each Microsoft Dynamics CRM 2015 Professional Use Additive CAL with active Software Assurance provides you the right to install and use Unified Service Desk (USD). The right to use USD is limited to the user or device to whom the qualifying CAL is assigned. You may not access or use USD after your Software Assurance coverage expires.

### **Microsoft Dynamics AX 2012 R3 Servers – Fail-over Servers**

For any OSE in which you use Running Instances of the server software, you may use up to the same number of passive fail-over Running Instances in a separate OSE on any Server in anticipation of a fail-over event.

In order to utilize this benefit, you must comply with the following terms:

Maintain Software Assurance coverage on the server licenses and core licenses under which you run your licensed software and for all CALs under which you access your licensed software.

Your right to run the passive fail-over instances ends when your Software Assurance coverage ends.

Fail-over server rights do not apply in the case of software moved to shared third party servers under License Mobility through Software Assurance.

### **Microsoft Dynamics AX – Localization and Updates**

Microsoft provides updates to the licensed software from time to time, which include revisions to help organizations remain current with applicable government tax and regulatory requirements (please refer to 'Country Availability' section in the Product List for more details). You are eligible to receive these updates and use them on licensed servers and the CALs permitting access to those licensed servers provided you have active Software Assurance for the licensed server and CALs.

### **Office 2013, Project 2013 or Visio 2013 -- Roaming Use Rights**

The Desktop Applications section of the License Agreement/Product Use Rights, as supplemented below, provides your license terms for use of the software under all editions of Office 2013, Project 2013 and Visio 2013 licenses with active Software Assurance coverage. In the case of any conflict between the terms in the Desktop Applications section and this section, these license terms govern. These rights are granted subject to the limitation on the number of users in the General License Terms of the Desktop Applications section, and all use must be for work-related purposes.

#### **USE OF SOFTWARE ON QUALIFYING THIRD PARTY DEVICE**

Except as provided below, the single primary user of the Licensed Device may:

remotely access the software running on your servers (e.g., in your datacenter) from a Qualifying Third Party Device, run the software in a virtual OSE on a Qualifying Third Party Device, and

install and use the software on an USB drive on a Qualifying Third Party Device.

Despite anything in your Volume Licensing Agreement to the contrary, Qualified Desktops do not include any Qualifying Third Party Device from which your users access and use the software and any (other) enterprise product solely under Roaming Use Rights (See [Universal License Terms, Definitions](#)).

When the primary user is on your or your affiliates' premises, Roaming Use Rights are not applicable.

You may not run the software in the physical OSE on the third party device under the Roaming Use Rights [MAKING AND STORING COPIES ON YOUR SERVERS OR STORAGE MEDIA](#)

You have the additional rights below for each of your Office 2013, Project 2013 and Visio 2013 licenses with active Software Assurance coverage:

You may make any number of copies of the software.

You may store copies of the software on any of your servers or storage media.

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You may make and store copies of the software solely to exercise your right to access and use the software under your licenses as described above (e.g., you may not distribute copies of the software to third parties).

#### TERM OF LICENSE

The primary user's right to use the software under these Roaming Use Rights terminates when either the corresponding rights on the Licensed Device expire, Software Assurance coverage expires or there is a change in the primary user status. At that time, you must ensure that that user is no longer using the software under the Roaming Use Rights.

Despite anything to the contrary in your Volume Licensing Agreement, these Roaming Use Rights are non-perpetual. You may not access or use the software under the license terms of this Roaming Use Rights section after your Software Assurance coverage expires.

#### Remote Desktop Services (“RDS”) User CAL -- Extended Rights

You may use your RDS User CALs with active Software Assurance coverage, as described in the Windows Server license terms in these License Agreement/Product Use Rights, with Windows Server software running on a third party's shared servers.

#### Requirements:

Maintain Software Assurance coverage on your CALs under which you exercise RDS User CAL – Extended Rights.

For each CAL used in this manner, either (i) exercise these rights on Microsoft Azure Platform Services or (ii) designate a qualified License Mobility through Software Assurance Partner through which you will exercise these rights. A list of qualified License Mobility through Software Assurance Partners is available at <http://www.microsoft.com/licensing/software-assurance/license-mobility.aspx>. You may designate a new License Mobility through Software Assurance Partner or elect to move from a License Mobility through Software Assurance Partner to Microsoft Azure Platform Services, but you must wait at least 90 days following a designation or election to make a new designation or election.

Complete and submit the License Mobility Validation form with each License Mobility through Software Assurance Partner who will run your licensed software on their shared servers. The License Mobility Validation form will be made available to you by the qualified License Mobility through Software Assurance Partner.

The OSE(s) in which you exercise RDS User CAL – Extended Rights must be dedicated to and accessed only by you. Other than administrative access by your designated License Mobility through Software Assurance Partner, no other party may access the OSE(s). RDS User CAL – Extended Rights permit access by your users only for your internal benefit. They do not permit access by other users, such as users of solutions you make available to third parties.

You may continue to access RDS functionality running on your servers and otherwise exercise use rights under your RDS User CALs outside of these RDS User CAL – Extended Rights; however, each CAL must be assigned to the same single user accessing RDS functionality under the Extended Rights. You may reassign your CALs only as permitted in the “License Reassignment” section of the Universal License Terms. If you reassign a RDS User CAL, the former user may no longer exercise RDS User CAL – Extended Rights on the third party's shared servers.

RDS User CAL – Extended Rights are intended to facilitate access to a graphical user interface hosted on Windows Server using RDS functionality or similar technology (sometimes referred to as “RDS Sessions.”) They do not convey any right to deploy Windows desktop operating system via virtual desktop infrastructure on the third party's shared servers.

Your rights to exercise RDS User CAL – Extended Rights on the third party's shared servers expires with the expiration of the Software Assurance coverage on your RDS User CALs.

#### Servers -- Disaster Recovery Rights

For each instance of eligible server software you run in a physical or virtual OSE on a licensed server, you may temporarily run a backup instance in physical or virtual OSE on either, (a) servers dedicated to disaster recovery and to your use, or, (b) for instances

~~of eligible software other than Windows Server, on Microsoft Azure Services, provided the backup instance is managed by Azure Site Recovery to Azure.~~ The license terms for the software and the following limitations apply to your use of the backup instance.

The backup instance can run only during the following exception periods:

For brief periods of disaster recovery testing within one week every 90 days

During a disaster, while the production server being recovered is down

Around the time of a disaster, for a brief period, to assist in the transfer between the primary production server and the disaster recovery

server

In order to use the software under disaster recovery rights, you must comply with the following terms:

The OSE on the disaster recovery server must not be running at any other times except as above.

The OSE on the disaster recovery server may not be in the same cluster as the production server.

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Other than backup instances run on Microsoft Azure Services, Windows Server license is not required for the disaster recovery server if the following conditions are met:

The Hyper-V role within Windows Server is used to replicate virtual OSEs from the production server at a primary site to a disaster recovery server.

The disaster recovery server may be used only to run hardware virtualization software, such as Hyper-V, provide hardware virtualization services, run software agents to manage the hardware virtualization software, serve as a destination for replication, receive replicated virtual OSEs, test failover, and await failover of the virtual OSEs.

run disaster recovery workloads as described above

The disaster recovery server may not be used as a production server.

Use of the software backup instance should comply with the license terms for the software.

Once the disaster recovery process is complete and the production server is recovered, the backup instance must not be running at any other times except those times allowed here.

Maintain Software Assurance coverage for all CALs, External Connector licenses and Server Management Licenses under which you access the backup instance and manage the OSEs in which that software runs.

Your right to run the backup instances ends when your Software Assurance coverage ends.

### Servers -- License Mobility through Software Assurance

License Mobility through Software Assurance lets you move certain on-premises licenses covered by Software Assurance to third party shared servers subject to the terms below. See [Universal License Terms, Definitions](#) for meanings of "CALs," "manage,"

"OSEs," "server farm," and "virtual OSEs."

### Applicable Products:

All Products that are currently eligible for "License Mobility within Server Farms" and covered by Software Assurance are eligible for License Mobility through Software Assurance. In addition, the following Products are also eligible for License Mobility through Software Assurance:

System Center – all Server Management Licenses (MLs), including SMSE and SMSD

### Permitted Use:

With License Mobility through Software Assurance, you may:

Move your licensed software from your servers to a third party's shared servers;

Access your licensed software running on the third party's shared servers under the appropriate access licenses (the CALs and External Connector licenses identified in the license terms for the individual Products subject to the requirement that you maintain Software Assurance coverage on those licenses as described below, and the User and Device SLs identified in the license terms for the individual Products);

Run your software in virtual OSEs on the third party's shared servers; and/or

Manage your OSEs that you use on the third party's shared servers; and/or

Manage your OSEs that you use on your servers using software that you run on the third party's shared servers.

### Use of Licensed Software with Microsoft Online Services:

Furthermore, solely in support of your joint use of (i) licensed software on a third party's shared servers (as described here) and (ii) a related, but separately licensed Microsoft Online Service, and despite anything to the contrary in the "Use of Software with the Online Service" section in the Online Services Use Rights, your right to use incidental software provided with that related Microsoft Online Service (software that allows the servers on which your software is run, as described here, to communicate with the Online Service Microsoft provisions) deemed to extend to that third party's shared servers. Except as expressly provided here, your right to run such software on the third party's shared servers remains subject to the license terms for the Online Service, and expires upon the earlier of (i) the expiration of the corresponding Online Service subscription or (ii) your right to use licensed software on the third party's shared servers.

### Requirements:

To use License Mobility through Software Assurance, you must:

Maintain Software Assurance coverage for licenses under which you run software on third party shared servers;



Maintain Software Assurance coverage for all CALs and External Connector licenses under which you access your licensed software running on third party shared servers;

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Maintain Software Assurance coverage for all Server Management Licenses under which you manage OSEs running in third party shared servers and under which you run software on third party shared servers to manage OSEs running on your servers;

Run your licensed software and manage your OSEs on third party shared servers solely for your use and benefit;

Deploy your licensed software only with Microsoft Assurance Platform Partners. A list of qualified License Mobility through Software Assurance Partners is available at <http://www.microsoft.com/licensing/software-assurance/license-mobility.aspx>; and

Complete and submit the License Mobility Validation form with each License Mobility through Software Assurance Partner who will run your licensed software on their shared servers. The License Mobility Validation form will be made available to you by the qualified License Mobility through Software Assurance Partner.

Your rights to run licensed software and manage OSEs on third party shared servers expires with the expiration of the Software Assurance coverage on those licenses. You may move your licensed software from a third party's shared servers back to your servers or to another third party's shared servers, but not on a short term basis (not within 90 days of the last assignment). You may also move instances run or OSEs managed under a particular license from a third party's shared servers in one server farm to its shared servers in another server farm, but not on a short-term basis (not within 90 days of the last assignment). OSEs managed under the same license must be in the same server farm. Use of software deployed by third parties on shared servers on your behalf remains subject to the terms and conditions of your volume license agreement. You agree that you will be responsible for third parties' actions with regard to software deployed and managed on your behalf. The license terms applicable to the Product together with the License Mobility through Software Assurance terms govern its use. The License Mobility through Software Assurance terms supersede any conflicting license terms for a Product when License Mobility through Software Assurance is used. Generally, your rights to use the software on third party shared servers are the same as the use rights when you run the software on your servers.

However, some Products, as outlined below, have different use rights for third party shared servers under License Mobility through Software Assurance:

PRODUCT LICENSING MODEL	PRODUCT OR PRODUCT TYPE	LICENSE	PERMITTED NUMBER OF OSEs PER LICENSE/PERMITTED NUMBER OF CORES PER LICENSE
Server/CAL	External Connector Licenses	Each External Connector license with active Software Assurance coverage	1 OSE per license
Server/CAL	SQL Server	Each Server license with active Software Assurance coverage	1 OSE per license
Per-Processor	All eligible Products	Each Processor license with active Software Assurance coverage	1 OSE with up to 4 virtual processors per license
Per-Core	All eligible Products	Each Core license with active Software Assurance coverage	One virtual core (subject to the License Agreement/Product Use Rights including the requirement of a minimum of 4 cores per OSE)
Management Servers	System Center Server Management Licenses (versions prior to System Center 2012)	Each Server Management license with active Software Assurance coverage	1 Managed OSE per license
Management Servers	System Center Server Management Suites	Each SMSE or SMSD license with active Software Assurance coverage	4 Managed OSEs per License
Management Servers	System Center 2012 R2 Standard	Each System Center 2012 R2 Standard Server Management license with active Software Assurance coverage	2 Managed OSEs per license

Management Servers	System Center 2012 R2 Datacenter	Each System Center 2012 R2 Datacenter Server Management license with active Software Assurance coverage	8 Managed OSEs per license
Specialty Servers	HPC Pack Enterprise	Each Server license with active Software Assurance coverage	1 OSE per license

Introduction    -+ Universal Terms -+ Desktop Apps -+    Desktop OS -+ Processor/CAL -+    Server/CAL -+    Per Core

## Servers -- Self-Hosted Applications

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The following additional licensing requirements and/or use rights apply to Self-Hosted Applications.

Self-Hosted Applications means those products for which the Product-Specific License Terms that indicate “Self-Hosted Applications: Yes”.

Despite any terms to the contrary in your Volume Licensing Agreement including these License Agreement/Product Use Rights, you may run licensed copies of Self-Hosted Applications that interact directly or indirectly with your own software to create a unified solution (“Unified Solution”) and permit third parties to use it, subject to the terms below.

### REQUIREMENTS

You must have the required Microsoft licenses and maintain Software Assurance coverage for:

the Self-Hosted Applications run as part of the Unified Solution; and

all access licenses used to make the Unified Solution available to external users (See [Universal License Terms, Definitions](#)). All Microsoft software used to create and deliver the Unified Solution must:

be licensed through a Volume Licensing program that is subject to these license terms (e.g., Enterprise Agreement, Select Plus Agreement, Open License Agreement) and not any other (e.g., Services Provider License Agreement, Independent Software Vendor Royalty License and Distribution Agreement); and

be marked as ‘Yes’ for ‘Self Hosting of Applications Allowed’ in these license terms. Your

software must:

add significant and primary functionality to the Self-Hosted Applications that are part of the Unified Solution (dashboards, HTML editors, utilities, and similar technologies alone are not a primary service and/or application of a Unified Solution);

be the principal service and/or application of the Unified Solution, and must not allow direct access to the Self-Hosted Applications by any end user of the Unified Solution;

be delivered to end users over the Internet, a telephone network, or a private network from servers physically dedicated to you and under the day to day control of you or a third party other than the end user of the Unified Solution (the Unified Solution may not be loaded onto the end user’s device); and

be owned, not licensed, by you, except that your software may include non-substantive third party software that is embedded in, or operates in support of, your software.

All use of the Self-Hosted Applications remains governed by the license terms for those products. You may not transfer licenses acquired under your Volume Licensing Agreement except as permitted in that agreement.

### CHANGES TO USE RIGHTS

Despite the terms of your Volume Licensing Agreement, we may modify or discontinue the above use rights at any time. However, if we do so, these use rights and the terms and conditions of your license agreement continue to apply to your use of the Self-Hosted Applications under licenses acquired before the effective date of that change until the end of your current term of Software Assurance coverage.

## Servers -- TechNet Subscription Media

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See Applicable Notices: Data Transfer

~~The Licensed User assigned a TechNet Subscription may install copies of the software on the user devices solely for evaluation. You may not use the software in a live operating environment, in a staging environment, in an application development environment.~~

Except as provided here, the General License terms of the Developer Tools section of the License Agreement/Product Use Rights applies to the use of the TechNet Subscription Media. Please see the Product List for additional TechNet Software Assurance benefits.

## Step-Up Licenses

~~A Step-Up License permits you to run a premium edition in place of the qualifying product. When your Step-Up License becomes perpetual, it permanently replaces your rights to the qualifying product.~~

**Software Assurance Product Support Services**

~~The way you use the software may not be supportable. It may also require you to buy more support services. Each of us may use information acquired in connection with support services as long as that use does not disclose the other's confidential information. The license terms for the underlying product apply to your use of any fixes.~~

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## SQL Server — Fail-over Servers

For any OSE in which you use Running Instances of the server software, you may use up to the same number of passive fail-over Running Instances in a separate OSE on any Server in anticipation of a fail-over event.

The following additional requirements apply if you have licensed the software by Physical Core or individual Virtual OSE under the Per Core licensing model:

If you license based on Physical Cores and the OSE in which you use the passive fail-over Running Instances is on a separate Server, the number of Physical Cores on the separate Server must not exceed the number of Physical Cores on the Licensed Server and the Core Factor for the Physical Processors in that Server must be the same or lower than the Core Factor for the Physical Processors in the Licensed Server.

If you license by individual Virtual OSE, the number of Hardware Threads used in that separate OSE must not exceed the number of Hardware Threads used in the OSE in which the active Running Instances are used.

In order to utilize this benefit, you must comply with the following terms:

Maintain Software Assurance coverage on the server licenses and core licenses under which you run your licensed software and for all CALs under which you access your licensed software.

Your right to run the passive fail-over instances ends when your Software Assurance coverage ends.

Fail-over server rights do not apply in the case of software moved to shared third party servers under License Mobility through Software Assurance.

## SQL Server 2014 Enterprise and Biz Talk Server 2013 Enterprise -- Unlimited Virtualization

The license terms for SQL Server 2014 Enterprise and Biz Talk Server 2013 Enterprise in the Servers – Per Core section of the License Agreement/Product Use Rights, as supplemented below, provide your license terms for the software under core licenses with active Software Assurance coverage. ~~In the case of any conflict between the applicable terms in the Servers – Per Core section and the license terms below, the license terms below govern.~~

For each server to which you have assigned the required number of licenses as provided in the “Physical Cores of a Server” section, you may run on the licensed server any number of instances of the server software in any number of physical and/or virtual OSEs, provided you have active Software Assurance coverage for those licenses.

## SQL Server 2012 Parallel Data Warehouse — Feature Updates

We may make feature releases (e.g., appliance updates) available between major product releases. Feature releases will be available only to customers with Software Assurance coverage for the product. The License Agreement/Product Use Rights for the product, as supplemented in this [Appendix 2](#). Software Assurance Benefits, govern your use of feature releases for which you are eligible.

## System Center Configuration Manager -- VDI Rights

See the [Universal License Terms, Definitions](#) for meanings of “virtual OSE” and “manage.” The license terms applicable to System Center Configuration Manager Client Management Licenses (“CMLs”) as set forth in the Management Server section of these License Agreement/Product Use Rights, and supplemented here, apply to your use of System Center Configuration Manager software under the following licenses with active Software Assurance coverage: System Center Configuration Manager CMLs, Core CALs, and Enterprise CALs (each, a “VDI qualifying license”). You may use the software to manage, at any one time, up to four virtual OSEs in which software used remotely from the device or by the user to which that VDI qualifying license has been assigned, is running. Those virtual OSEs may be on up to four different virtual desktop infrastructure hosts. Your right to use the software as permitted here expires when Software Assurance on your System Center Configuration Manager CMLs, Core CALs or Enterprise CALs expires.

**Visual Studio -- MSDN**

The Developer Tools section of the License Agreement/Product Use Rights provides your license terms for MSDN. Your rights to use any software licensed through MSDN become perpetual when your right to use Visual Studio becomes perpetual.

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**Windows Desktop Operating System -- Rights to run "Clustered HPC Applications"**

The Desktop Operating System section of the License Agreement/Product Use Rights, as supplemented below, provides your license terms for use of the software under licenses for the Windows desktop operating system with active Software Assurance coverage. See [Universal License Terms, Definitions](#) for meanings of "Cycle Harvesting node" and "clustered HPC application."

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Despite anything to the contrary in the license terms for the Windows desktop operating system, more than one user may use the software at one time when the additional users use the Licensed Device as a Cycle Harvesting node to run clustered HPC applications.

The rights provided under this section do not permit you to use the Licensed Devices as a general purpose server, database server, web server, e-mail server, print server or file server, for other multi-user access purposes, or for any other similar resource sharing purpose.

Your right to use the software as permitted here expires when Software Assurance coverage on your Windows desktop operating system license expires.

**Windows Enterprise (Per User and Per Device), Windows Embedded Industry Enterprise (Per Device), and Windows Virtual Desktop Access (VDA) (Per User and Per Device)**

**DEFINED TERMS IN THIS SECTION (SEE UNIVERSAL LICENSE TERMS)**

"Instance", "Licensed Device", "OSE", "Physical OSE", "Running Instances", and "Virtual OSE" "Software," as

used here, refers to Windows 8.1 Enterprise or Windows 8.1 Embedded Industry Enterprise. "Licensed Device,"

as used here, refers to the device to which you assign active coverage.

"Licensed User", as used here, refers to the user to which you assign active coverage. If the underlying user license is transferred from one person to another, the original user of the license is no longer licensed.

Use of the Software in this section is governed by the General License Terms in the Desktop Operating System (Per Copy Per Device) section of these License Agreement/Product Use Rights, the Product-Specific License Terms for Windows Enterprise or Windows Embedded Industry Enterprise and the license terms here. The license terms in this section govern in the case of any conflict with the terms in the Desktop Operating System sections.

Your right to use the Software as described here is non-perpetual; you may not access or use the Software, as permitted here, after your Software Assurance or VDA coverage expires.

Item		Windows Enterprise SA		Win Emb. Ind. Ent. SA	Windows VDA	
		Per Device	Per User	Per Device	Per Device	Per User
1	Any user of a Licensed Device, or any device used by a Licensed User; may remotely access up to four Instances of the Software Running in Virtual OSEs or one Instance of the Software Running in one Physical OSE on (a) device(s) in your datacenter.	X	X	X	X	X
2A	In addition to item 1, you may run up to four Instances in Virtual OSEs and one Instance in the Physical OSE locally on the Licensed Device. If all of the Instances permitted to run in Virtual OSEs locally are used, you may use the Instance in the Physical OSE only to host and manage the Virtual OSEs. For Windows VDA (Per Device), the Licensed Device must also be licensed for Windows 8/8.1 Pro or Enterprise, or Windows 7 Professional or Enterprise.	X		X	X	
2B	In addition to item 1, you may run up to four instances in virtual OSEs and one instance in the physical OSE locally on devices licensed for Windows 8/8.1 Pro or Enterprise, or Windows 7 Professional or Enterprise. If all of the instances permitted to run in virtual OSEs locally are used, you may use the instance in the physical OSE only to host and manage the virtual OSEs.		X			X
3	In addition to items 1 and 2B above, you may install the Software on devices with integrated screens 10.1" diagonally or less.		X			X

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4	Windows To Go: You may create and store an instance of the software on up to two USB drives and use them on Licensed	X	X	X	X	X
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		Windows Enterprise SA		Win Emb. Ind. Ent. SA	Windows VDA	
	Devices if licensed per device and on any device if licensed per user.					
5	You may run Windows 8.1 Pro or Enterprise, Windows 8.1 Industry Pro or Enterprise, or any earlier versions of the Software, in place of any permitted Instance.	X	X	X	X	X
6	You do not need a license to access your permitted Instances only to administer the Software.	X	X	X	X	X

**Roaming Use Rights (under Windows Desktop Operating System Software Assurance (Per Device), Windows VDA (Per Device), and Windows Embedded Industry Software Assurance (Per Device))**

**DEFINED TERMS IN THIS SECTION (SEE UNIVERSAL LICENSE TERMS)**

"instance", "Licensed Device", "OSE", "qualifying third-party device", "running instances", "server", and "virtual OSE"

"Software," as used here, refers to Windows 8.1 Enterprise or Windows Embedded 8.1 Industry Enterprise.

Use of the software is subject to the Desktop Operating System section, the corresponding Windows 8.1 Enterprise section or the Windows Embedded 8.1 Industry section and the license terms here. The license terms in this section govern in the case of any conflict with the terms in the Desktop Operating System section. Ongoing use of Windows 8.1 Enterprise or Windows Embedded

8.1 Industry Enterprise under a perpetual Windows license, after Software Assurance coverage expires, is subject to the Desktop Operating System section without the additional rights and limitations here.

The single primary user<sup>1</sup> of the Licensed Device may remotely access the permitted instances running on servers in your datacenter from a Qualifying Third Party Device<sup>2</sup> from anywhere off your or your affiliates' premises.

The same user may also run one instance of the software in a virtual OSE on a Qualifying Third Party Device while off your and your affiliates' premises.

The same user may also run the instance on a USB drive (subject to Windows to Go Rights) on a Qualifying Third Party Device while off your and your affiliates' premises.

All Roaming Rights use must be for work-related purposes.

No other user may use the software under the same license at the same time except for purposes of technical support, using Remote Assistance or similar technology, or administering the software.

Your right to use the software under Roaming Rights is non-perpetual; you may not access or use the software, as permitted here, after your Windows Software Assurance coverage or Windows VDA subscription expires.

<sup>1</sup> as that term is defined in the Desktop Operating Systems section

<sup>2</sup> Despite anything in your Volume Licensing Agreement to the contrary, Qualified Desktops and Devices do not include any Qualifying Third Party Devices from which your users access and use the software and any (other) enterprise product solely under Roaming Use Rights.

**Companion Devices**

For the purposes of this section:

"Primary User" means the user who uses a Windows Software Assurance, Windows Embedded Industry Software Assurance, or Windows VDA Licensed Device more than 50% of the time in any 90 day period.

"Companion Device" means any additional device that is used by the Primary User, and either (i) is not capable of running an Instance of Windows 8.1 Pro locally (in a Physical or Virtual OSE), or (ii) is both capable of running an Instance of Windows 8.1 Pro locally (in a Physical or Virtual OSE) and personally owned by the Primary User.

**WINDOWS RT COMPANION DEVICES (UNDER WINDOWS DESKTOP OPERATING SYSTEM SOFTWARE ASSURANCE, WINDOWS INDUSTRY SOFTWARE ASSURANCE, OR WINDOWS VDA)**

"Window RT Companion Device" means a Companion Device you (not a third party) have licensed for Windows RT or Windows RT 8.1.

Use of the software is subject to the Desktop Operating System section, the corresponding Windows 8.1 Enterprise or Windows 8.1 Industry Enterprise section and the license terms here. The license terms in this section govern in the case of any conflict with the terms in the Desktop Operating System section.

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The Primary User may remotely access any permitted Instance of the software Running on servers in your datacenter as provided in the corresponding Windows 8.1 Enterprise and Windows 8.1 Industry Enterprise section from a Windows RT Companion Device. No other user may use the software under the same license at the same time except for purposes of technical support, using Remote Assistance or similar technology, or administering the software.

Your right to use the software on a Windows RT Companion Device is non-perpetual; you may not access or use the software, as permitted here, after your Windows Software Assurance coverage, Windows Industry Software Assurance, or Windows VDA subscription expires.

#### [WINDOWS COMPANION SUBSCRIPTION LICENSE \(SL\)](#)

Beginning December 1, 2014, all Windows Companion Subscription Licenses have the same use rights as if they were Windows Enterprise SA Per User Add-on. See the Product List for license assignment rules.

#### **Windows Desktop Operating System – Windows Thin PC**

The Desktop Operating System section of the License Agreement/Product Use Rights provides your license terms for Windows Thin PC. However, you may use the software only to run the types of applications listed below.

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security  
management  
terminal emulation  
Remote Desktop and similar technologies  
web browser  
media player  
instant messaging client  
document viewers  
NET Framework and Java Virtual Machine

You may choose not to install the media player. If so, the sections of the Desktop Operating System section of the License Agreement/Product Use Rights listed below do not apply to your use of the software.

Windows Media Digital Rights Management  
Windows Media Player

You may use the software on a device other than the one on which it was first installed if you move the corresponding Software Assurance coverage to that other device.

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**APPENDIX 3: ADDITIONAL SOFTWARE**

**BizTalk Server 2013 R2 Branch**

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Administration and Monitoring Tools</li> <li>• Development Tools</li> <li>• Software Development Kit(s)</li> <li>• HTTP Receive Adapter</li> <li>• SOAP Receive Adapter</li> <li>• Windows SharePoint Services Adapter Web Service</li> <li>• Windows Communication Foundation Adapters</li> <li>• Business Activity Monitoring (“BAM”) Event APIs and Interceptors &amp; Administration Tools</li> <li>• BAM Alert Provider for SQL Notification Services</li> </ul> | <ul style="list-style-type: none"> <li>• BAM Client</li> <li>• BizTalk Server Related Schemas and Templates</li> <li>• Business Activity Services</li> <li>• Master Secret Server/Enterprise Single Sign-On</li> <li>• MQHelper.dll</li> <li>• <a href="http://ADOMD.NET">ADOMD.NET</a></li> <li>• MSXML</li> <li>• SQLXML</li> <li>• Business Rules Component</li> <li>• MQSeries Agent</li> <li>• UDDI</li> </ul> |
|--|---|

**BizTalk Server 2013 R2 Enterprise**

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Administration and Monitoring Tools</li> <li>• Development Tools</li> <li>• Software Development Kit(s)</li> <li>• HTTP Receive Adapter</li> <li>• SOAP Receive Adapter</li> <li>• Windows SharePoint Services Adapter Web Service</li> <li>• Windows Communication Foundation Adapters</li> <li>• Business Activity Monitoring (“BAM”) Event APIs and Interceptors &amp; Administration Tools</li> <li>• BAM Alert Provider for SQL Notification Services</li> </ul> | <ul style="list-style-type: none"> <li>• BAM Client</li> <li>• BizTalk Server Related Schemas and Templates</li> <li>• Business Activity Services</li> <li>• Master Secret Server/Enterprise Single Sign-On</li> <li>• MQHelper.dll</li> <li>• <a href="http://ADOMD.NET">ADOMD.NET</a></li> <li>• MSXML</li> <li>• SQLXML</li> <li>• Business Rules Component</li> <li>• MQSeries Agent</li> <li>• UDDI</li> </ul> |
|--|---|

**BizTalk Server 2013 R2 Standard**

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Administration and Monitoring Tools</li> <li>• Development Tools</li> <li>• Software Development Kit(s)</li> <li>• HTTP Receive Adapter</li> <li>• SOAP Receive Adapter</li> <li>• Windows SharePoint Services Adapter Web Service</li> <li>• Windows Communication Foundation Adapters</li> <li>• Business Activity Monitoring (“BAM”) Event APIs and Interceptors &amp; Administration Tools</li> <li>• BAM Alert Provider for SQL Notification Services</li> </ul> | <ul style="list-style-type: none"> <li>• BAM Client</li> <li>• BizTalk Server Related Schemas and Templates</li> <li>• Business Activity Services</li> <li>• Master Secret Server/Enterprise Single Sign-On</li> <li>• MQHelper.dll</li> <li>• <a href="http://ADOMD.NET">ADOMD.NET</a></li> <li>• MSXML</li> <li>• SQLXML</li> <li>• Business Rules Component</li> <li>• MQSeries Agent</li> <li>• UDDI</li> </ul> |
|--|---|

**Exchange Server 2013 Enterprise**

Exchange Management Tools



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**Exchange Server 2013 Standard**

Exchange Management Tools

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**Forefront Identity Manager 2010 - Windows Live Edition**

Client Software

**Microsoft Dynamics AX 2012 R3 Server**

Microsoft Dynamics AX 2012 R3 Windows Rich Client Software  
Management Reporter Designer Client Software for Microsoft  
Dynamics AX 2012 R3 Server

**Microsoft Dynamics AX 2012 R3 Standard Commerce Server Core**

Microsoft Dynamics AX 2012 R3 Windows Rich Client Software  
Management Reporter Designer Client Software for Microsoft  
Dynamics AX 2012 R3 Server

**Microsoft Dynamics AX 2012 R3 Store Server**

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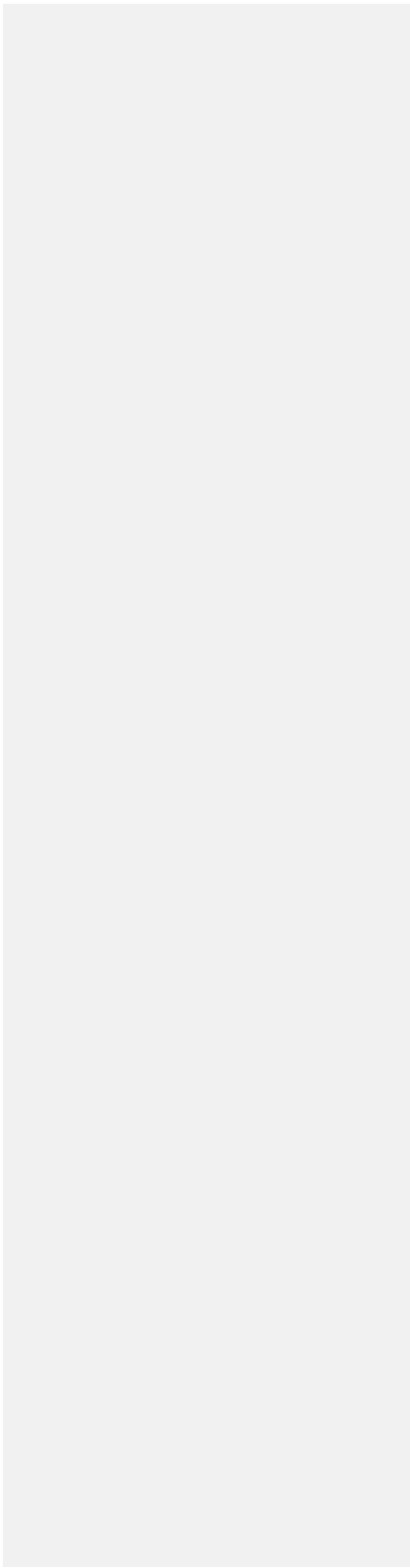
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## INTRODUCTION

Beginning July 1, 2014 these Online Services Terms (OST) replace the Online Services Use Rights (OLSUR). The OST contains terms that apply to Customer's use of Online Services. Separate terms, including different privacy and security terms, govern Customer's use of Non-Microsoft Products (as defined below), as well as other products and services from Microsoft.

Most Online Services offer a Service Level Agreement (SLA). For more information regarding the Online Services SLAs, please refer to <http://microsoft.com/licensing/contracts>.

### Prior Versions

The OST provides terms for Online Services that are currently available. For earlier versions Customer may refer to <http://go.microsoft.com/?linkid=9840733> or contact its reseller or Microsoft Account Manager.

### Clarifications and Summary of Changes

Additions	Deletions
Azure Directory Basic	
Microsoft Dynamics Marketing Sales Collaboration	
Office 365 Business	
Parature, from Microsoft	

### Changes

#### General Terms

In the Compliance with Laws section, clarified Microsoft does not determine whether Customer Data is subject to any specific law or regulation.

#### Privacy and Security Terms

In the General Privacy and Security Terms section, added Parature, from Microsoft, to the list of Online Services that are not covered.  
 In the Data Processing Terms section, added Parature to the list of what's excluded from "Online Services" with Microsoft Dynamics CRM Online.  
 In the Data Processing Terms section, added Exchange Online Protection to the list of what's included with "Online Services" for Office 365.

#### Instance and Storage Add-ons

Information related to Instance Add-on SLs and Storage Add-ons may be found in product support materials.

#### Enterprise Mobility Services

Created a new family of Online Services that includes Online Services available for purchase as the Enterprise Mobility Suite as well as other Online Services that are not part of the Suite.

#### Microsoft Azure Services

Corrected Clerical Error in July OST: changed hyperlink in the definition of "Microsoft Azure Services" back to what it had been in April Online Services Use Rights (OLSUR) document.

#### Microsoft Dynamics Online

Changed the family name from Microsoft Dynamics Online to Microsoft Dynamics Online Services.  
 Organized family into subsets of Online Services, and clarified which terms apply to all Products and which apply only to subsets.

#### Office 365 Services

Added Office 365 ProPlus to the list of Office 365 Services covered by the Service Level Agreement.  
 In Office 365 Applications Installation and Use Rights section, added right of users to install software with Shared Computer Activation (SCA) on a network server or Microsoft Azure Platform Services.

#### Other Online Services

Changed the name from Microsoft Azure Directory Premium to Azure Active Directory Premium and moved under Enterprise Mobility Services family.  
Changed the name from Microsoft Rights Management to Azure Rights Management Service and moved under Enterprise Mobility Services family.

**Windows Intune**

Moved under Enterprise Mobility Services family.

**Yammer**

Removed prohibition against use by children under age 13.

**Attachment 1, Notices**

In the Notice about H.264/AVC Visual Standard, VC-1 Video Standard, MPEG-4 Part Visual Standard and MPEG-2 Video Standard notice, fixed the hyperlink.

**Attachment 2, Subscription License Suites**

Deleted Office 365 Small Business and Office 365 Small Business Premium Suite SLs.

Added Office 365 Business Essentials, Office 365 Business Premium, Microsoft Dynamics CRM Online Professional, and Microsoft Dynamics CRM Online Enterprise Suite SLs.

## GENERAL TERMS

Customer may use the Online Services and related software as expressly permitted in Customer's Volume Licensing Agreement. Microsoft reserves all other rights. Customer must acquire and assign the appropriate Subscription Licenses required for its use of each Online Service. A User SL is required for each user that accesses the Online Service unless specified otherwise in the [Online Service-specific Terms, Attachment 2](#) describes SL Suites that also fulfill requirements for User SLs. Customer has no right to use an Online Service after the SL for that Online Service ends.

### Definitions

If any of the terms below are not defined in Customer's Volume Licensing Agreement, they have the definitions below. "Customer" means the government entity that has ordered the Microsoft Online Services from an authorized Microsoft reseller or Government Partner under the terms of a Volume License Agreement.

"Customer Data" means all data, including all text, sound, video, or image files, and software, that are provided to Microsoft by, or on behalf of, Customer through use of the Online Service.

"External User" means a user of an Online Service that is not an employee, onsite contractor, or onsite agent of Customer or its Affiliates. "Instance" means an image of software that is created by executing the software's setup or install procedure or by duplicating such an image.

"Licensed Device" means the single physical hardware system to which a license is assigned. For purposes of this definition, a hardware partition or blade is considered to be a separate device.

"Non-Microsoft Product" means any third-party-branded software, data, service, website or product.

"Online Service" means a Microsoft-hosted service to which Customer subscribes under a Microsoft Volume Licensing Agreement, including any service identified in the Online Services section of the Product List. The Product List is located at <http://go.microsoft.com/?linkid=9839207>.

"Operating System Environment" (OSE) means all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance, that enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and Instances of applications, if any, configured to run on all or part of that operating system Instance. There are two types of OSEs, physical and virtual. A physical hardware system can have one physical OSE and/or one or more virtual OSEs. The operating system Instance used to run hardware virtualization software or to provide hardware virtualization services is considered part of the physical OSE.

"SL" means Subscription License.

### Online Service Term Updates

When Customer renews or purchases a new subscription to an Online Service, the then-current OST will apply and will not change during

Customer's subscription for that Online Service. When Microsoft introduces features, supplements or related software that are new (i.e., that were not previously included with the subscription), Microsoft may provide terms or make updates to the OST that apply to Customer's use of those new features, supplements or related software.

### Regulatory Changes & International Availability

Microsoft may make commercially reasonable changes to each Online Service from time to time. Microsoft may terminate an Online Service in any country where Microsoft is subject to a government regulation, obligation or other requirement that is not generally applicable to businesses operating there. Availability, functionality, and language versions for each Online Service may vary by country. For information on availability, Customer may refer to [www.microsoft.com/online/international-availability.aspx](http://www.microsoft.com/online/international-availability.aspx).

### Data Retention

Microsoft will retain Customer Data stored in the Online Service in a limited function account for 90 days after expiration or termination of

Customer's subscription so that Customer may extract the data. After the 90 day retention period ends, Microsoft will disable Customer's account and delete the Customer Data.

The Online Service may not support retention or extraction of software provided by Customer. Microsoft has no liability for the deletion of Customer Data as described in this section.

**Use of Software with the Online Service**

Customer may need to install certain Microsoft software in order to use the Online Service. If so, the following terms apply:

**Microsoft Software License Terms**

Customer may install and use the software only for use with the Online Service. The [Online Service-specific Terms](#) may limit the number of copies of the software Customer may use or the number of devices on which Customer may use it. Customer's right to use the software begins



when the Online Service is activated and ends when Customer’s right to use the Online Service ends. Customer must uninstall the software when Customer’s right to use it ends. Microsoft may disable it at that time.

**Validation, Automatic Updates, and Collection for Software**

Microsoft may automatically check the version of any of its software. Devices on which the software is installed may periodically provide information to enable Microsoft to verify that the software is properly licensed. This information includes the software version, the end user’s user account, product ID information, a machine ID, and the internet protocol address of the device. If the software is not properly licensed, its functionality will be affected. Customer may only obtain updates or upgrades for the software from Microsoft or authorized sources. By using the software, Customer consents to the transmission of the information described in this section. Microsoft may recommend or download to Customer’s devices updates or supplements to this software, with or without notice. Some Online Services may require, or may be enhanced by, the installation of local software (e.g., agents, device management applications) (“Apps”). The Apps may collect data about the use and performance of the Apps, which may be transmitted to Microsoft and used for the purposes described in this OST.

**Third-party Software Components**

The software may contain third party software components. Unless otherwise disclosed in that software, Microsoft, not the third party, licenses these components to Customer under Microsoft’s license terms and notices.

**Non-Microsoft Products**

Microsoft may make Non-Microsoft Products available to Customer through Customer’s use of the Online Services (such as through a store or gallery). If Customer installs or uses any Non-Microsoft Product with an Online Service, Customer may not do so in any way that would subject Microsoft’s intellectual property or technology to obligations beyond those expressly included in Customer’s Volume Licensing Agreement. For Customer’s convenience, Microsoft may include charges for the Non-Microsoft Product as part of Customer’s bill for Online Services. Microsoft, however, assumes no responsibility or liability whatsoever for the Non-Microsoft Product. Customer is solely responsible for any Non-Microsoft Product that it installs or uses with an Online Service.

**Acceptable Use Policy**

Neither Customer, nor those that access an Online Service through Customer, may use an Online Service:

- in a way prohibited by law, regulation, governmental order or decree;
- to violate the rights of others;
- to try to gain unauthorized access to or disrupt any service, device, data, account or network;
- to spam or distribute malware;
- in a way that could harm the Online Service or impair anyone else’s use of it; or
- in any application or situation where failure of the Online Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.

Violation of the terms in this section may result in suspension of the Online Service. Microsoft will suspend the Online Service only to the extent reasonably necessary. Unless Microsoft believes an immediate suspension is required, Microsoft will provide reasonable notice before suspending an Online Service.

**Technical Limitations**

Customer must comply with, and may not work around, any technical limitations in an Online Service that only allow Customer to use it in certain ways.

**Compliance with Laws**

Microsoft will comply with all laws and regulations applicable to its provision of the Online Services, including security breach notification law. However, Microsoft is not responsible for compliance with any laws or regulations applicable to Customer or Customer’s industry that are not generally applicable to information technology service providers. Microsoft does not determine whether Customer Data includes information subject to any specific law or regulation. All Security Incidents are subject to the Security Incident Notification terms below.

Customer must comply with all laws and regulations applicable to its use of Online Services, including laws related to privacy, data protection and confidentiality of communications. Customer is responsible for implementing and maintaining privacy protections and security measures for components that Customer provides or controls (such as devices enrolled with Windows Intune or within a Microsoft Azure customer’s virtual machine or application), and for determining whether the Online Services are appropriate for storage and processing of information subject to any specific law or regulation. Customer is responsible for responding to any request from a third party regarding Customer’s use of an Online Service, such as a request to take down content under the U.S. Digital Millennium Copyright Act or other applicable laws.



**Acquired Rights**

Microsoft and Customer agree that the provision and use of the Online Services is not intended to result in any liability under the Acquired Rights Directive (Council Directive 2001/23/EC, formerly Council Directive 77/187/EC as amended by Council Directive 98/50/EC) or any national laws or regulations implementing the same, or similar laws or regulations (including the Transfer of Undertakings (Protection of Employment) Regulations 2006 in the United Kingdom) (collectively, the “ARD”). Microsoft will defend Customer against any claim arising under the ARD alleging the transfer (or alleged transfer) of any employee or contractor to Customer as a result of the termination of any Online Service, provided Customer (i) notifies Microsoft promptly in writing, not later than 30 days after Customer receives notice of the claim; (ii) gives Microsoft control of the defense, with input from Customer, and any settlement negotiations, provided that for the U.S. Government the control of the defense and settlement is subject to 28 U.S.C. 516; and (iii) gives Microsoft the information, authority, and assistance Microsoft needs to defend against or settle the claim.

**Electronic Notices**

Microsoft may provide Customer with information and notices about Online Services electronically, including via email, through the portal for the Online Service, or through a web site that Microsoft identifies. Notice is given as of the date it is made available by Microsoft.

**License Reassignment**

Most, but not all, SLs may be reassigned. Except as permitted in this paragraph or in the [Online Service-specific Terms](#), Customer may not reassign an SL on a short-term basis (i.e., within 90 days of the last assignment). Customer may reassign an SL on a short-term basis to cover a user’s absence or the unavailability of a device that is out of service. Reassignment of an SL for any other purpose must be permanent. When Customer reassigns an SL from one device or user to another, Customer must block access and remove any related software from the former device or from the former user’s device.

**Font Components**

While Customer uses an Online Service, Customer may use the fonts installed by that Online Service to display and print content. Customer may only embed fonts in content as permitted by the embedding restrictions in the fonts and temporarily download them to a printer or other output device to print content.

**Multiplexing**

Hardware or software that Customer uses to pool connections; reroute information; reduce the number of devices or users that directly access or use the Online Service (or related software); or reduce the number of OSEs, devices or users the Online Service directly manages (sometimes referred to as “multiplexing” or “pooling”) does not reduce the number of licenses of any type (including SLs) that Customer needs.

**Supplemental Terms**

If any document or provision referenced in a URL included in these OST contains terms that (a) allow for the automatic termination of the Online Services; (b) allow for the automatic renewal of fees; (c) require the governing law to be anything other than Federal law; (d) require Customer to indemnify Microsoft or any third party; and/or (e) otherwise violate applicable law, then such provision shall not apply.

**Disputes**

Violation of any of the terms and/or provisions in this OST document may be considered a material breach and shall be handled in accordance with the Contracts Disputes Act (41 U.S.C. §§7101-7109).

# PRIVACY AND SECURITY TERMS

This section of the Online Services Terms has two parts:

- General Privacy and Security Terms, which apply to all Online Services; and
- Data Processing Terms, which are additional commitments for certain Online Services.

## General Privacy and Security Terms

### Scope

The terms in this section apply to all Online Services except Bing Maps Enterprise Platform, Bing Maps Mobile Asset Management Platform, Translator API, Yammer, and Parature, from Microsoft, which are governed by the privacy and/or security terms referenced below in the applicable [Online Service-specific Terms](#).

### Use of Customer Data

Customer Data will be used only to provide Customer the Online Services including purposes compatible with providing those services. Microsoft will not use Customer Data or derive information from it for any advertising or similar commercial purposes. As between the parties, Customer retains all right, title and interest in and to Customer Data. Microsoft acquires no rights in Customer Data, other than the rights Customer grants to Microsoft to provide the Online Services to Customer. This paragraph does not affect Microsoft’s rights in software or services Microsoft licenses to Customer.

### Disclosure of Customer Data

Microsoft will not disclose Customer Data outside of Microsoft or its controlled subsidiaries and affiliates except (1) as Customer directs, (2) with permission from an end user, (3) as described in the OST, or (4) as required by law.

Microsoft will not disclose Customer Data to law enforcement unless required by law. Should law enforcement contact Microsoft with a demand for Customer Data, Microsoft will attempt to redirect the law enforcement agency to request that data directly from Customer. If compelled to disclose Customer Data to law enforcement, then Microsoft will promptly notify Customer and provide a copy of the demand unless legally prohibited from doing so.

Upon receipt of any other third party request for Customer Data (such as requests from Customer’s end users), Microsoft will promptly notify Customer unless prohibited by law. If Microsoft is not required by law to disclose the Customer Data, Microsoft will reject the request. If the request is valid and Microsoft could be compelled to disclose the requested information, Microsoft will attempt to redirect the third party to request the Customer Data from Customer.

Except as Customer directs, Microsoft will not provide any third party: (1) direct, indirect, blanket or unfettered access to Customer Data; (2) the platform encryption keys used to secure Customer Data or the ability to break such encryption; or (3) any kind of access to Customer Data if Microsoft is aware that such data is used for purposes other than those stated in the request.

In support of the above, Microsoft may provide Customer’s basic contact information to the third party.

### Educational Institutions

If Customer is an educational agency or institution to which regulations under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA) apply, Microsoft acknowledges that for the purposes of the OST, Microsoft is a “school official” with “legitimate educational interests” in the Customer Data, as those terms have been defined under FERPA and its implementing regulations, and Microsoft agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials.

Customer understands that Microsoft may possess limited or no contact information for Customer’s students and students’ parents. Consequently, Customer will be responsible for obtaining any parental consent for any end user’s use of the Online Service that may be required by applicable law and to convey notification on behalf of Microsoft to students (or, with respect to a student under 18 years of age and not in attendance at a

postsecondary institution, to the student’s parent) of any judicial order or lawfully-issued subpoena requiring the disclosure of Customer Data in Microsoft’s possession as may be required under applicable law.

### Security

Microsoft is committed to helping protect the security of Customer’s information. Microsoft has implemented and will maintain and follow appropriate technical and organizational measures intended to protect Customer Data against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

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**Security Incident Notification**

If Microsoft becomes aware of any unlawful access to any Customer Data stored on Microsoft’s equipment or in Microsoft’s facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data (each a “Security Incident”), Microsoft will promptly (1) notify Customer of the Security Incident; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.

Notification(s) of Security Incidents will be delivered to one or more of Customer’s administrators by any means Microsoft selects, including via email. It is Customer’s sole responsibility to ensure Customer’s administrators maintain accurate contact information on each applicable Online Services portal. Microsoft’s obligation to report or respond to a Security Incident under this section is not an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.

Customer must notify Microsoft promptly about any possible misuse of its accounts or authentication credentials or any security incident related to an Online Service.

**Location of Data Processing**

Except as described elsewhere in the OST, Customer Data that Microsoft processes on Customer’s behalf may be transferred to, and stored and processed in, the United States or any other country in which Microsoft or its affiliates or subcontractors maintain facilities. Customer appoints Microsoft to perform any such transfer of Customer Data to any such country and to store and process Customer Data in order to provide the Online Services. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.

**Preview Releases**

Microsoft may offer preview, beta or other pre-release features and services (“Previews”) for optional evaluation. Previews may employ lesser or different privacy and security measures than those typically present in the Online Services. Unless otherwise provided, Previews are not included in the SLA for the corresponding Online Service.

**Use of Subcontractors**

Microsoft may hire subcontractors to provide services on its behalf. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Microsoft remains responsible for its subcontractors’ compliance with Microsoft’s obligations in the OST. Customer has previously consented to Microsoft’s transfer of Customer Data to subcontractors as described in the OST.

**How to Contact Microsoft**

If Customer believes that Microsoft is not adhering to its privacy or security commitments, Customer may contact customer support or use Microsoft’s Privacy web form, located at <http://go.microsoft.com/?linkid=9846224>. Microsoft’s mailing address is:

**Microsoft Enterprise Service Privacy**

Microsoft Corporation One  
Microsoft Way  
Redmond, Washington 98052 USA

Microsoft Ireland Operations Limited is Microsoft’s data protection representative for the European Economic Area and Switzerland. The privacy representative of Microsoft Ireland Operations Limited can be reached at the following address:

**Microsoft Ireland Operations, Ltd.**

Attn: Data Protection  
Carmenhall Road  
Sandyford, Dublin 18, Ireland

**Data Processing Terms**

The Data Processing Terms (DPT) include the terms in this section.

The Data Processing Terms also include the “Standard Contractual Clauses,” pursuant to the European Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under the EU Data Protection Directive. The Standard Contractual Clauses are in [Attachment 3](#). In addition,

Execution of the Volume Licensing Agreement includes execution of [Attachment 3](#), which is countersigned by Microsoft Corporation; The terms in Customer’s Volume Licensing Agreement, including the DPT, constitute a data processing agreement under which Microsoft is the data processor; and



The DPT control over any inconsistent or conflicting provision in Customer’s Volume Licensing Agreement and, for each subscription, will remain in full force and effect until all of the related Customer Data is deleted from Microsoft’s systems in accordance with the DPT.

Customer may opt out of the “Standard Contractual Clauses” or the Data Processing Terms in their entirety. To opt out, Customer must send the following information to Microsoft in a written notice (under terms of the Customer’s Volume Licensing Agreement):

- the full legal name of the Customer and any Affiliate that is opting out;
- if Customer has multiple Volume Licensing Agreements, the Volume Licensing Agreement to which the Opt Out applies;
- if opting out of the entire DPT, a statement that Customer (or Affiliate) opts out of the entirety of the Data Processing Terms; and
- if opting out of only the Standard Contractual Clauses, a statement that Customer (or Affiliate) opts out of the Standard Contractual Clauses only.

In countries where regulatory approval is required for use of the Standard Contractual Clauses, the Standard Contractual Clauses cannot be relied upon under European Commission 2010/87/EU (of February 2010) to legitimize export of data from the country, unless Customer has the required regulatory approval.

**In the DPT, the term “Online Services” applies only to the services in the table below, excluding any Preview features or services, and “Customer Data” includes only Customer Data that is provided through use of those Online Services.**

Online Services	
Microsoft Dynamics Online Services	Microsoft Dynamics Online Services made available through volume licensing or the Microsoft online services portal, excluding (1) Microsoft Dynamics CRM for supported devices, which includes but is not limited to Microsoft Dynamics CRM Online Services for tablets and/or smartphones and (2) any separately-branded service made available with or connected to Microsoft Dynamics CRM Online, such as Microsoft Social Listening, Parature, from Microsoft, and Microsoft Dynamics Marketing.
Office 365 Services	Exchange Online, Exchange Online Archiving, Exchange Online Protection, SharePoint Online, OneDrive for Business, Lync Online, and Office Online included in Office 365 Enterprise Plans E1, E2, E3, E4, K1 and K2; and Exchange Online Plans 1, 2, Basic and Kiosk; SharePoint Online Plans 1, 2 and Kiosk; OneDrive for Business, Office Online Plans 1 and 2; and Lync Online Plans 1, 2 and 3. Office 365 Services do not include Office 365 ProPlus or any separately branded service made available with an Office 365-branded plan or suite, such as a Bing or Yammer service or a service branded “for Office 365.”
Microsoft Azure Core Services	Cloud Services (web and worker roles), Virtual Machines (including with SQL Server), Storage (Blobs, Tables, Queues), Virtual Network, Traffic Manager, Web Sites, BizTalk Services, Media Services, Mobile Services, Service Bus, Multi-Factor Authentication, Active Directory, Rights Management Service, SQL Database, and any other features identified as included on the Microsoft Azure Trust Center.
Windows Intune Online Services	The cloud service portion of Windows Intune such as the Windows Intune Add-on Product (Volume Licensing SKU number U7U-00007). It does not include any on-premises software made available with a Windows Intune subscription.

**Location of Customer Data at Rest**

Microsoft will store Customer Data at rest within certain major geographic areas (each, a Geo) as follows:

**Office 365 Services.** If Customer provisions its tenant in the United States or the EU, Microsoft will store the following Customer Data at rest within that Geo: (1) Exchange Online mailbox content (e-mail body, calendar entries, and the content of e-mail attachments) and (2) SharePoint Online site content and the files stored within that site.

**Windows Intune Online Services.** When Customer provisions a tenant account, Customer selects an available Geo where Customer Data at rest will be stored. Microsoft will not transfer the Customer Data outside of Customer’s selected Geo except as noted in the “Data Location” section of the Windows Intune Trust Center.

**Microsoft Azure Core Services.** If Customer configures a particular service to be deployed within a Geo then, for that service, Microsoft will store Customer Data at rest within the specified Geo. Certain services may not enable Customer to configure deployment in a particular Geo or outside the United States and may store backups in other locations, as detailed in the Microsoft Azure Trust Center (which Microsoft may update from time to time, but Microsoft will not add exceptions for existing Services in general release).

**Microsoft Dynamics CRM Online Services.** For entities managed by the Microsoft Dynamics CRM Online Service, if Customer provisions its tenant in the United States or EU, Microsoft will store Customer Data at rest in the United States or EU, as applicable.

Microsoft does not control or limit the regions from which Customer or Customer’s end users may access or move Customer Data.

**Privacy**

**Customer Data Deletion or Return.** No more than 180 days after expiration or termination of Customer’s use of an Online Service, Microsoft will disable the account and delete Customer Data from the account.

**Transfer of Customer Data.** Microsoft will, during the term designated under Customer’s Volume Licensing Agreement, remain certified under the EU and Swiss Safe Harbor programs, provided that they are maintained by the United States government. In addition, unless Customer has opted out of the Standard Contractual Clauses, all transfers of Customer Data out of the European Union, European Economic Area, and Switzerland shall be governed by the Standard Contractual Clauses.

**Microsoft Personnel.** Microsoft personnel will not process Customer Data without authorization from Customer. Microsoft personnel are obligated to maintain the security and secrecy of any Customer Data as provided in the DPT and this obligation continues even after their engagements end.

**Subcontractor Transfer.** Any subcontractors to whom Microsoft transfers Customer Data, even those used for storage purposes, will have entered into written agreements with Microsoft that are no less protective than the DPT. Customer has previously consented to Microsoft’s transfer of Customer Data to subcontractors as described in the DPT. Except as set forth in the DPT, or as Customer may otherwise authorize, Microsoft will not transfer to any third party (not even for storage purposes) personal data Customer provides to Microsoft through the use of the Online Services. Each Online Service has a website that lists subcontractors that are authorized to access Customer Data. At least 14 days before authorizing any new subcontractor to access Customer Data, Microsoft will update the applicable website and provide Customer with a mechanism to obtain notice of that update. If Customer does not approve of a new subcontractor, then Customer may terminate the affected Online Service without penalty by providing, before the end of the notice period, written notice of termination that includes an explanation of the grounds for non-approval. If the affected Online Service is part of a suite (or similar single purchase of services), then any termination will apply to the entire suite. After termination, Microsoft will remove payment obligations for the terminated Online Services from subsequent Customer invoices.

**Additional European Terms.**

These Additional European Terms apply only if Customer has end users in the European Economic Area (“EEA”) or Switzerland.

**End Users in EEA or Switzerland.** Terms used in the DPT that are not specifically defined will have the meaning in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the “EU Data Protection Directive”).

**Intent of the Parties.** For the Online Services, Microsoft is a data processor (or sub-processor) acting on Customer’s behalf. As data processor (or sub-processor), Microsoft will only act upon Customer’s instructions. The OST and Customer’s Volume Licensing Agreement (including the terms and conditions incorporated by reference therein) are Customer’s complete and final instructions to Microsoft for the processing of Customer Data. Any additional or alternate instructions must be agreed to according to the process for amending Customer’s Volume Licensing Agreement.

**Duration and Object of Data Processing.** The duration of data processing shall be for the term designated under Customer’s Volume Licensing Agreement. The objective of the data processing is the performance of the Online Services.

**Scope and Purpose of Data Processing.** The scope and purpose of processing of Customer Data, including any personal data included in the Customer Data, is described in the DPT and Customer’s Volume Licensing Agreement.

**Customer Data Access.** For the term designated under Customer’s Volume Licensing Agreement Microsoft will, at its election and as necessary under applicable law implementing Article 12(b) of the EU Data Protection Directive, either: (1) provide Customer with the ability to correct, delete, or block Customer Data, or (2) make such corrections, deletions, or blockages on Customer’s behalf.

**Security**

**General Practices.** Microsoft has implemented and will maintain and follow for the Online Services the following security measures, which, in conjunction with the security commitments in the OST, are Microsoft’s only responsibility with respect to the security of Customer Data.

Domain	Practices
Organization of Information Security	<p><b>Security Ownership.</b> Microsoft has appointed one or more security officers responsible for coordinating and monitoring the security rules and procedures.</p> <p><b>Security Roles and Responsibilities.</b> Microsoft personnel with access to Customer Data are subject to confidentiality obligations.</p> <p><b>Risk Management Program.</b> Microsoft performed a risk assessment before processing the Customer Data or launching the Online Services service. Microsoft retains its security documents pursuant to its retention requirements after they are no longer in effect.</p>
Asset Management	<p><b>Asset Inventory.</b> Microsoft maintains an inventory of all media on which Customer Data is stored. Access to the inventories of such media is restricted to Microsoft personnel authorized in writing to have such access.</p> <p><b>Asset Handling</b></p>

Domain	Practices
	<p>Microsoft classifies Customer Data to help identify it and to allow for access to it to be appropriately restricted.</p> <p>Microsoft imposes restrictions on printing Customer Data and has procedures for disposing of printed materials that contain Customer Data.</p> <p>Microsoft personnel must obtain Microsoft authorization prior to storing Customer Data on portable devices, remotely accessing Customer Data, or processing Customer Data outside Microsoft’s facilities.</p>
Human Resources Security	<p><b>Security Training.</b> Microsoft informs its personnel about relevant security procedures and their respective roles. Microsoft also informs its personnel of possible consequences of breaching the security rules and procedures. Microsoft will only use anonymous data in training.</p>
Physical and Environmental Security	<p><b>Physical Access to Facilities.</b> Microsoft limits access to facilities where information systems that process Customer Data are located to identified authorized individuals.</p> <p><b>Physical Access to Components.</b> Microsoft maintains records of the incoming and outgoing media containing Customer Data, including the kind of media, the authorized sender/recipients, date and time, the number of media and the types of Customer Data they contain.</p> <p><b>Protection from Disruptions.</b> Microsoft uses a variety of industry standard systems to protect against loss of data due to power supply failure or line interference.</p> <p><b>Component Disposal.</b> Microsoft uses industry standard processes to delete Customer Data when it is no longer needed.</p>
Communications and Operations Management	<p><b>Operational Policy.</b> Microsoft maintains security documents describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Customer Data.</p> <p><b>Data Recovery Procedures</b> On an ongoing basis, but in no case less frequently than once a week (unless no Customer Data has been updated during that period), Microsoft maintains multiple copies of Customer Data from which Customer Data can be recovered.</p> <p>Microsoft stores copies of Customer Data and data recovery procedures in a different place from where the primary computer equipment processing the Customer Data is located.</p> <p>Microsoft has specific procedures in place governing access to copies of Customer Data.</p> <p>Microsoft reviews data recovery procedures at least every six months.</p> <p>Microsoft logs data restoration efforts, including the person responsible, the description of the restored data and where applicable, the person responsible and which data (if any) had to be input manually in the data recovery process.</p> <p><b>Malicious Software.</b> Microsoft has anti-malware controls to help avoid malicious software gaining unauthorized access to Customer Data, including malicious software originating from public networks. <b>Data Beyond Boundaries</b> Microsoft encrypts, or enables Customer to encrypt, Customer Data that is transmitted over public networks.</p> <p>Microsoft restricts access to Customer Data in media leaving its facilities (e.g., through encryption).</p> <p><b>Event Logging.</b> Microsoft logs, or enables Customer to log, access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity.</p>
Access Control	<p><b>Access Policy.</b> Microsoft maintains a record of security privileges of individuals having access to Customer Data.</p> <p><b>Access Authorization</b> Microsoft maintains and updates a record of personnel authorized to access Microsoft systems that contain Customer Data.</p> <p>Microsoft deactivates authentication credentials that have not been used for a period of time not to exceed six months.</p> <p>Microsoft identifies those personnel who may grant, alter or cancel authorized access to data and resources.</p> <p>Microsoft ensures that where more than one individual has access to systems containing Customer Data, the individuals have separate identifiers/log-ins.</p> <p><b>Least Privilege</b> Technical support personnel are only permitted to have access to Customer Data when needed.</p> <p>Microsoft restricts access to Customer Data to only those individuals who require such access to perform their job function.</p>

Domain	Practices
	<p><b>Integrity and Confidentiality</b>                      Microsoft instructs Microsoft personnel to disable administrative sessions when leaving premises                      Microsoft controls or when computers are otherwise left unattended.                      Microsoft stores passwords in a way that makes them unintelligible while they are in force.</p> <p><b>Authentication</b>                      Microsoft uses industry standard practices to identify and authenticate users who attempt to access information systems.                      Where authentication mechanisms are based on passwords, Microsoft requires that the passwords are renewed regularly.                      Where authentication mechanisms are based on passwords, Microsoft requires the password to be at least eight characters long.                      Microsoft ensures that de-activated or expired identifiers are not granted to other individuals.                      Microsoft monitors, or enables Customer to monitor, repeated attempts to gain access to the information system using an invalid password.                      Microsoft maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed.                      Microsoft uses industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, and during storage.</p> <p><b>Network Design.</b> Microsoft has controls to avoid individuals assuming access rights they have not been assigned to gain access to Customer Data they are not authorized to access.</p>
Information Security Incident Management	<p><b>Incident Response Process</b>                      Microsoft maintains a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the reporter, and to whom the breach was reported, and the procedure for recovering data.                      Microsoft tracks, or enables Customer to track, disclosures of Customer Data, including what data has been disclosed, to whom, and at what time.</p> <p><b>Service Monitoring.</b> Microsoft security personnel verify logs at least every six months to propose remediation efforts if necessary.</p>
Business Continuity Management	<p>Microsoft maintains emergency and contingency plans for the facilities in which Microsoft information systems that process Customer Data are located.</p> <p>Microsoft’s redundant storage and its procedures for recovering data are designed to attempt to reconstruct Customer Data in its original or last-replicated state from before the time it was lost or destroyed.</p>

**Certifications and Audits**

Microsoft has established and agrees to maintain a data security policy (Online Information Security Policy) for each Online Service that complies with the ISO 27001 standards for the establishment, implementation, control, and improvement of the Information Security Management System and the ISO/IEC 27002 code of best practices for information security management. On a confidential need-to-know basis, and subject to Customer’s agreement to non-disclosure obligations Microsoft specifies, Microsoft will make the Online Information Security Policy available to Customer, along with other information reasonably requested by Customer regarding Microsoft security practices and policies. Customer is solely responsible for reviewing the Online Information Security Policy, making an independent determination as to whether the Online Information Security Policy meets Customer’s requirements, and for ensuring that Customer’s personnel and consultants follow the guidelines they are provided regarding data security. If Customer is subject to the Standard Contractual Clauses, then this section is in addition to Clause 5 paragraph f and Clause 12 paragraph 2 of the Standard Contractual Clauses.

Microsoft will audit the security of the computers and computing environment that it uses in processing Customer Data (including personal data) on the Online Services and the physical data centers from which Microsoft provides the Online Services. This audit: (1) will be performed at least annually; (2) will be performed according to ISO 27001 standards; (3) will be performed by qualified, independent third party security professionals at Microsoft’s selection and expense; (4) will result in the generation of an audit report (Microsoft Audit Report), which will be Microsoft’s confidential information; and (5) may be performed for other purposes in addition to satisfying this section (e.g., as part of Microsoft’s regular internal security procedures or to satisfy other contractual obligations).

If Customer requests in writing, Microsoft will provide Customer with a confidential summary of the Microsoft Audit Report(Summary Report) so that Customer can reasonably verify Microsoft’s compliance with the security obligations under the DPT. The Summary Report will clearly disclose the scope of the audit and any material findings by the auditor. The Summary Report is Microsoft confidential information.

If the Standard Contractual Clauses apply, then Customer agrees to exercise its audit right by instructing Microsoft to execute the audit as described in this section of the DPT. If Customer has not opted out of the Standard Contractual Clauses and desires to change this instruction

regarding exercising this audit right, then Customer has the right to change this instruction as mentioned in the Standard Contractual Clauses, which shall be requested in writing.

If the Standard Contractual Clauses apply, then nothing in this section of the DPT varies or modifies the Standard Contractual Clauses nor affects any supervisory authority's or data subject's rights under the Standard Contractual Clauses. Microsoft Corporation is an intended third-party beneficiary of this section.

## ONLINE SERVICE SPECIFIC TERMS

If an Online Service is not listed below, it does not have any Online Service-specific terms.

### Microsoft Azure Services

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#### Notices

The Customer Support and H.264/AVC Visual Standard, VC-1 Video Standard, and MPEG-4 Part 2 Visual Standard and MPEG-2 Video Standard Notices in [Attachment 1](#) apply.

#### Service Level Agreement

Refer <http://azure.microsoft.com/en-us/support/legal/sla/>.

#### Definitions

“Customer Solution” means an application or any set of applications that adds primary and significant functionality to the Microsoft Azure Services and that is not primarily a substitute for the Microsoft Azure Services.

“Managed Service Solution” means a managed IT service provided by Customer to a third party that consists of the administration of and support for Microsoft Azure Services.

“Microsoft Azure Services” means one or more of the Microsoft services and features identified at <http://azure.microsoft.com/en-us/services>, except where identified as licensed separately.

#### Limitations

Customer may not

resell or redistribute the Microsoft Azure Services, or allow multiple users to directly or indirectly access any Microsoft Azure Service feature that is made available on a per user basis (e.g., Active Directory Premium). Specific reassignment terms applicable to a Microsoft Azure Service feature may be provided in supplemental documentation for that feature.

#### Retirement of Services or Features

Microsoft will provide Customer with 12 months’ notice before removing any material feature or functionality or discontinuing a service, unless security, legal or system performance considerations require an expedited removal. This does not apply to Previews

#### Data Retention after Expiration or Termination

The expiration or termination of Customer’s Online Service subscription will not change Customer’s obligation to pay for hosting of Customer Data during any Extended Term.

#### Hosting Exception

Customer may create and maintain a Customer Solution and, despite anything to the contrary in Customer’s Volume Licensing Agreement, combine Microsoft Azure Services with Customer Data owned or licensed by Customer or a third party, to create a Customer Solution using the Microsoft Azure Service and the Customer Data together. Customer may permit third parties to access and use the Microsoft Azure Services in connection with the use of that Customer Solution. Customer is responsible for that use and for ensuring that these terms and the terms and conditions of Customer’s Volume Licensing Agreement are met by that use.

#### Managed Service Exception

Customer may provide a Managed Service Solution provided (i) Customer has the sole ability to access, configure, and administer the Microsoft Azure Services, (ii) Customer has administrative access to the virtual OSE(s), if any, in the Managed Service Solution, and (iii) the third party has



administrative access only to its application(s) or virtual OSE(s). Customer is responsible for the third party's use of Microsoft Azure Services in accordance with the terms of the Volume Licensing Agreement.

#### Virtual Machines

Microsoft Azure Services may provide Customer with the option of running Windows Server and other Microsoft software in a Virtual Machine. Customer agrees to secure the rights necessary to run all software (including the operating system) within Customer's Virtual Machines. Customer may use that software only within the Microsoft Azure Services and only in conjunction with Customer's permitted use of any applicable Microsoft Azure role, and subject to the Universal and General Terms for the software detailed in the License Agreement/Product Use Rights document found at <http://go.microsoft.com/?linkid=9839206> or its successor site.



**Sharing**

The Microsoft Azure Services may provide the ability to share a Customer Solution and/or Customer Data with other Azure users and communities, or other third parties. If Customer chooses to engage in such sharing, Customer agrees that it is giving a license to all authorized users, including the rights to use, modify, and repost its Customer Solution and/or the Customer Data, and Customer is allowing Microsoft to make them available to such users in a manner and location of its choosing.

**Import/Export Services**

Customer's use of the Import/Export Service is conditioned upon its compliance with all instructions provided by Microsoft with respect to the preparation, treatment and shipment of the physical media containing its data (storage media), which will be provided via email or at [www.go.microsoft.com/fwlink/?linkid=301900&CLCID=0X409](http://www.go.microsoft.com/fwlink/?linkid=301900&CLCID=0X409). Customer is solely responsible for ensuring the storage media and data are provided in compliance with all laws and regulations. All incoming storage media will be shipped DAP Microsoft DCS Data Center (INCOTERMS 2010).

Exported storage media will be shipped DAP Customer Dock (INCOTERMS 2010). Customer is responsible for ensuring that the data exported on storage media is permitted to be shipped to the location Customer provides.

Customer agrees that Microsoft has no duty with respect to the storage media and the data contained therein and no liability for lost, damaged or destroyed storage media. Customer is solely responsible for taking any precautions to protect the storage media and data contained therein, including without limitation: encrypting data, tamper-proof packaging, shipping insurance, data backup, and data redundancy.

**Store**

Microsoft Azure enables Customer to access or purchase Non-Microsoft Products through features such as Microsoft Azure Store and the Virtual Machine Gallery, subject to separate terms available at <http://azure.microsoft.com/en-us/support/legal/microsoft-azure-store-terms/>.

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## Enterprise Mobility Services

**Notices**

The Bing Maps Notices in [Attachment 1](#) apply.

**Subscription License Suites**

In addition to User SLs, refer to [Attachment 2](#) for other SLs that fulfill requirements for Azure Active Directory Premium, Azure Rights Management, and Windows Intune.

## Azure Active Directory Basic

Customer may, using Single Sign-On, pre-integrate up to 10 SAAS Applications/Custom Applications per User SL. All Microsoft as well as third party applications count towards this application limit.

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## Azure Active Directory Premium

Customer may, using Single Sign-On, pre-integrate SaaS Applications/Custom Applications. Customer may not copy or distribute any data set (or any portion of a data set) included in the Forefront Identity Manager software that is included with a Microsoft Azure Active Directory Premium User SL.

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## Azure Rights Management Service

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## Windows Intune

Windows Intune (per user)	Windows Intune Add-on for System Center Configuration Manager and System Center Endpoint Protection (per user)
Windows Intune with Windows Desktop Operating System (per user)	

(“WindowsIntuneAdd-On”)

### Manage Devices

Each user to whom Customer assigns a User SL may access and use the Online Service and related software (including System Center software) to manage up to five devices.

### Storage Add-on SL

A Storage Add-on SL is required for each gigabyte of storage in excess of the storage provided with the base subscription.

### Windows Software Components in System Center Software

The System Center software includes one or more of the following Windows Software Components: Microsoft .NET Framework, Microsoft Data Access Components, Powershell software and certain .dlls related to Microsoft Build, Windows Identity Foundation, Windows Library for JavaScript, Debughelp.dll, and Web Deploy technologies.

The license terms governing use of the Windows Software Components are in the Windows 8.1 Pro and Enterprise section of the Product Use Rights. The License Agreement/Product Use Rights is located at <http://go.microsoft.com/?linkid=9839206>.

### SQL Server Technology and Benchmarking

The Software included with the Online Service includes SQL Server-branded components other than a SQL Server Database. Those components are licensed to Customer under the terms of their respective licenses, which can be found in the installation directory or unified installer of the software. Customer must obtain Microsoft’s prior written approval to disclose to a third party the results of any benchmark test of these components or the software that includes them.

### The following additional terms apply to Windows Desktop Operating System Service that customers receive with Windows Intune with Windows Desktop Operating System Service:

#### Notices

H.264/AVC Visual Standard, VC-1 Video Standard, MPEG-2 Video Standard, MPEG-4 Part 2 Visual Standard and MPEG-2 Video Standard Notice in Appendix 1 applies to Windows Intune with Windows Desktop Operating System.

#### Access to Online Service

Each user to whom Customer assigns a Windows Intune with Windows Desktop Operating System User SL may access and use the Online Service and other related software (including System Center software) to manage the user’s Windows Device and up to four additional devices.

#### Assigning the Windows Desktop Operating System License

Each user who has been assigned a User SL (the Primary User) may use the Windows software (as described in the “Windows Desktop Operating System” section below) on a single device, which must have an assigned and installed qualifying operating system license. That device is the Primary User’s Windows Device for purposes of these license terms and the Microsoft Desktop Optimization Pack (MDOP) license terms Product Use Rights. The License Agreement/Product Use Rights is located at <http://go.microsoft.com/?linkid=9839206>.

Qualifying operating system licenses (both 32 and 64-bit) include the following:

- Windows 8 and 8.1 Enterprise or Pro, (diskless, N, K and KN editions)
- Windows 7 Enterprise or Professional (diskless) (including the N, K and KN editions),\ or Ultimate
- Windows Vista Enterprise (N, K, KN editions), Business (N, K, KN, Blade editions) or Ultimate
- Windows XP Professional or Tablet Editions (including the N, K, KN and Blade editions), Windows XP Pro N or Windows XP Pro Blade PC
- Windows 2000 Professional
- Windows NT Workstation 4.0
- Windows 98 (including 2nd Edition)
- Apple Macintosh

#### Windows Desktop Operating System

The License Agreement/Product Use Rights for the Windows Enterprise Operating System apply to the Windows desktop operating system software included with the User SL, except as provided in this section. Software, as used here, refers to Windows Enterprise.

Customer may install one copy of Windows 8.1 Enterprise, 8.1 Pro, or any earlier supported version of the software on the Windows Device on up to two processors. The Primary User may use the software for work-related purposes locally or remotely.

**Local Virtualization Rights.** The Primary User may run up to four Instances in virtual OSEs and one Instance in the Physical OSE locally on the Windows Device. If all of the Instances permitted to run in virtual OSEs locally are used, Customer may use the Instance in the Physical OSE only to host and manage the virtual OSEs.

**Remote Virtualization Rights.** When using the Windows Device, the Primary User may remotely access up to four Instances of the software running in virtual OSEs or one instance of the software running in one physical OSE on a device in Customer’s datacenter.

**Roaming Use Rights.** The Primary User may remotely access the permitted Instances running on servers in Customer’s datacenter from a device that is not controlled, directly or indirectly, by Customer or its Affiliates (a “Qualifying Third Party Device”) from anywhere off Customer’s or its Affiliates’ premises and may run one Instance of the software in a virtual OSE on a Qualifying Third Party Device while off Customer’s or its Affiliates’ premises.

**Windows to Go Rights.** Customer may create and store an Instance of the software on up to two USB drives for the Primary User to run on any Windows Device or on a Qualifying Third Party Device from anywhere off Customer’s or Customer’s Affiliates’ premises.

The Primary User may remotely access any permitted Instance of the software running on servers in Customer’s datacenter from a Windows RT Companion Device, where “Window RT Companion Device” means any additional device that is used by the Primary User and properly licensed by Customer (not a third party) for Windows RT or Windows RT 8.1.

Customer may connect up to 20 devices to the Windows Device for file sharing, printing, Internet Information Services, Internet Connection Sharing or telephony services. An unlimited number of connections are allowed for Key Management Services activation or similar technology.

Customer may create any number of Instances of the software and store them on any of Customer’s servers or storage media solely to exercise Customer’s right to run Instances of the software under any of Customer’s Windows Intune with Windows Desktop Operating System (per user) licenses.

Other users may access the software solely to provide technical support using Remote Assistance (or similar technology) or administering the software.

**Reassignment of Windows Desktop OS**

Subject to the general rule against short-term reassignment of licenses, Customer may reassign its license to a qualifying replacement device. A qualifying replacement device is a device to which Customer has assigned a license and upon which Customer has installed the latest version of the Windows desktop operating system. Customer may reassign its license sooner if it retires the licensed device due to permanent hardware failure. Customer may replace a Windows Device with another device, but not on a short-term basis (90 days or less) and only if that replacement device is licensed for a supported qualifying version of the Windows desktop operating system. Licenses that are granted or acquired in connection with other qualifying licenses (e.g., MDOP) generally must be reassigned as and when the qualifying license is reassigned.

**Windows Operating System Buy-out option**

A buy-out option is available to obtain perpetual Licenses for the latest version of Windows Enterprise that is made available to Customer under its Windows Intune with Windows Desktop Operating System subscription on or before the date Customer exercises the buy-out option (the “Windows Enterprise Software”). A buy-out order may be submitted during or any time after the 12th calendar month of an active Windows Intune with Windows Desktop Operating System subscription or up to 90 days after Customer’s subscription expires or is cancelled. Customer will be required to pay any outstanding subscription and/or cancellation fees upon or in advance of exercising the buy-out option. Customer’s buy-out order for Windows Enterprise Software may include a number of Licenses up to but not exceeding the number of active SLs Customer currently has (or had up to 90 days prior to buy-out) for Windows Intune with Windows Desktop Operating System. For pricing, payment terms, and information about how to exercise the buy-out option Customer should contact its local support center: [www.microsoft.com/online/help/en-us/help/howto/0d8eb4c2-77c5-4dd8-b66c-9f1de7451e24.htm](http://www.microsoft.com/online/help/en-us/help/howto/0d8eb4c2-77c5-4dd8-b66c-9f1de7451e24.htm).

**Perpetual Licenses**

Upon Microsoft’s acceptance of Customer’s buy-out order and receipt of payment in full, Customer will have perpetual Licenses for the Windows Enterprise Software for the number of Licenses specified in the buy-out order. Perpetual Licenses received under the buy-out option remain subject to the terms of Customer’s Volume Licensing Agreement (including these Online Services Terms, as further specified below, and all License limitations), and supersede and replace Customer’s underlying perpetual Licenses for a qualifying Microsoft desktop operating system. The terms governing Customer’s ongoing use of the Windows Enterprise Software survive expiration or termination of Customer’s Volume Licensing Agreement.

**Buy-Out Option**

Notwithstanding anything to the contrary in Customer’s Volume Licensing Agreement, Customer may not reassign perpetual Windows desktop operating system licenses acquired under the Windows Intune with Windows Desktop Operating System buy-out option to replacement devices.

**Assigning Licenses**

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Customer must assign the perpetual licenses Customer acquires under the buy-out option to Windows Devices on which Customer used the software under Customer’s corresponding Windows Intune with Windows Desktop Operating System (per user) SLs.

**Product Use Rights**

The License Agreement/Product Use Rights for the Windows Enterprise Operating System apply to Customer’s use of Windows Enterprise Software under the perpetual Licenses Customer acquires under the buy-out option. The License Agreement/Product Use Rights is located at <http://go.microsoft.com/?linkid=9839206>. The Virtualization Rights, Roaming Use Rights, Windows to Go Rights and Companion Devices described above in this section do not apply.

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**Microsoft Dynamics Online Services**

**Notices**

The Bing Maps and Customer Support Notices in [Attachment 1](#) apply.

**Subscription License Suites**

In addition to User SLs, refer to [Attachment 2](#) for other offerings that fulfill SL requirements

**Microsoft Dynamics CRM Online**

Microsoft Dynamics CRM Online Essentials

Microsoft Dynamics CRM Online Professional

Microsoft Dynamics CRM Online Basic

Microsoft Dynamics CRM Online Enterprise

**External Users**

External Users of all editions of Microsoft Dynamics CRM Online do not need an SL to access the Online Service unless using Microsoft Dynamics CRM clients. This exemption does not apply to access of the Microsoft Dynamics Marketing, Microsoft Social Listening, or Parature, from Microsoft.

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**Microsoft Dynamics Marketing**

Microsoft Dynamics Marketing Enterprise

Microsoft Dynamics Marketing Sales

Collaboration

**Service Level Agreement**

There is no SLA for Microsoft Dynamics Marketing.

**Web User Profile**

Users configured and accessing this Online Service as Web Portal Users do not need User SLs.

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**Microsoft Social Listening**

Microsoft Social Listening Professional

**Service Level Agreement**

There is no SLA for Microsoft Social Listening.

**Social Content Obtained through Microsoft Social Listening**

“Social Content” is publicly-available content collected from social media networks (such as Twitter, Facebook and YouTube) and data indexing or data aggregation services in response to Customer’s search queries executed in Microsoft Social Listening. Social Content is not Customer Data. Microsoft reserves the right to:

- store Social Content in a database commingled with content aggregated from other sources by other licensees;
- access, edit or delete Social Content in response to a request from a social media network, data indexing or data aggregation service, Social Content owner or a takedown request under the Digital Millennium Copyright Act;
- instruct Customer to edit or delete Social Content, if Customer exports Social Content; and
- delete or restrict further access to Social Content after the Online Service has been terminated or expires.



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## Parature, from Microsoft

Parature Enterprise

### Service Level Agreement

There is no SLA for Parature, from Microsoft.

Customer may use Parature in accordance with the privacy and/or security terms located at <http://www.parature.com/privacylegal/>.

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## Office 365 Services

### Notices

The Bing Maps Notices in [Attachment 1](#) apply.

### Core Features for Office 365 Services

During the term of Customer's subscription, the Office 365 Services will substantially conform to the Core Features description provided (if any) in the Office 365 service-specific sections below, subject to Product restrictions or external factors (such as the recipient, message rate, message size and mailbox size limits for e-mail; default or Customer-imposed data retention policies; search limits; storage limits; Customer or end user configurations; and meeting capacity limits). Microsoft may permanently eliminate a functionality specified below only if it provides Customer a reasonable alternative functionality.

### Administration Portal

Customer will be able to add and remove end users and domains, manage licenses, and create groups through the Microsoft Online Services Portal or its successor site.

### Subscription License Suites

In addition to User SLs, refer to [Attachment 2](#) for other SLs that fulfill requirements for Exchange Online Plans 1 and 2, Lync Online Plans 1 and 2 and SharePoint Online Plans 1 and 2.

## Exchange Online

Data Loss Prevention  
Exchange Online Archiving for Exchange Online Exchange  
Online Archiving for Exchange Server

Exchange Online Kiosk Exchange  
Online Plan 1 Exchange Online  
Plan 2

### Core Features for Office 365 Services – Exchange Online

Exchange Online or its successor service will have the following [Core Features](#) capabilities:

#### Emails

An end user will be able to send email messages, receive email messages that originate from within and outside of Customer's organization, and access the end user's mailbox.

#### Mobile and Web Browser Access

Through the Microsoft Exchange ActiveSync protocol or a successor protocol or technology, Exchange Online will enable an end user to send and receive emails and update and view calendars from a mobile device that adequately supports such a protocol or technology. An end user will be able to send email messages, receive email messages that originate from within and outside of Customer's organization, and access the end user's mailbox, all from within a compatible web browser.

#### Retention Policies

Customer will be able to establish archive and deletion policies for email messages.

#### Deleted Item and Mailbox Recovery

Customer will be able to recover the contents of a deleted non-shared mailbox and an end user will be able to recover an item that has been deleted from one of the end user's email folders.

#### Multi-Mailbox Search

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Customer will be able to search for content across multiple mailboxes within its organization.

**Calendar**

An end user will be able to view a calendar and schedule appointments, meetings, and automatic replies to incoming email messages.

**Contacts**

Through an Exchange Online-provided user interface, Customer will be able to create and manage distribution groups and an organization-wide directory of mail-enabled end users, distribution groups, and external contacts.

**Core Features for Office 365 Services – Exchange Online Archiving**

Exchange Online Archiving or its successor service will have the following [Core Features](#) capabilities:

**Storage**

Customer will be able to allow an end user to store email messages.

**Retention Policies**

Customer will be able to establish archive and deletion policies for email messages distinct from policies that an end user can apply to the end user’s own mailbox.

**Deleted Item and Mailbox Recovery**

Customer, through Office 365 support services, will be able to recover a deleted archive mailbox, and an end user will be able to recover an item that has been deleted from one of the end user’s email folders in the end user’s archive.

**Multi-Mailbox Search**

Customer will be able to search for content across multiple mailboxes within its organization.

**Legal Hold**

Customer will be able to place a “legal hold” on an end user’s primary mailbox and archive mailbox to preserve the content of those mailboxes.

**Archiving**

Archiving may be used for messaging storage only with Exchange Online Plans 1 and 2.

**Archiving for Exchange Server**

Users licensed for Exchange Server 2013 Standard Client Access License may access the Exchange Server 2013 Enterprise Client Access License features necessary to support use of Exchange Online Archiving for Exchange Server.

**Exchange Online Plan 2 from Exchange Hosted Archive Migration**

Exchange Online Plan 2 is a successor Online Service to Exchange Hosted Archive. If Customer renews from Exchange Hosted Archive into Exchange Online Plan 2 and has not yet migrated to Exchange Online Plan 2, Customer’s licensed users may continue to use the Exchange Hosted Archive service subject to the terms of the March 2011 Product Use Rights until the earlier of Customer’s migration to Exchange Online Plan 2 or the expiration of Customer’s Exchange Online Plan 2 User SLs. The License Agreement/Product Use Rights is located at

**Data Loss Prevention Device License**

If Customer is licensed for Data Loss Prevention by Device, all users of the Licensed Device are licensed for the Online Service.

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**Lync Online**

Lync Online Plan 1  
LyncOnline Plan 2

**Notices**

The Recording and the H.264/MPEG-4 AVC and/or VC-1 Notices in [Attachment 1](#) apply.

**Core Features for Office 365 Services**

Lync Online or its successor service will have the following [Core Features](#) capabilities:

**Instant Messaging**

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An end user will be able to transfer a text message to another end user in real time over an Internet Protocol network.

**Presence**

An end user will be able to set and display the end user’s availability and view another end user’s availability.

**Online Meetings**

An end user will be able to conduct an Internet-based meeting that has audio and video conferencing functionality **with other end users.**

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## Office 365 Applications

Office 365 Business	Project Pro for Office 365
Office 365 ProPlus	Visio Pro for Office 365

**Service Level Agreement**

There is no SLA for Project Pro for Office 365 and Visio Pro for Office 365.

**Installation and Use Rights**

Each user to whom Customer assigns a User SL must have a Microsoft Account in order to use the software provided with the subscription. These users:

- may activate the software provided with the SL on up to five concurrent OSEs for local or remote use;
- may also install the software, with Shared Computer Activation (SCA), on a network server or Microsoft Azure Platform Services and use the software to create, edit, or save documents. For the purpose of this use right “network server” means a physical hardware server solely dedicated to Customer use. This SCA provision does not apply to Customers license for Office 365Business; and
- must connect each device upon which user has installed the software to the Internet at least once every 30 days or the functionality of the software may be affected.

**The following terms apply only to Office 365 Business and Office 365 ProPlus Smartphone and Tablet Devices**

Each user to whom Customer assigns a User SL may also activate Microsoft Office Mobile software to create, edit, or save documents on up to five of user’s smartphones and five of user’s tablets.

**The following terms apply only to Office 365 ProPlus Office Home & Student 2013 RT Commercial Use**

Each User SL for Office 365 ProPlus modifies the user’s right to use the software under a separately acquired Office Home & Student 2013 RT license by waiving the prohibition against commercial use. Except for this allowance for commercial use of the software, all use is subject to the terms and use rights provided with the Office Home & Student 2013 RT License.

**Office Web Apps Server 2013**

Each Office 365 ProPlus user may use the Office Web Apps Server 2013 software. This provision does not apply to Customers that license this Product under the Microsoft Online Subscription Agreement or other Microsoft agreement that cover Online Services only.

**Subscription License Suites**

In addition to Office 365 ProPlus User SLs, Customer may fulfill the SL requirement for this Product by purchasing a Suite SL (refer [Attachment 2](#)).

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## Office Online

**Core Features for Office 365 Services**

Office Online or its successor service will have the following [Core Features](#) capabilities:  
An end user will be able to create, view, and edit documents in Microsoft Word, Excel, PowerPoint, and OneNote file types that are supported by Office Online or its successor service.

**External Users**

External Users invited to site collections via Share-by-Mail functionality do not need User SLs with Office Online.

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## OneDrive for Business

### External Users

External Users invited to site collections via Share-by-Mail functionality do not need User SLs with OneDrive for Business.

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## Project Online

Project Lite  
Project Online

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## SharePoint Online

Duet Enterprise Online for Microsoft SharePoint and SAP	SharePoint Online Plan 1
SharePoint Online Kiosk	SharePoint Online Plan 2

### Core Features for Office 365 Services

SharePoint Online or its successor service will have the following [Core Features](#) capabilities:

#### Collaboration Sites

An end user will be able to create a web browser-accessible site through which the end user can upload and share content and manage who has permission to access that site.

#### Storage

Customer will be able to set storage capacity limits for a site created by an end user.

#### External Users

External Users invited to site collections via Share-by-Mail functionality do not need User SLs with SharePoint Online Kiosk, Plan 1 and Plan 2.

#### Storage Add-on SLs

Office 365 Extra File Storage is required for each gigabyte of storage in excess of the storage provided with User SLs for SharePoint Online Plans 1 and 2.

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## Other Online Services

### Bing Maps Enterprise Platform and Bing Maps Mobile Asset Management Platform

#### Service SLs

A Service SL is required to provide access to the services. Each Service SL must be purchased with at least one of the following qualifying Add-On SLs:

a Website usage Add-On SL, which is required for unauthenticated users to access Bing Maps Enterprise Platform and Bing Maps Mobile Asset Management Platform through Customer's programs based on the number of billable transactions per month,

a public website usage SL, which is available for a specified number of billable transactions for use on a website that is available publicly without restriction,

an Internal Website Usage Add-on, which is available for a specified number of billable transactions for use on an internal website (e.g., intranet) on a private network,

Bing Maps Unlimited Add-on,

Bing Maps Known User SL, or

Bing Maps Light Known User SL.

#### Qualifying Bing Maps Mobile Asset Management Platform Service SL Add-on SLs



For the Bing Maps Mobile Asset Management Platform, an Add-on SL is required for each tracked Asset whose GPS or other sensor based position can be monitored, displayed, reverse geocoded or used to perform calculations using Bing Maps Mobile Asset Management Platform. "Asset" is defined as any vehicle, device or other mobile object. These Add-on SLs are for a specified number of tracked Assets.

**Authenticated Users**

Users that are authenticated by Customer's programs that access Bing Maps Enterprise Platform and Bing Maps Mobile Asset Management Platform must have a SL.

**Bing Maps APIs**

Customer may use all Bing Maps APIs in accordance with the Microsoft Bing Maps Platform API Terms of Use and Bing Maps Platform SDKs, including any successors thereto, located at <http://go.microsoft.com/fwlink/p/?LinkId=66121> and <http://go.microsoft.com/fwlink/p/?LinkId=223436>.

**Bing Maps Privacy**

The Bing Privacy Statement and privacy terms in the Microsoft Bing Maps Platform API Terms of Use located at: <http://go.microsoft.com/fwlink/?LinkId=248686> apply to Customer's use of the Bing Maps Services.

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## Microsoft Learning E-Reference Library

Any person that has valid access to Customer's computer or internal network may copy and use the documentation for Customer's internal reference purposes. Documentation does not include electronic books.

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## Microsoft Learning IT Academy

**Service SL**

A Service SL is required for each Location that accesses or uses any Microsoft Learning IT Academy service or benefit. Location is defined as a physical site with staff under the same administrator, such as a principal, in a single building or group of buildings located on the same campus.

**IT Academy Program Guidelines**

The IT Academy program guidelines, located at <http://www.microsoft.com/itacademy>, apply to Customer's use of the Microsoft Learning IT Academy and its benefits.

**Program Benefits Provided by Third-Party**

Program benefits may only be used by a licensed institution's faculty, staff and students currently enrolled in the licensed institution.

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## Office 365 Developer

**No Production Use of Office 365 Developer**

Each user to whom Customer assigns a User SL may use the Online Service to design, develop, and test Customer's applications to make them available for Customer's Office 365 Online Services, on-premises deployments or for the Microsoft Office Store. The Online Service is not licensed for production use.

**Office 365 Developer End Users**

Customer's end users do not need a SL to access Office 365 Developer to perform acceptance tests or provide feedback on Customer programs.

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## Power BI for Office 365

**Notices**

The Bing Maps Notices in [Attachment 1](#) apply.

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## System Center Endpoint Protection

### Device SLs

An SL is required for each device that accesses System Center Endpoint Protection or related software, excluding Servers, which require Server Management Licenses.

### Server Management SLs

In addition to User SL requirements, Server Management Licenses are required for each Server in the number specified in the System Center 2012 R2 Datacenter and Standard license terms in the Management Servers section of the Product Use Rights. The License Agreement/Product Use Rights is located at <http://go.microsoft.com/?linkid=9839206>. For purposes of this statement, OSEs running server operating systems that access System Center Endpoint Protection or related software are managed OSEs. For this paragraph, a "Servers" is a device on which Customer runs server operating system software.

### Substitution of Scan Engines

Microsoft may substitute comparable software and files for the Online Service's:

- anti-virus and anti-spam software; and
- signature files and content filtering data files.

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## Translator API

Customer may use Translator API in accordance with the Translator API Terms of Use, including successor Terms, located at <http://aka.ms/translatortou> and the Translator Privacy Statement located at <http://aka.ms/translatorprivacy>.

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## Yammer Enterprise

### External Users

External Users invited to Yammer via external network functionality do not need User SLs.

### Microsoft's use of Customer Data

Despite anything to the contrary in Customer's Volume Licensing Agreement or the OST, Microsoft's use of Customer Data in the Yammer Enterprise online service, both before and after Customer's Online Service subscription terminates, will be governed by the Yammer Privacy Statement at [www.yammer.com/about/privacy](http://www.yammer.com/about/privacy).

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## Attachment 1 – Notices

### Bing Maps

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The Online Service or its included software includes use of Bing Maps. Any content provided through Bing Maps, including geocodes, can only be used within the product through which the content is provided. Customer's use of Bing Maps is governed by the Bing Maps End User Terms of Use available at [go.microsoft.com/?linkid=9710837](http://go.microsoft.com/?linkid=9710837) and the Bing Maps Privacy Statement available at [go.microsoft.com/fwlink/?LinkID=248686](http://go.microsoft.com/fwlink/?LinkID=248686).

### Customer Support

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If Customer's volume licensing agreement incorporates a Master Business Agreement dated before September 1, 2007 (and Customer has not signed any other master-level Microsoft Professional Services agreement) or if Customer licenses under the Microsoft Online Subscription Agreement or other Microsoft agreement that cover Online Services only, Customer Support is provided subject to these additional terms.

#### Definitions

Terms used in this Customer Support Notice but not defined will have the definition provided in Customer's volume licensing agreement. "Customer Support" means all support or advice provided to Customer under Customer's volume licensing agreement.

"Fixes" means Product fixes, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as service packs), or that Microsoft provides to Customer when performing Customer Support to address a specific issue.

#### Fixes

If Microsoft provides Fixes to Customer in the course of performing Customer Support, those Fixes are licensed according to the license terms applicable to the Product to which those Fixes relate unless the Fixes include separate terms, in which case those terms will govern. If Fixes are provided for Microsoft Azure Services, Microsoft Dynamics CRM Online, Microsoft Dynamics Marketing or Microsoft Social Listening, any other use terms Microsoft provides with the Fixes will apply, and if no use terms are provided, Customer shall have a non-exclusive, temporary, fully paid-up license to use and reproduce the Fixes solely for Customer's internal use. Customer may not modify, change the file name of, or combine any Fixes with any non-Microsoft computer code.

#### Pre-Existing Work

All rights in any computer code or non-code based written materials developed or otherwise obtained by or for the parties or their Affiliates

independent of Customer's volume licensing agreement (Pre-Existing Work) shall remain the sole property of the party providing the Pre-Existing Work. During the performance of Customer Support, each party grants to the other party (and Microsoft's contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its Pre-Existing Work provided to the other party, solely as needed to perform its obligations in connection with the Customer Support. Except as may be otherwise expressly agreed by the parties in writing, upon payment in full Microsoft grants Customer a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) any Microsoft Pre-Existing Work provided as part of a Customer Support deliverable, solely in the form delivered to Customer, and solely for Customer's internal business purposes. The license to Microsoft's Pre-Existing Work is conditioned upon Customer's compliance with the terms of Customer's volume licensing

agreement. If Customer is located in the Czech Republic, Customer represents that the author has granted relevant approvals to modify Customer's pre-existing work. Any violation of conditions of Customer's volume licensing agreement, or any other statements regarding customer support under that agreement, by Customer will be a condition subsequent for obtaining the perpetual license to Microsoft's Pre-existing Work that Microsoft leaves to Customer at the end of Microsoft's performance of Customer Support.

#### Materials

Microsoft shall own all rights in any materials developed by Microsoft (other than software code) and provided to Customer in connection with Customer Support ("Materials"), except to the extent such Materials constitute Customer's Pre-Existing Work. Microsoft grants Customer a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify the Materials solely for Customer's internal business operations and without any obligation of accounting or payment of royalties.

**Sample Code**

Microsoft grants Customer a nonexclusive, perpetual, royalty-free right to use and modify any software code provided by Microsoft for the purposes of illustration ("Sample Code") and to reproduce and distribute the object code form of the Sample Code, provided that Customer agrees:

to not use Microsoft's name, logo, or trademarks to market Customer's software product in which the Sample Code is embedded; and (ii) to include a valid copyright notice on Customer's software product in which the Sample Code is embedded. Customer authorizes and consents to the use or distribution of any Sample Code and Customer software product in accordance with 28 U.S.C. 1498.

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**Affiliates' Rights**

Customer may sublicense the rights contained in this section to Affiliates, but Customer's Affiliates may not sublicense these rights and their use must be consistent with the license terms contained in Customer's volume licensing agreement.

**Warranty for Customer Support**

Microsoft warrants that all Customer Support will be performed with professional care and skill.

**Notice about H.264/AVC Visual Standard, VC-1 Video Standard, MPEG-4 Part Visual Standard and MPEG-2 Video Standard**

This software may include H.264/AVC, VC-1, MPEG-4 Part 2, and MPEG-2 visual compression technology. MPEG LA, L.L.C. requires this notice: THIS PRODUCT IS LICENSED UNDER THE AVC, THE VC-1, THE MPEG-4 PART 2 AND MPEG-2 VISUAL PATENT PORTFOLIO LICENSES FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE ABOVE (VIDEO STANDARDS) AND/OR

DECODE AVC, VC-1, MPEG-4 PART 2 AND MPEG-2 VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE SUCH VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C. REFER TO [www.mpegla.com](http://www.mpegla.com).

For clarification purposes, this notice does not limit or inhibit the use of the software for normal business uses that are personal to that business which do not include (i) redistribution of the software to third parties, or (ii) creation of content compliant with the VIDEO STANDARDS technologies for distribution to third parties.



## ATTACHMENT 2 – SUBSCRIPTION LICENSE SUITES

Online Services may be available for purchase as Suites of Online Services. If, in the table below, a cell is shaded blue in an Online Service’s row, the Suite SL for the column the cell is in fulfills the SL requirements for the cell’s Online Services.

Online Service	Suite SLs																	
	Office 365 Enterprise				Office 365 Government				Office 365 Education				Office 365 Business Essentials	Office 365 Business Premium	Office 365 Midsize Business	Enterprise Mobility Suite	Microsoft Dynamics CRM Online	
	K1	E1	E3	E4	K1	E1	E3	E4	E1	E3	E4					Pro.	Ent.	
Exchange Online																		
Exchange Online Kiosk																		
Exchange Online Plan 1																		
Exchange Online Plan 2																		
SharePoint Online																		
SharePoint Online Kiosk																		
SharePoint Online Plan 1																		
SharePoint Online Plan 2																		
Lync Online																		
Lync Online Plan 1																		
Lync Online Plan 2																		
Yammer Enterprise																		
Office Online																		
Office 365 Business																		
Office 365 ProPlus																		
Windows Intune																		
Azure Rights Management																		
Azure Active Directory Premium																		
Microsoft Dynamics Marketing Sales Collaboration																		
Microsoft Dynamics Marketing Enterprise																		
Microsoft Social Listening Professional																		
Parature Enterprise																		

Add-on Suite SLs that include “without ProPlus” in the title do not include rights to Office 365 ProPlus.

## ATTACHMENT 3 – THE STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

To the extent Customer is subject to Article 26(2) of Directive 95/46/EC and to the extent not prohibited by applicable law, then, for the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, Customer (as data exporter) and Microsoft Corporation (as data importer, whose signature appears below), each a “party,” together “the parties,” have agreed on the following Contractual Clauses (the “Clauses” or “Standard Contractual Clauses”) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

### Clause 1: Definitions

'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

'the data exporter' means the controller who transfers the personal data;

'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

'the subprocessor' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

### Clause 2: Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 below.

### Clause 3: Third-party beneficiary clause

The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

**Clause 4: Obligations of the data exporter**

The data exporter agrees and warrants:

that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 below;

that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

that it will ensure compliance with the security measures;

that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

that it will ensure compliance with Clause 4(a) to (i).

**Clause 5: Obligations of the data importer**

The data importer agrees and warrants:

to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

that it will promptly notify the data exporter about:

any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation, any accidental or unauthorised access, and

any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority; to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter; that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent; that the processing services by the subprocessor will be carried out in accordance with Clause 11; and to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

**Clause 6: Liability**

The parties agree that any data subject who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

**Clause 7: Mediation and jurisdiction**

The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject: to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority; to refer the dispute to the courts in the Member State in which the data exporter is established. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

**Clause 8: Cooperation with supervisory authorities**

The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

**Clause 9: Governing Law.**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

**Clause 10: Variation of the contract**

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The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

**Clause 11: Subprocessing**

The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

**Clause 12: Obligation after the termination of personal data processing services**

The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**Appendix 1 to the Standard Contractual Clauses**

- Data exporter:** Customer is the data exporter. The data exporter is a user of Online Services as defined in the section of the OST entitled "Security and Data Processing: Additional Technical and Organizational Measures."
- Data importer:** The data importer is MICROSOFT CORPORATION, a global producer of software and services.
- Data subjects:** Data subjects include the data exporter's customer's representatives and end-users including employees, contractors, collaborators, and customers of the data exporter. Data subjects may also include individuals attempting to communicate or transfer personal information to users of the services provided by data importer.
- Categories of data:** The personal data transferred includes e-mail, documents and other data in an electronic form in the context of the Online Services.
- Processing operations:** The personal data transferred will be subject to the following basic processing activities:
- Duration and Object of Data Processing.** The duration of data processing shall be for the term designated under the applicable Volume Licensing Agreement between data exporter and the Microsoft entity to which these Standard Contractual Clauses are annexed ("Microsoft"). The objective of the data processing is the performance of Online Services.
- Scope and Purpose of Data Processing.** The scope and purpose of processing personal data is described in the DPT. The data importer operates a global network of data centers and management/support facilities, and processing may take place in any jurisdiction where data importer or its subprocessors operate such facilities.
- Customer Data Access.** For the term designated under the applicable Volume Licensing Agreement data importer will at its election and as necessary under applicable law implementing Article 12(b) of the EU Data Protection Directive, either: (1) provide data exporter with the ability to correct, delete, or block Customer Data, or (2) make such corrections, deletions, or blockages on its behalf.
- Data Exporter's Instructions.** For Online Services, data importer will only act upon data exporter's instructions as conveyed by Microsoft.

**Customer Data Deletion or Return.** Upon expiration or termination of data exporter’s use of Online Services, it may extract Customer Data and data importer will delete Customer Data, each in accordance with the OST applicable to the agreement.

**Subcontractors:** The data importer may hire other companies to provide limited services on data importer’s behalf, such as providing customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services the data importer has retained them to provide, and they are prohibited from using Customer Data for any other purpose.

**Appendix 2 to the Standard Contractual Clauses**

Description of the technical and organizational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):

**Personnel.** Data importer’s personnel will not process Data without authorization. Personnel are obligated to maintain the confidentiality of any Data and this obligation continues even after their engagement ends.

**Data Privacy Contact.** The data privacy officer of the data importer can be reached at the following address:

Microsoft Corporation  
Attn: Chief Privacy Officer 1  
Microsoft Way Redmond, WA  
98052 USA

**Technical and Organization Measures.** The data importer has implemented and will maintain appropriate technical and organizational measures, internal controls, and information security routines intended to protect Customer Data, as defined in the DPT, against accidental loss, destruction, or alteration; unauthorized disclosure or access; or unlawful destruction as follows: The technical and organizational measures, internal controls, and information security routines set forth in the DPT are hereby incorporated into this Appendix 2 by this reference and are binding on the data importer as if they were set forth in this Appendix 2 in their entirety.

Signature of Microsoft Corporation appears on the following page.

Signing the Standard Contractual Clauses, Appendix 1 and Appendix 2 on behalf of the data importer:

Raje  
One  
Signature 851B7BFC2840456  
Rajesh Jha  
.....  
DocuSigned By: Rajesh Jha



**MICROSTRATEGY INCORPORATED**  
**1850 TOWERS CRESCENT PLAZA**  
**TYSON'S CORNER, VA 22182**

**EC AMERICA RIDER TO PRODUCT SPECIFIC LICENSE TERMS AND CONDITIONS**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached MicroStrategy Incorporated ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**MICROSTRATEGY INCORPORATED**

**MICROSTRATEGY INCORPORATED. LICENSE, WARRANTY AND SUPPORT TERMS**

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**SOFTWARE LICENSE AND SERVICES AGREEMENT**

This Software License and Services Agreement (“Agreement”) applies to an order entered into between Contractor acting by and through its supplier, MicroStrategy Incorporated (“we,” “us,” “our”) and the eligible Ordering Activity under GSA Schedule contracts identified on the order (“you,” “your,” or “Ordering Activity”), and specifies the terms and conditions under which we will license and supply Products and Services to you.

**I. GENERAL TERMS**

The terms of this Section I (“General Terms”) apply generally to all Products and Services supplied under this Agreement.

**1. Definitions**

Unless otherwise defined in this Agreement, capitalized terms used in the body of this Agreement will have the meanings set forth below.

“Applicable Data Protection Law” means all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality or security of Protected Data, including the European Union Directives and regulations governing general data protection and all applicable industry standards concerning privacy, data protection, confidentiality or information security.

“CPU” means a physical core (in a physical computing environment) or a virtual core (in a virtual computing environment) to which an instance of a Product is assigned, as identified by the operating system in which the Product is installed.

“Customer Content” means software (including machine images), data, text, audio, video, images, or other content of yours or a third-party that you or your Representative utilize with a Product.

“Designated Software Instance,” or “DSI” means a single MicroStrategy metadata database or a set of related MicroStrategy metadata databases (e.g., for production, development, testing, etc.) that will be accessed by the Products specified on an order.

“Documentation” means the user documentation or manuals normally distributed or made available in connection with a Product.

“Named User” means a single individual designated by you as a user of a Product on a non-temporary basis.

“Product” means a generally available MicroStrategy software product identified on an order that is licensed to you pursuant to the terms of this Agreement, and any tools included with such software product (including, in the case of the “Cloud Platform” version of our Products, the MicroStrategy Cloud provisioning console).

“Protected Data” means any data or information that is subject to regulation under Applicable Data Protection Law.

“Representative” means any of your affiliates, your third-party contractors and anyone else accessing or using a Product or Service on your behalf or through your systems, including any Named Users.

“Service” means any service provided by us pursuant to this Agreement, including technical support, education, and consulting (or any portion thereof).

“Technical Support Services” means the technical support and maintenance Services provided by us according to our then current technical support policy listed at

[https://www.microstrategy.com/getmedia/20f15098-14b2-432d-afa42e14189c492c/COLL-1909-0618-TS-policy-with-GDPR-section\\_final](https://www.microstrategy.com/getmedia/20f15098-14b2-432d-afa42e14189c492c/COLL-1909-0618-TS-policy-with-GDPR-section_final) (“Technical Support Policy”) when the Services are purchased. “Third-Party Solution” means any product, service, content or item of a third-party.

“Update” means a later commercial release of a Product made available after you license the Product.

**2. Certain Obligations and Restrictions**

You are responsible for compliance with this Agreement by your Representatives. You are also responsible for the proper operation of your network and your equipment used to connect to the Products. You and your Representatives will not (a) copy, display, distribute, or otherwise use a Product in any manner or for any purpose not expressly authorized by this Agreement; or (b) create derivative works of or otherwise modify any Product or any portion thereof except as expressly provided in the Documentation; or (c) modify, tamper with or repair any Product; or (d) reverse engineer, decompile or disassemble any Product or such software or the metadata created by a Product or such software, or apply any other process or procedure to derive the source code of any Product or such software; or (e) interfere with or disrupt the integrity or performance of a Product; or (f) attempt to gain unauthorized access to a Product; or (g) access or use any Product in a way intended to avoid incurring fees or exceeding usage limits or quotas; or (h) use a Product to develop any product or service that is in any way competitive with any of our product or service offerings; or (i) make available to any third-party any analysis of the operation of a Product, including any benchmarking results, without our prior written consent; or (j) use any Product to provide time-sharing services, software-as-a-service offering, service bureau services or similar services; or (k) use a Product to store or transmit (1) material in violation of third-party privacy rights; or (2) libelous, or otherwise unlawful or tortious material; or (3) material that infringes any copyright, trademark, patent, trade secret or other proprietary right of any entity or individual; or (4) viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs.

As required for our performance pursuant to this Agreement and an order, you are also required to (A) provide us with reliable, accurate and complete information; and (B) make decisions and obtain required management approvals in a timely manner; and (C) obtain all consents, approvals and licenses

necessary for use of any software, services, data or other items provided by you or on your behalf; and (D) cause your third-party contractors and licensors to cooperate with us.

**3. Intellectual Property Ownership**

We, our affiliates and our licensors will own all right, title and interest in and to all Products. You will be and remain the owner of all rights, title and interest in and to Customer Content. Each party will own and retain all rights in its trademarks, logos and other brand elements (collectively, "Trademarks"). To the extent a party grants any rights or licenses to its Trademarks to the other party in connection with this Agreement, the other party's use of such Trademarks will be subject to the reasonable trademark guidelines provided in writing by the party that owns the Trademarks.

**4. Limited Warranties and Remedies**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO WARRANTIES OR COMMITMENTS, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO ANY PRODUCT OR SERVICE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEMS INTEGRATION, TITLE, SATISFACTORY QUALITY AND NONINFRINGEMENT. WE DO NOT WARRANT AND ARE NOT RESPONSIBLE FOR ANY THIRD-PARTY PRODUCTS OR SERVICES AND YOUR SOLE AND EXCLUSIVE RIGHTS AND REMEDIES WITH RESPECT TO ANY THIRD-PARTY PRODUCTS OR SERVICES ARE AS PROVIDED BY THE THIRD-PARTY PROVIDER AND NOT BY US.

**5. Data Protection**

You will not transfer to us or provide us any access to any Protected Data in connection with this Agreement, including Personal Data, Protected Health Information and Personally Identifiable Information (as such terms are defined in Applicable Data Protection Law), except for Protected Data related to your contact persons.

We have implemented appropriate technical, organizational, and security measures designed to safeguard and protect Protected Data provided by you to us and we may access, use and transfer such Protected Data to our affiliates and third parties (including those located outside of the European Economic Area) only for the purposes of fulfilling our obligations and exercising our rights, providing information to you and complying with our legal and auditing requirements.

**6. Third-Party Solution Connectors**

When you access any Third-Party Solution (including third-party data sources) with connectors included as part of the Products, you agree and acknowledge that (a) you may download content from the servers of the Third-Party Solution provider; and (b) your access to the ThirdParty Solution with such connectors will be for the purpose of utilizing the Third-Party Solution in conjunction with the Products; and (c) we are not responsible for interruptions of service caused by the ThirdParty Solution provider; and (d) if we have a business relationship with the Third-Party Solution provider, that relationship is subject to termination and cancellation; (e) you may not remove or obscure any patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any output of the Products and (f) you are solely responsible for licensing the use of third-party data sources accessed by our Products.

**7. Other Provisions**

Our security Products are not designed to manage physical or logical access to facilities or systems where delay in or failure of such access could threaten health or safety, or cause property, environmental or similar damage. You represent that your decision to license a Product is not based on (a) any oral or written comments made by us with respect to functionality or features not currently offered in our latest generally available version of our Products; or (b) any expectation that any additional features or functionality presented as part of a demonstration, beta evaluation or roadmap presentation of a Product may be included in a future update or release of a Product; or (c) demonstrations of any software that is not currently generally available. You further acknowledge that the development, release and timing of any additional features or functionality for the Products remain at our sole discretion. If you deploy our Products or Services as part of an extranet application, you agree to display "Powered by MicroStrategy" or certain other similar trademarks designated by us.

**II. ENTERPRISE PLATFORM LICENSE TERMS**

The terms of this Section II ("Enterprise Platform License Terms") apply exclusively to the licensing and provision of the "Enterprise Platform" version of our Products. Products licensed under these Enterprise Platform License Terms will be designated for use in an "Enterprise Platform for Windows" or "Enterprise Platform for Linux" operating environment on an order.

**License Grant.** We grant you a non-exclusive, non-transferable

license, subject to the terms and conditions of this Agreement and in accordance with applicable law, to (a) install our Products identified in an order on servers and workstations in the country to which the Products are delivered; and (b) grant Named Users located anywhere in the world access to the Products (including the Documentation and reports, dashboards, dossiers and other output generated by the Products) in support of your internal business operations, each in accordance with the Documentation and license type(s) and terms specified on an order. We will supply each Product to you by making it available electronically. You may make additional copies of the download files containing the Products for archival purposes.

**License Type.** Your license to a Product will be under a Named User or CPU license type, as specified on an order. Each Named User license to a Product entitles a Named User to access and use that Product in one production environment and up to two non-production environments. Each CPU license to a Product entitles you to assign the Product to a single CPU in one production environment and up to two non-production environments, for use in support of an unspecified number of Named Users.

**License Duration.** The duration of your license to a Product will be for a perpetual or limited term, as specified on an order. Subject to the terms of this Agreement and the applicable order, (a) if a "Perpetual" interval is specified for a Product, you will receive a license to that Product in perpetuity; and (b) if a "Term" interval is specified for a Product, you will receive a license to that Product for a period of 12 months (or another period specified on the order) from the date of delivery of the Product.

**Deployment Method.** You may only install the Products on servers and workstations under your control in your enterprise data center or under the control of your third-party service provider who hosts the Products on your behalf in a public Cloud, and will deploy the Products only in the operating environment specified on the order. If the "Enterprise Platform for Windows" operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order (e.g., Intelligence, Reporter or Identity) solely in a Microsoft Windows environment. If the "Enterprise Platform for Linux" operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order solely in a Linux environment.

**Additional Limited Warranties and Remedies.** We warrant that (a) for a period of six (6) months from the effective date of an order ("Enterprise Platform Warranty Period"), each Product listed on the order and Updates delivered for the Product during the Enterprise Platform Warranty Period will perform in substantial conformance with the technical specifications set forth in the Documentation; and (b) prior to release, we scan each version of the Products using a nationally recognized virus scanning program and we will remove any virus detected by such virus scanning program prior to releasing such version of the Products. For any breach of the warranty set forth in subsection (a) above, your exclusive remedy and our entire liability will be (1) the correction of the Product errors that caused the breach of the warranty; or (2) replacement of the Product; or (3) if neither of the foregoing can be reasonably effected by us, the refund of the license fees and any unused, prepaid Technical Support Services fees paid for the Product, provided that the Product licenses are terminated.

### III. CLOUD PLATFORM LICENSE TERMS

The terms of this Section III ("Cloud Platform License Terms") apply exclusively to the licensing and provision of the "Cloud Platform" version of our Products, an optimized version of the MicroStrategy software platform built specifically for deployment in an Amazon Web Services or Microsoft Azure environment through the MicroStrategy Cloud provisioning console. Products licensed under these Cloud Platform License Terms will be designated for use in a "Cloud Platform for AWS" or "Cloud Platform for Azure" operating environment on an order.

**License Grant.** We grant you a non-exclusive, non-transferable license, subject to the terms and conditions of this Agreement and in accordance with applicable law, to (a) install our Products identified in an order on servers and workstations in the country to which the Products are delivered; and (b) grant Named Users located anywhere in the world access to the Products (including the Documentation and reports, dashboards, dossiers and other output generated by the Products) in support of your internal business operations, each in accordance with the Documentation and license type(s) and terms specified on an order. We will supply each Product to you by making it available electronically. You may make additional copies of the download files containing the Products for archival purposes.

**License Type.** Your license to a Product will be under a Named User or CPU license type, as specified on an order. Each Named User license to a

**License Duration.** The duration of your license to a Product will be for a perpetual or limited term, as specified on an order. Subject to the terms of this Agreement and the applicable order, (a) if a "Perpetual" interval is specified for a Product, you will receive a license to that Product in perpetuity; and (b) if a "Term" interval is specified for a Product, you will receive a license to that Product for a period of 12 months (or another period specified on the order) from the date of delivery of the Product.

**Deployment Method.** You may only install the Products on servers and workstations under the control of your third-party service provider who hosts the Products on your behalf in a public Cloud, and will deploy the Products only in the operating environment specified on the order. If the "Cloud Platform for AWS" operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order (e.g., Intelligence, Reporter or Identity) solely in an Amazon Web Services environment. If the "Cloud Platform for Azure" operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order solely in a Microsoft Azure environment.

**Additional Limited Warranties and Remedies.** We warrant that (a) for a period of six (6) months from the effective date of an order ("Cloud Platform Warranty Period"), each Product listed on the order and Updates delivered for the Product during the Cloud Platform Warranty Period will perform in substantial conformance with the technical specifications set forth in the Documentation; and (b) prior to release, we scan each version of the Products using a nationally recognized virus scanning program and we will remove any virus detected by such virus scanning program prior to releasing such version of the Products. For any breach of the warranty set forth in subsection (a) above, your exclusive remedy and our entire liability will be (1) the correction of the Product errors that caused the breach of the warranty; or (2) replacement of the Product; or (3) if neither of the foregoing can be reasonably effected by us, the refund of the license fees and any unused, prepaid Technical Support Services fees paid for the Product, provided that the Product licenses are terminated.

### IV. SERVICES TERMS

The terms of this Section IV ("Services Terms") apply exclusively to the provision of our Technical Support, Education, and Consulting Services offerings.

**Models.** Each type of Service purchased under these Services Terms will be provided under one of the following models.

(a) Annual Subscription. Services sold under an "Annual

Subscription" model will be designated on an order by an "Annual" interval. We will provide these Services to you for a period of twelve (12) months beginning on the effective date of the order, except as otherwise set forth below.

(b) Hourly. Services sold under an "Hourly" model will be designated on an order by a "Project" interval for an estimated number of hours. We will deliver these Services at your request on a time and materials basis during the twelve (12) month period beginning on the effective date of the order; the number of hours that we actually deliver may vary from the estimated number of hours listed on the order. For clarity, these types of Services are not provided on a fixed-fee basis and we do not guarantee completion of deliverables within a specific number of hours. If the parties anticipate that the hours to be delivered will exceed the estimated hours set forth on the order, we will request your approval to exceed the estimate and will not deliver those excess hours until we receive your approval; such approval may be provided by email or in an executed change order.

(c) Prepaid Hourly. Services sold under a "Prepaid Hourly" pricing model will be designated on an order by an "Annual" interval for a set number of hours. Prepaid Hourly Services are payable by you in advance. We will deliver these Services at your request on a time and materials basis up to 4 the number of hours stated on the order; hours not requested during the twelve (12) month period beginning on the effective date of the order will expire

#### **Technical Support**

(a) Levels of Technical Support Offerings. We offer four (4) levels of Technical Support Services – Standard Support, Extended Support, Premier Support and Elite Support – each of which is provided by us in accordance with and described in the Technical Support Policy. We will provide you the level of Technical Support Services specified on an order. Each of these support offerings is provided on an Annual Subscription basis.

(b) Support Liaisons. You may designate a set number of Support Liaisons (as defined in our Technical Support Policy) for each or your DSIs based on the



level of Technical Support Services you purchase. You may also purchase additional Support Liaisons on an Annual Subscription basis.

(c) Enterprise Support. As part of your Technical Support Services subscription, we will deliver a pre-determined number of hours of "Enterprise Support" to you annually at your request, as specifically described in the Technical Support Policy. If you would like us to deliver more hours of Enterprise Support than the hours to which you are entitled under your Technical Support Services subscription, you may purchase additional Enterprise Support via an order on a Prepaid Hourly basis.

(d) Additional Technical Support Terms. Each order for perpetual Product licenses will state the fee for Standard Technical Support Services for a period of twelve (12) months commencing on the date of delivery of those Products. Except as otherwise specified on an order, (a) upon expiration of the initial annual subscription term, you have the option to renew Standard Technical Support Services on those Product licenses. Standard Technical Support Services for term licenses is included as part of the term license fee. For each Product license, we will deliver to you, at your request, an Update at no charge as part of a Technical Support Services subscription. Updates will not include new products that we market separately. We warrant that we will not materially decrease the level of Technical Support Services provided during an active subscription to such Technical Support Services.

**Education** We offer education and training Services on either an Annual Subscription or Hourly basis, as described below. Education offerings may be purchased via an order or an online credit card purchase. In the case of education offerings purchased online via a credit card, references to an order will be deemed to refer to the online purchase, and references to the "effective date of an order" will be deemed to mean the date of online purchase.

(a) Types of Education Offerings.

(i) Education Passes. Education Passes are sold on an Annual Subscription basis and provide our customers and partners with flexible access to our training materials and courses. Each Education Pass provides a single individual ("Education Pass User") global access to instructor-led public training classes (virtual or in-person) and self-paced training courses, and includes all applicable certification exam fees. There are two types of Education Passes: an "Education Pass-Architect," that provides the Education Pass User with unlimited access to all live or on-demand courses and annual certifications specific to Architects and the establishment of an Intelligence Center; and an "Education Pass-Analyst," that provides the Education Pass User with access to all live or on-demand courses and annual certifications specific to Analysts. We will notify you that your Education Pass subscription is set to expire between thirty (30) and ninety (90) days prior to the expiration of the then-current term. No more than once during an Education Pass subscription term, you may reassign an Education Pass subscription to a new Education Pass User for the remainder of the subscription term if the current Education Pass User has not used the Education Pass to attend any public instructor-led courses or access any self-paced training courses or if the current Education Pass User has terminated employment with you.

(ii) Education Credits. Education Credits are sold on an Annual Subscription basis and are "purchase cards" that organizations can apply to other training, including a la carte courseware for individuals and onsite customer training for groups. Education Credits may not be applied to the purchase of Education Pass subscriptions.

(iii) Education Services. Education Services are sold on an Hourly basis. Under an "Education Services" engagement, we will assist you with customizing and adapting our courseware and training classes to your application standards, data sets, customizations and use cases. You will reimburse us for all reasonable expenses we incur when delivering these Education Services. We grant you a license to use the work product we develop as part of an Education Services engagement in support of your internal business operations.

(b) Additional Education Terms.

(i) Instructor-Led Private Classes. For each in-person instructor-led private training class delivered at a non- MicroStrategy location, (a) if the instructor is required to travel to deliver the class, you will reimburse us for the instructor's reasonable travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document. If you redeem Education Credits for an instructor-led private training class and you cancel the class prior to commencement, you will reimburse us for any non-cancelable travel expenses and facility rental fees we incur in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR); and if you cancel within fourteen (14) business days prior to commencement, you may only reschedule the class to an alternate available date by redeeming additional Education Credits for the class; if the cancellation is more than fourteen (14) business days prior to commencement, you may reschedule the class to an alternate available date at no additional cost (such date must be within the applicable Education Credit redemption period).

(ii) Courseware for Instructor-Led Training Classes. For each instructor-led training class (whether public or private, virtual or in-person) we deliver to you, we will make electronic versions of the course content files for the class ("Courseware") available to you, and you may reproduce and distribute one paper copy of the Courseware to each of your employees (or other individual designated by you) who attends the class. Your use of the Courseware is limited to use only by those individuals who attend the class, solely for their own training purposes.

(iii) **Intellectual Property and Subcontractors.** All education course materials (including Courseware) are copyrighted by us and are our confidential information. Education and training Services are provided and delivered either directly by us or through our subcontractors. Notwithstanding anything to the contrary in any written agreement between you and us, if any, you consent to our use of subcontractors to provide education and training Services.

**Consulting.** We offer consulting Services on an Hourly basis, either as a packaged consulting Service offering or as an individual consultant resource Service offering, each as more particularly described below.

Types of Consulting Services.

**Packaged Consulting Services.** For packaged consulting Service offerings, we will perform the applicable tasks described below at your request on an Hourly basis at a single blended rate, regardless of the consultant(s) we engage to provide the Services. For these offerings, we will determine the level of consultant(s) who will provide the Services at our sole discretion, and the location where the Services will be performed (either onsite or remotely from our offshore Global Delivery Center).

**Platform Services.** Under a "Platform Services" engagement, we will assist you with architecting, configuring, and deploying your Product architecture; tasks may include designing a best practice-based architecture that includes separate environments for development and user testing to enable end users to experience great application performance across applications during peak hours while minimizing system cost; developing a sizing strategy to maximize platform efficiency; configuring administration services and security settings including provisioning users, scheduling, subscriptions, system monitoring, OS patches, and back-ups; and designing an upgrade strategy to enable you to start using the latest innovations from MicroStrategy faster.

**Application Services.** Under an "Application Services" engagement, we will assist you with defining, developing and deploying end-to-end enterprise or departmental applications; tasks may include determining the optimal technology approach and caching strategy to deliver effective, high-performance applications; leveraging a best practice approach for building new applications which includes conducting user workshops, building wireframes, iterating, testing,

documenting and mentoring to increase adoption; and enhancing, optimizing or redesigning existing applications for improved user experience, faster performance or extended functionality.

**Analytics Services.** Under an “Analytics Services” engagement, we will assist you with designing and configuring a scalable and reusable federated enterprise data layer that supports a single version of the truth; tasks may include configuring and optimizing connections to databases, big data sources, NoSQL sources, and enterprise applications to access enterprise data for use in analytics and mobility applications; designing an optimized in-memory strategy and publishing high performance data sets to Analysts, Data Scientists and Developers, and Architects, so they can build analytics, models and applications faster on trusted data; and conducting regression testing, reviewing the schema, resolving issues, and implementing a process for on-going data integrity management.

**Mobility Services.** Under a “Mobility Services” engagement, we will assist you with defining, developing and deploying end-to-end enterprise mobile architecture and applications; tasks may include implementing a successful mobile strategy in a heterogeneous device environment that optimizes the experience for iOS and Android users; leveraging a best practice approach for building new mobile apps which includes conducting user workshops, building wireframes, iterating, testing, documenting and mentoring to increase adoption; developing a caching strategy that optimizes the performance and offline experience of apps; determining the optimal deployment strategy and navigating security requirements and industry regulations; and enhancing, optimizing or redesigning existing apps for improved user experience, faster performance or extended functionality such as write-back capabilities or mobile alerting via push notifications.

**Individual Consultant Resources.** We also offer consulting Services at certain individual consultant resource levels – Specialist, Master, Expert and Fellow. For these individual consultant resource Service offerings, we will perform the applicable tasks set forth on an order or a statement of work at your request on an Hourly basis at the hourly rates applicable to each resource. Except for Fellows, each of these resource levels are available either onsite or remotely from our offshore Global Delivery Center. Fellows are available onsite only.

**Additional Consulting Terms.** You will reimburse us for all reasonable expenses we incur when delivering the Services in accordance with applicable regulations. We grant you a license to use the work product we develop as part of a consulting Services engagement in support of your internal business operations.

**Additional Limited Warranty Applicable to all Service Offerings.** We warrant that our employees and contractors will perform any Services listed on an order in a manner conforming to generally accepted industry standards and practices. For any breach of this warranty, your exclusive remedy and our entire liability will be reperformance of the Services at no cost to you.



**MMODAL SERVICES, LTD.  
5000 MERIDIAN BLVD., SUITE 200  
FRANKLIN, TN 37067**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. Scope. This Rider and the attached MModal Services, Ltd (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”).

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The Government Customer is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

e) Choice of Law. Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

f) Force Majeure. Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

g) Assignment. All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

h) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

i) Customer Indemnities. Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

j) Contractor Indemnities. All Manufacturer Specific Terms that (1) violate DOJ’s jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

k) Renewals. All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

l) Future Fees or Penalties. All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

m) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties.

n) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.

o) Installation and Use of the Software. Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

p) Dispute Resolution and Venue. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

q) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

r) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

s) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## **ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

### **MMODAL SERVICES LTD.**

#### **MMODAL SERVICES LTD. LICENSE, WARRANTY AND SUPPORT TERMS**

This agreement and the underlying GSA Schedule Contract, Schedule pricelist, and purchase order which by this reference are incorporated herein (together referred to hereinafter as the "Agreement" or "End User Agreement") is a binding agreement between MModal Services, Ltd. and/or its Affiliates (hereinafter referred to as "M\*Modal") and the entity identified in the purchase order as the licensee of software from M\*Modal (hereinafter referred to as "Ordering Activity"). M\*Modal and Ordering Activity may be referred to herein individually as a "Party" and collectively as the "Parties."

1 DEFINITIONS. The following terms when used with capital letters shall have the corresponding definitions:

1.1 "Access Credentials" means any user name, identification number, password, license or security key, security token, PIN or other security code, used alone or in combination to verify an individual's identity and authorization to access and use the Software.

1.2 "Affiliate" means, with respect to any person or entity, any other person or entity that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such person or entity. "Control" means the possession of the power to direct or cause the direction of the management or policies of such person or entity, whether through the ownership of equity interests, voting power or voting control, or by Agreement. Without limiting the generality of the foregoing, the holding of fifty percent (50%) or more of the equity interests of an entity, fifty percent (50%) or more of the voting power of an entity, or the voting control of an entity shall each be deemed Control.

1.3 "Authorized User" means each of the individuals employed or engaged by Ordering Activity at a Facility with appropriate Access Credentials to the Software and/or Services.

1.4 "Ordering Activity Data" means clinical information, in any form or medium, collected, downloaded or otherwise received from Ordering Activity or an Authorized User by or through the Software.

1.5 "Ordering Activity Systems" means the Ordering Activity's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Ordering Activity or through third-party services.

1.6 "Confidential Information" means business or technical information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party"), in any form or medium, tangible or intangible, in connection with this Agreement and (a) is designated either in writing or orally as confidential at or within a reasonable time after such disclosure, (b) by the nature of the circumstances surrounding such disclosure would, in good faith, reasonably be expected to be treated as confidential information of the Disclosing Party, whether or not such information is identified as such by the Disclosing Party, or (c) has or could have commercial value or other utility in the business or prospective business of the Disclosing Party. Confidential Information shall not include information that: (d) is shown by written documentation to already have been in the possession of, or known to, the Receiving Party prior to disclosure and prior to such Receiving Party having an obligation of confidentiality with respect to such Confidential Information, in each case provided that, to the extent such Confidential Information was obtained by the Receiving Party from a third party, such third party did not commit a breach of an obligation of confidence with respect to such Confidential Information, or (e) becomes publicly available through no fault or breach of the Receiving Party.

1.7 "Deliverables" means work produced from the Software, created for and delivered to Ordering Activity under this Agreement.

1.8 "Facility" means the Ordering Activity location where Software is downloaded and/or installed.

1.9 "Intellectual Property Rights" means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets and know-how, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

1.10 "M\*Modal Materials" means the Software, User Guide, M\*Modal Systems and any other information, data, documents, materials, works, content, devices, tools, methods, processes, know-how, hardware, software and other technologies and inventions possessed by M\*Modal prior to the

commencement of or independent of M\*Modal's delivery of the Services or Products, or acquired, developed or used by M\*Modal in the performance of Services or licensing of Software (other than Ordering Activity Confidential Information and Ordering Activity Data), and any modifications, enhancements and derivative works thereof, regardless of who or how created, and all Intellectual Property Rights attendant thereto.

1.11 "M\*Modal Systems" means the information technology infrastructure, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by M\*Modal or through third-party services, used by M\*Modal in providing Services or Software.

1.12 "Services" means any services provided by M\*Modal to Ordering Activity pursuant to the Agreement.

1.13 "Specifications" means the descriptions concerning the functionality, features, and requirements of the Software listed within the User Guide.

1.14 "Software" means M\*Modal branded software applications including any maintenance releases and the appropriate User Guide Ordering Activity is granted a license to under this Agreement.

1.15 "Third Party Products" means any non-M\*Modal branded materials or equipment.

1.16 "User Guide" means the operator and/or user manual and written instructions for the Software.

2 EFFECT OF TERMINATION. In the event of termination or expiration of this Agreement (a) M\*Modal will cease providing any Services; (b) the licenses related to this Agreement shall terminate, unless expressly stated otherwise in the Agreement; (c) Ordering Activity shall immediately cease using any M\*Modal Confidential Information and destroy all copies of M\*Modal Materials and other M\*Modal Confidential Information that Ordering Activity has not previously returned to M\*Modal; and (d) M\*Modal shall immediately cease using any Ordering Activity Confidential Information and destroy all copies of Ordering Activity Data and other Ordering Activity Confidential Information that M\*Modal has not previously returned to Ordering Activity. Notwithstanding the above, a Party may retain a copy of the other's Confidential Information to comply with its legal obligations, or to the extent Confidential Information is embedded in the Receiving Party's off-site disaster recovery or information technology backup systems until such systems are purged in accordance with the Receiving Party's systematic back-up and archiving procedures.

### 3 RESERVED.

### 4 INTELLECTUAL PROPERTY

4.1 General: Except for the limited license(s) granted herein, all right, title and interest in and to M\*Modal Materials are retained by M\*Modal or its licensors. Absent the prior, written consent of M\*Modal, neither Ordering Activity nor any Authorized User shall alter or remove any trademark, copyright, trade secret, patent, proprietary or other legal notice or legend contained in or on copies thereof. Ordering Activity shall make reasonable efforts to protect M\*Modal Materials from unauthorized use. Ordering Activity unconditionally and irrevocably assigns to M\*Modal its entire right, title and interest in and to any Intellectual Property Rights that Ordering Activity may now or hereafter have in or relating to the M\*Modal Materials (including any rights in derivative works or patent improvements), whether held or acquired by operation of law, Agreement, assignment or otherwise. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost.

4.2 Continuous Improvement: Ordering Activity acknowledges and agrees that M\*Modal may use, compile (including creating statistical or other models), and analyze Ordering Activity Data to (a) improve, develop or otherwise modify M\*Modal Materials, and (b) use computerized processes to tailor and deliver to Ordering Activity relevant communications. To the extent Ordering Activity Data is used or compiled in or with any M\*Modal Materials, all Intellectual Property Rights in such M\*Modal Materials shall be solely owned by M\*Modal.

4.3 Ordering Activity Data and Deliverables: Except for the limited purpose of performing Services or providing Software, and except for the limited license(s) granted herein, all right, title and interest in and to Ordering Activity Data is retained by Ordering Activity. Subject to this Agreement, and except to the extent Deliverables include any M\*Modal Materials or M\*Modal Confidential Information, M\*Modal hereby assigns to Ordering Activity all Intellectual Property Rights in and to the Deliverables, whether held or acquired by operation of law, contract, assignment or otherwise. Ordering Activity is responsible for making and maintaining its own backup copies of any Ordering Activity Data and Deliverables.

4.4 License Grant: Any license granted to Ordering Activity in the Software (a) is non-exclusive and non-transferable; and (b) extends to Ordering Activity and Authorized Users to access and use the Software in the United States solely for Ordering Activity's internal business purposes. The Software shall be downloaded and installed on only computing device for a single Authorized User. The term of the license shall be set forth in the ordering documents.

4.5 License Restrictions: Without expanding the limited license grant herein, Ordering Activity and Authorized Users shall not (a) disassemble, decompile, reverse compile or reverse engineer the Software, or take any action in order to derive a source code equivalent of the Software, (b) release to any third party results of any benchmark, performance, or functionality tests performed on the Software, (c) release to any third party results obtained through use of the Software other than the Deliverables, (d) incorporate, bundle or pre-load any portion of the Software into any software or computing device of Ordering Activity except as expressly set forth in this Agreement, (e) copy, modify or create derivative works of the Software, (f) sublicense the Products or any portion thereof to a third party, or otherwise permit use of the Software including, without limitation, timesharing or networking use by any third party, except as expressly set forth in this Agreement, (g) link, combine or use the Software with any open source software without the written permission of M\*Modal if such linkage, combination or use would create a risk, or have the "viral" effect, of disclosing or licensing M\*Modal source code or rendering any M\*Modal patent unenforceable under the GNU General Public License or under the terms of any other open source license applicable thereto, or (h) cause the Software to interact with the functionality of a Third Party Product similar to that contained in the Software. For clarification, a Third Party Product shall not be deemed to "interact with" the Software if such Third Party Product does not export or import data from the Software to such Third Party Product, or vice versa.

### 5 M\*MODAL WARRANTIES AND DISCLAIMERS.

5.1 M\*Modal warrants that, for a period of ninety (90) days from completion of implementation, in the case of Products implemented by M\*Modal, or shipment in all other cases (the "Warranty Period"), Products shall materially function in accordance with applicable Specifications and the media on which Software is distributed shall be free from defects in materials and workmanship. Ordering Activity must provide M\*Modal with written notice of breach of this warranty during the Warranty Period setting forth in reasonable detail the nature of such breach. In the event of breach, as Ordering Activity's sole and exclusive remedy, M\*Modal shall, at M\*Modal's option, (a) repair or replace that portion of the Products effected.

5.2 M\*Modal warrants that it shall perform Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. Ordering Activity must provide M\*Modal with written notice of breach of this warranty within thirty (30) days after performance of Services

setting forth in reasonable detail the nature of such breach. In the event of breach, as Ordering Activity's sole and exclusive remedy, M\*Modal shall, at M\*Modal's option re-perform the Services.

5.3 The limited warranties set forth above do not apply to problems arising out of or related to:

5.3.1 Products, or the media on which it is provided, that is modified or damaged by Ordering Activity;

5.3.2 Any operation or use of, or other activity relating to, the Products other than as specified in the User Guide, including any incorporation in the Products of, or combination, operation or use of the Products in or with, any technology or service not specified for Ordering Activity's use in the User Guide or expressly authorized by M\*Modal in writing;

5.3.3 Ordering Activity's or any Authorized User's negligence, abuse, misapplication or misuse of the Products;

5.3.4 Ordering Activity's failure to promptly install maintenance releases that M\*Modal has previously made available to Ordering Activity;

5.3.5 Operation of or access to Ordering Activity Systems; and

5.3.6 Third Party Products.

5.4 To the extent applicable, M\*Modal shall pass through to Ordering Activity any warranty provided to M\*Modal for Third Party Products.

5.5 OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH ABOVE OR IN THIS AGREEMENT, M\*MODAL MAKES NO FURTHER OR ADDITIONAL WARRANTIES IN CONNECTION WITH ANY PURCHASE, LICENSE OR SALE OF SERVICES OR PRODUCTS. M\*MODAL DOES NOT WARRANT THAT THE OPERATION OF ANY PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. M\*MODAL DISCLAIMS ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

6 ORDERING ACTIVITY WARRANTIES AND ACKNOWLEDGEMENTS. Ordering Activity warrants that Ordering Activity and any person or entity using the Software shall (a) use the Software consistent with the User Guide and this Agreement; (b) comply with all applicable laws and regulations, including export and import laws, in connection with receipt or use of the Software; (c) be responsible for the accuracy and legality of information provided to M\*Modal; and (d) be responsible for identifying errors in the results from use of the Software or before relying on such results. Ordering Activity agrees that its purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by M\*Modal regarding future functionality or features. Ordering Activity further acknowledges that M\*Modal may make changes to the Software determined reasonably necessary by M\*Modal so long as such changes do not materially decrease the functionality of the Software.

**MULTIVISTA FRANCHISE SYSTEMS, LLC**  
203-38 FELL AVENUE  
NORTH VANCOUVER B.C., CANADA

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Multivista Franchise Systems, LLC** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is



made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**MULTIVISTA**

**MULTIVISTA LICENSE, WARRANTY AND SUPPORT TERMS**

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### Service Descriptions

This Attachment A described below combines Contractor's state-of-the-art Multivista indexing and navigation system with inspection-grade digital photography designed to capture actual conditions throughout construction and at critical milestones. The Multivista system will utilize actual construction drawings, making such drawings interactive and accessible anywhere through a secure on-line interface. For all documentation referenced herein, indexing and navigation is organized by both time and location throughout the Project.

#### Site Survey and Progressions Sets:

"Progression" photo sets are performed at pre-determined intervals throughout the duration of construction. Progression photos broadly track all aspects of construction through time.

*The Site Survey and Progression Sets are generally included in all subscriptions to the Multivista system. They are critical tools for the communication and project management aspects of all product types.*

Site Survey (Pre-Construction): The pre-construction site survey is a one-time shoot that provides coverage of the site and its immediately surrounding area to carefully memorialize conditions before a project begins.

Exterior Progression Shoots: Exterior Progression photos are taken from key perspectives along site perimeters and 360 degrees around each building envelope during erection. Exterior progressions track the construction of building elevations and all work within the immediate vicinity of the exterior of the building, including some site work. Exterior progressions are performed, approximately, at monthly intervals and are coordinated with the pace of erection. Exterior progression documentation typically begins at substantial framing, and not at commencement of site work. Exterior progressions can begin at commencement of site work for the purpose of *broadly* capturing site work upon request.

Interior Progression Shoots: Interior Progression photos track the interior improvements from when interior work begins (typically, at the commencement of stud-work) to completion. Interior Progressions broadly track the improvements from logical perspectives. Interior Progressions are designed to provide comprehensive coverage of the various trades coming together over time. Interior progressions are performed, approximately, at monthly intervals and are coordinated with the pace of erection.

#### Detailed Sets ("Exact-Built<sup>®</sup>):

Detailed photo sets serve as "visual as-builts" which are performed at critical milestones during construction. They offer a higher concentration of photos and perspectives than the Progression shoots and/or focus on details of particular interest or importance to the Ordering Activity.

#### The Fundamental Exact-Built<sup>®</sup>:

*Depending on the product type, subscriptions to the Multivista System generally include at least two out of three of the following Exact-Built<sup>®</sup> shoots which, when combined with the Site Survey and Progression Shoots, result in an unparalleled permanent documentation package superior to any known "best-practices."*

Pre-Slab Exact-Built<sup>®</sup>: This process will include overlapping images of all roughed-in MEP, cabling systems and other structural components *within* the building envelope(s), post inspection (where necessary), just prior to the concrete being poured.

Interior MEP Exact-Built<sup>®</sup>: Mechanical, Electrical, Plumbing (MEP) and all other systems in walls and ceilings will be documented post-inspection and pre-insulation, sheet rock or dry wall installation. This process provides a high concentration of overlapping coverage allowing for all finished systems to be viewed in great detail. This Exact-Built<sup>®</sup> sweeps the entire project: every wall and every ceiling, on every floor of every building, throughout the entire Project. Note that this will not capture pre-slab, site, or in-slab-on-deck systems or other "horizontal" MEP work.

Interior Finished Condition Exact-Built<sup>®</sup>: At Certificate of Occupancy or other "finished" milestone as the Ordering Activity designates, all walls, ceilings and floors in their post-inspection, completed condition are documented in exceptional detail.

Elevation Exact-Built<sup>®</sup>: – documentation of the entire building and skin capturing all exterior facades of building, to include windows and exterior skin to be determined by the Ordering Activity.

#### Custom Exact-Built<sup>®</sup>:

*These Exact-Built<sup>®</sup> shoots are project-specific Detailed Sets that are not generally included in standard subscriptions to the service, but can be added to scope upon request.*

Existing Condition Exact-Built<sup>®</sup>: At Certificate of Occupancy or other "finished" milestone as the Ordering Activity designates, all walls, ceilings and floors in their post-inspection, completed condition are documented in exceptional detail.

Slideshows: Slideshows capture miscellaneous occurrences or conditions while a photographer is on-site to perform any other shoot in the Order. These conditions are those that do not fit neatly into the building envelope interface (i.e., materials stored on site). Slideshows are not linked to architectural plans in the same manner as the formal shoots; however, they will be dated, labeled and stored on the Ordering Activity's interface. Thus, all of Ordering Activity's information remains in one "place." Owner and Superintendent photograph collections of critical events or conditions may also be provided to Contractor for incorporation into the Slideshow collections.

#### Web Camera Hosting Packages

*Web hosting is integrated into the Multivista Documentation Software. This includes live 24/7 image stream; static images (1920x1080 resolution), archived every 15 minutes between 6:00am and 6:00pm local time with ability to perform historical review; camera stream re-broadcasting capable of supporting up to twelve (12) concurrent users. Installation and Webhosting are included with the Web Camera options.*



3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - PoE Connection Kit  
2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - PoE Connection Kit  
3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - 5.8 GHz Wireless Connection Kit  
2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - 5.8 GHz Wireless Connection Kit  
3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - Cellular Connection Kit  
2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - Cellular Connection Kit  
3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - Cellular Connection Kit - Lightning Zone  
2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - Cellular Connection Kit - Lightning Zone

**Video Services:**

*Contractor uses high definition video equipment to document "As Delivered" construction events. Documentation comprises of Video recordings of dynamic events during the construction process. This deliverable may include but not limited to owner or process training videos, specific milestones or events and inspections. The deliverable includes post production editing. The final deliverable will be on a DVD or hard drive format and is not hosted on the Contractor's Multivista website or server.*

**Additional Items**

Contractor will accommodate, without charge, limited additional items that may be captured during our scheduled visits and included in the Slideshow section of our service. Additional items requested which are of significant scope, may be ordered separately.

**Miscellaneous**

**SERVICES:** Contractor shall provide professional services in accordance with the Order. Contractor will begin a Project Set-Up only after receipt of electronic plans from the architect of the Project in an acceptable format. Thereafter, Contractor requires at least ten (10) business days for Project Set-Up *prior to the first shoot* contemplated by the Order.

**DETAILED PHOTO SETS:** Because of the volatile nature of construction schedules, IT IS THE SOLE RESPONSIBILITY OF THE ORDERING ACTIVITY TO PROVIDE CONTRACTOR AT LEAST 24 HOURS NOTICE PRIOR TO THE TIME THAT A DETAILED SET MUST BE PERFORMED. To the extent look-ahead schedules are made available to Contractor, Contractor will endeavor to communicate with the Project owner's representative or superintendent regarding upcoming Detailed Set shoots. However, Contractor will not be responsible if such Detailed Sets are not performed due to lack of notice pursuant to this provision.

**AGENT/OWNER'S REPRESENTATIVE:** Ordering Activity must designate a specific person or persons authorized to and responsible for scheduling site visits and Detailed Shoots.

**STANDARD OF CARE:** Services provided by Contractor under this Attachment A will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Contractor makes no warranties or guarantees, either expressed or implied, of the fitness of its documentation for any particular use.

**OWNERSHIP OF DOCUMENTS:** Contractor makes no warrants as to the professional nature of the photograph other than to capture the construction progress. Notwithstanding the foregoing, the underlying proprietary software, processes, procedures and all other proprietary information used to create these instruments of service, including all intellectual property rights associated therewith, shall at all time remain the sole property of Contractor and/or its suppliers.

**SITE VISITS/OBSERVATION:** Contractor shall visit the project and/or construction site at appropriate intervals and take photos of the construction progress. Visits to the project site and observations made by Contractor as part of services provided during construction under this Attachment A shall not make Contractor responsible for monitoring of the work. Contractor employees will report to the site office prior to working on site. The site superintendent shall be the designated person granting permission onto the site in order to ensure safe access for Contractor employees.

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

NEC CORPORATION OF AMERICA  
9140 GUILFORD ROAD  
COLUMBIA, MD 21046

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **NEC Corporation of America** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is

made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**NEC CORPORATION OF AMERICA ("NEC")**

**NEC CORPORATION OF AMERICA LICENSE, WARRANTY AND SUPPORT TERMS**

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## 1. DEFINITIONS

- 1.01 "CPU" means a central processing unit in the System or SubSystem.
- 1.02 "Computer Program" means any instruction or instructions in object-code format for controlling the operation of a CPU.
- 1.03 "Licensed Product" means:
- a: The Computer Program furnished hereunder to the Ordering Activity (herein also referred to as "LICENSEE").
  - b: The Computer Program manuals, documentation and any other material for the licensed Computer Program.
  - c: (i) "PBX" as used herein shall mean hardware PRODUCTS. (ii) "PBX Applications" as used herein shall mean computer software which executes in conjunction with the PBX hardware PRODUCTS utilizing external interfaces and include the following applications.
    - Global Navigator
    - Unified Communications for Business (UCB)
    - Unified Communications for Enterprise (UCE)
    - UM Products (UM8700, UM4730, UM8500, UM8000)
  - d: (i) "ECP" as used herein shall mean UNIVERGE® SV7000, UNIVERGE® SV8500 and NEC Spherical® hardware PRODUCTS. (ii) "Applications" as used herein shall mean PBX Applications as defined in Section 1.03 (c) above.

**THE TERM "LICENSED PRODUCT" DOES NOT MEAN OR INCLUDE THE SOURCE CODE FORMAT FOR THE COMPUTER PROGRAM.**

## 2. GRANT OF RIGHTS

- 2.01 Contractor hereby grants the LICENSEE, and the LICENSEE hereby accepts, a personal, non-transferable and non-exclusive right to use the Licensed Product on 1 CPU at a time, or a single system where multiple CPU's are provided in the configuration, solely for its internal business purposes. The LICENSEE understands that the Licensed Product furnished to the LICENSEE is furnished solely for use in conjunction with the related hardware Licensed PRODUCTS sold by Contractor to LICENSEE. The LICENSEE has no right to use the Licensed Product so furnished on any CPU other than that such CPU or for any purpose not specified herein.
- 2.02 LICENSEE and Contractor expressly acknowledge and agree that NEC and/or NEC's licensors retain ownership of and title to their respective portions of the License Product and no right, title or interest to the intellectual property in the Licensed Product is hereby transferred to the LICENSEE or Contractor, except as expressly granted herein.
- 2.03 The LICENSEE shall not transfer possession of the Licensed Product, nor any rights conferred herein to any third party, except to a third party who acquires title to the LICENSEE'S related hardware Licensed PRODUCTS, provided such transferee has executed and provided to NEC, a signed copy of this Attachment A and has tendered to NEC, the then-current license transfer fee.
- 2.04 LICENSEE hereby agrees that it shall not reverse compile, disassemble, alter, add to, delete from, or otherwise modify the Licensed Product, except to the extent that such modification capability is an intended feature of the Licensed Product.

## 3. LIMITED WARRANTY AND REMEDIES

- 3.01 a: For a period of 14 months from date of shipping to the LICENSEE'S site, Contractor warrants that the PBX and the UNIVERGE® SV8500 hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.
- b: For a period of 120 days from date of shipping to LICENSEE's site, Contractor warrants that the UNIVERGE SV8500 software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.
- c: For a period of 90 days from date of shipping to the LICENSEE's site, Contractor warrants that the Applications software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.
- d: For a period of 90 days from date of shipping to the LICENSEE'S site, Contractor warrants that the UNIVERGE® SV7000 hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.
- e: For a period of 90 days from date of shipping to the LICENSEE'S site, Contractor warrants that the NEC Spherical® PRODUCTS software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.
- f: For a period of 14 months from date of shipping to the LICENSEE'S site, Contractor warrants that the UNIVERGE® SV8500 hardware and the NEC Spherical® hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.
- g: For a period of 90 days from date of shipping to the LICENSEE'S site, Contractor warrants that the Unified Communications Enterprise (UCE), Unified Communications Business (UCB), CallCenterWorX and Global Navigator software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and

maintained.

h: For a period of 180 days from date of shipping to the LICENSEE's, Contractor warrants that the Unified Messaging (UM8700, UM4730, UM8500, UM8000) software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

3.02 Contractor's liability for any Licensed Product which is shown to be defective during its warranty period is limited to:

- a: replacing the Licensed Product or part thereof with a functionally equivalent Licensed Product or part,
- b: repairing the Licensed Product, or
- c: issuing credit for the depreciated value of the Licensed Product

The choice of which of the above warranty remedies to utilize concerning any particular Licensed Product shall be Contractor's.

3.03 In the event that any Licensed Product is shown to be defective during the warranty period, the LICENSEE, who purchased or leased such Licensed PRODUCTS, shall:

- a: notify Contractor promptly in writing of any claims,
- b: provide Contractor and/or NEC, with an opportunity to inspect and test the Licensed PRODUCTS claimed to be defective, and
- c: (if repair or replacement of the Licensed Product is selected) return the Licensed Product to Contractor or NEC, in accordance with instructions provided.

3.04 The above warranty excludes coverage for Licensed PRODUCTS which were installed, repaired or maintained by an unauthorized service provider or which were subjected to misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, improper temperature, humidity or other environmental condition (including, but not limited to, lightning or water damage), storage, transportation or handling, unless caused by NEC or its authorized representative.

3.05 THE LICENSED PRODUCT WARRANTY CONTAINED IN THIS ATTACHMENT A IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING BUT NOT LIMITED TO PREVENTION, DETECTION OR DETERRENCE OF TOLL FRAUD, COMPUTER VIRUSES OR OTHER UNAUTHORIZED OR IMPROPER USE OF THE SOFTWARE PRODUCTS.

#### **4. TERMINATION**

4.01 Upon termination, the LICENSEE shall immediately discontinue the use of the Licensed Product and shall return all copies of the Licensed Product to Contractor.

#### **5. REGISTRATION AND ACTIVATION**

5.01 PRODUCT LICENSES delivered through the electronic licensing portals offered by NEC will be required to be registered and activated prior to the licenses being used or technical support being provided.

5.02 At the time of LICENSE registration, the Contractor is required to provide NEC with accurate LICENSEE contact information.



NETALLY  
2075-A RESEARCH PARKWAY  
COLORADO SPRINGS, CO 80920  
UNITED STATES



**EC AMERICA RIDER TO PRODUCT SPECIFIC TERMS AND CONDITIONS (FOR U.S.  
GOVERNMENT END USERS)**  
(V31-OCT-2019)

**Scope.** This rider (“Rider”) and the attached LinkRunner, LLC d/b/a NetAlly (“Manufacturer”) product specific end-user terms establish the terms and conditions enabling EC America (“Contractor” and/or EC America”) to provide Manufacturer’s information technology products and services to Ordering Activities, as defined in the Schedule Contract, under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”) with the U.S. Government General Services Administration (“GSA”) (hereinafter Manufacturer, EC-America, and GSA may individually be referred to as a “Party” or collectively, as the “Parties”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer’s Specific Terms, as defined below, attached hereto as Attachment A, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and, whereas, the Parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract. Now, therefore, the Parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that the Manufacturer Specific Terms are consistent with U.S. Federal Law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with U.S. Federal Law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the Parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting

under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.



Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third-Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless

included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third-party manufacturer shall be brought into the negotiation, or the components acquired separately under federally- compatible agreements, if any.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

{End}

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**END-USER TERMS AND CONDITIONS**

(GSA v01-Oct-19)

These End-User Terms and Conditions ("General T&Cs") are by and between the eligible Ordering Activity under GSA Schedule contracts set forth in the applicable Order ("Company" or "Ordering Activity"), as further defined below, and sets forth the terms, conditions, rights and restrictions for which LinkRunner, LLC d/b/a NetAlly, and any of its subsidiaries and affiliates (collectively or individually referred to as "NetAlly") is willing to sell devices ("Hardware") and license NetAlly's proprietary software, as well as any firmware residing on such Hardware, ("Software") (The Hardware and Software may be collectively referred to as the "Product(s)"), and provide maintenance and technical support services ("Maintenance"), to Company. Unless otherwise governed by a signed contract between Company and NetAlly, only these General T&Cs will apply to any Orders made for NetAlly's Products. NetAlly's provisioning of Products, Maintenance or any other services to Company is expressly contingent upon Company's acceptance of these General T&Cs.

Receipt without return of any Products from NetAlly by Company shall be deemed as acceptance of this Order and shall also constitutes Company's confirmation that the Products descriptions, quantities, term, and prices set forth in the Order in accordance with the GSA Schedule Pricelist accurately represent Company's intended purchase. All additional and conflicting terms and conditions presented with or in any communication, shall be deemed *null* and *void*.

**Definitions.**

"API(s)" means the software application interfaces and workflow methods made generally available by NetAlly in certain Products to enable integration, implementation, and interoperability with third party hardware and software.

"Evaluation Product" means software that contains a license key, which disables the Software after 30 days, or other term as agreed to by the parties, and which will render the Product unusable.

"Company" means an eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document, which has entered into a commercial agreement with NetAlly, allowing for the licensing or re-licensing of Software or distribution, sale, or resale of Products and Service.

"Order" means the combination of Company's P.O., a Quote issued by NetAlly or a NetAlly Company, and these General T&Cs.

"Company Data" means information that Company uploads or uses in conjunction with Company's use of the Products.

"Personal Data" means any information relating to an identified or identifiable natural person (hereafter a "Data Subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

"P.O." means a purchaser order or document, in tangible or

"Data Protection Act" means the Health Information Portability and Accountability Act (HIPAA) (29 U.S. Code § 1181, *et seq.*), Gramm Leach Bliley Act (GLBA) (15 U.S. Code § 1681), General Data Protection Regulation (GDPR) (EU 2016/679), and other applicable regulations which seek to protect the processing and storage of personal information.

"Documentation" means any installation guides, reference guides, operation manuals and release notes provided with the Product in printed, electronic, or online form.

intangible form (e.g. .rtf, .pdf, formats, etc.), issued by Company indicating Company's acceptance of the Quote and these General T&Cs, without regards to any conflicting terms and conditions presented therein, except with respect to price, quantity, and location of Products or Services.

“Quote” means the document under which NetAlly offers for sale and licenses its Products, Maintenance, and other services.

“Services” means Maintenance as well as any other services offered by NetAlly to Company from time to time.

Shipment & Delivery Terms. NetAlly ships all Products, *via* ground shipment hereunder FOB Destination. Unless otherwise agreed to by the parties, all shipments will be made using the carrier designated by Company. If Company does not designate a carrier, NetAlly reserves the right to choose a carrier at Company's expense. For Software available for electronic download, delivery will be deemed to have occurred once NetAlly has made the Software available for download by Company or Company's designate agent or representative. Unless otherwise stated conspicuously on the face of the applicable Order, NetAlly reserves the right to fulfill Orders *via* multiple shipments. For all Products shipped internationally, Company will be the importer of record. Company agrees that it will not remove any NetAlly General T&Cs or other agreement from the NetAlly Product(s), and/or associated packaging. All costs incurred by Company will be in accordance with the GSA Pricelist.

License Grant and Restrictions. Subject to payment of the applicable license fee and the terms set forth in an applicable Order, NetAlly grants Company a limited, non-exclusive, non-transferable, revocable license to use the Software and the Documentation for Company's own internal business purposes.

Evaluation License: NetAlly hereby grants Company a temporary, non-exclusive, non-transferable, revocable license to use the Evaluation Product set forth in the applicable NetAlly Evaluation Request Form solely for internal testing, evaluation, or demonstration purposes. If Company chooses not to purchase a license for the Evaluation Product, the Evaluation Product must be removed from Company's system(s) and all permitted copies of such Evaluation Product immediately destroyed. A Return Materials Authorization

number (“RMA #”) for any Hardware Evaluation Product must be obtained prior to return of such Product.

General T&Cs. Without limiting the foregoing, Company specifically agrees not to (i) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Software or any portion

Pre-Released Products. If the Product Company has received with this license is not yet commercially available (“Pre- Released Product”), then NetAlly grants Company a temporary, non- exclusive, non-transferable, revocable license to use the Pre-Released Product and the associated Documentation, if any, as provided to Company by NetAlly solely for internal evaluation purposes. NetAlly may terminate Company’s right to use the Pre-Released Product at any time at NetAlly’s discretion. Company’s use of the Pre-Released Product is limited to thirty (30) days unless otherwise agreed to in writing by NetAlly. Company acknowledges and agrees that (i) NetAlly has not promised or guaranteed to Company that the Pre- Released Product will be announced or made available to anyone in the future; (ii) NetAlly has no express or implied obligation to Company to announce or introduce the Pre-Released Product; (iii) NetAlly may not introduce a product similar to or compatible with the Pre-Released Product; and (iv) any use of the Pre-Released Product or any product associated with the Pre-Released Product is entirely at Company’s own risk. During the term of these General T&Cs, if requested by NetAlly, Company will provide feedback to NetAlly regarding use of the Pre-Released Product. Company will not disclose any features or functions of any Pre-Released Product until NetAlly makes the Pre-Released Product publicly available.

API License. NetAlly grants Company a limited, non- exclusive, non-transferable revocable license to use the API, together with applicable documentation, any sample code, and any sample applications provided with the API, solely in connection with the Products for Company’s internal business purposes; provided that Company may not use the API in connection with developing a product or service that competes with Products.

License Restrictions. Except as required by law, Company will not, and will not cause or permit others to, derive the source code of the Software, or reverse engineer, disassemble, or de- compile the Products. Company may not (i) create derivative works of the Software, (ii) lend, rent, lease, assign, sublicense, and/or make available through timesharing or service bureau the Software, or (iii) transfer the Software or provide third party access to the Software.

Third-party Technology. The Products may contain embedded third-party technology (“Third-party Materials”). Such Third-party Materials are licensed for use solely with the Product. Third-party Materials are provided subject to the applicable third-party terms of use. Nothing herein shall bind the Ordering Activity to any Third-party Materials terms unless the terms are provided for review and agreed to in writing by all parties.

Ownership. NetAlly and its third-party licensors retain all right, title, and interest in and to the Products, Third party Technology and/or APIs. Company retain all right, title and interest in and to the Company Data.

Acceptable Use. Company specifically agrees to limit the use of the Products and/or Services to those specifically granted in these



thereof; (ii) modify, port, translate, localize or create derivative works of the Software; (iii) remove any of NetAlly's, or its vendors, copyright notices and proprietary legends; (iv) use the Products to (a) infringe on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violate any law, statute, ordinance, or regulation (including but not limited to the laws and regulations governing export/import control, unfair competition, anti-discrimination and/or false advertising); or (c) propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; and/or (v) file copyright or patent applications that include the Product or any portion thereof.

that the Products are appropriate for Company's purposes or error-free. If during the Software Warranty Period or Hardware Warranty Period, a nonconformity is reported to NetAlly, NetAlly, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware. THIS REMEDY IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND NETALLY'S SOLE LIABILITY FOR A BREACH OF

Company & Personal Data. During the Term, Company may provide to NetAlly Company Data. NetAlly may use Company Data in connection with the performance of its obligations under these General T&Cs. Company hereby agrees to strictly comply with any and all applicable Data Protection Acts with regards to the transfer, handling storage and processing of Personal Data. Company acknowledges and agrees that should Company transfer such Personal Data to NetAlly, or other third-parties, Company will serve as such Personal Data's "Controller", as set forth in the applicable Data Protection Acts. Further, in the event of a breach of Personal Data, attributed to Company's actions or inactions in furtherance of these General T&Cs, in violation of the Data Protection Acts, Company shall promptly (i) take all necessary steps to curtail such breach; (ii) undertake all necessary actions to mitigate damages; (iii) provide the necessary notification and remediation, as set forth in the applicable Data Protection Act; and (iv) aid and assist in NetAlly's efforts to do the same, at Company's sole cost and expense.

{Reserved}

{Reserved}

Warranties. NetAlly warrants, for Company's benefit alone, (i) that the Hardware will be free from material defects for a period of twelve (12) months following the date of shipment of the Hardware ("Hardware Warranty Period"); and (ii) the Software, will conform materially and substantially to the Documentation for a period of ninety (90) days following the date when first made available to Company for download ("Software Warranty Period"). The warranties set forth herein do not apply to any failure of the Software or Hardware caused by (a) Company's failure to follow NetAlly's installation, operation, or maintenance instructions, procedures, or Documentation; (b) Company's mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (c) modifications or repairs not authorized by NetAlly;

(d) use of the Products in combination with equipment or software not supplied by NetAlly or authorized in the Documentation; and/or (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside NetAlly's reasonable control. NetAlly cannot and does not warrant the performance or results that may be obtained by using the Products, nor does NetAlly warrant

WARRANTY. EXCEPT FOR THE EXPRESS WARRANTIES Damages, 12 Indemnification, and 14 General Provisions. STATED IN THIS SECTION 8, “WARRANTIES” NETALLY DISCLAIMS ALL WARRANTIES ON MERCHANDISE SUPPLIED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

{Reserved}

EXCLUSION OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, AND/OR INCIDENTAL DAMAGES, WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

ESSENTIAL PURPOSE. THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN SHALL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE REFLECTED IN THE PRICING.

{Reserved}

Relationship with Third parties. The relationship between the parties established by these General T&Cs is that of independent contractors, and nothing contained in these General T&Cs shall be construed to: (i) give either party the power to direct or control the day-to-day activities of the other; (ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking or franchise; (iii) allow Company to create or assume any obligation on behalf of NetALLY for any purpose whatsoever; or (iv) allow any customer, End-User, or other person or entity not a party to these General T&Cs to be considered a third-party beneficiary of these General T&Cs.

General Provisions.

Modification. . No modification of these General T&Cs shall be effective unless in writing and signed by both parties.

Severability & Survival. The illegality or unenforceability of any provision of these General T&Cs shall not affect the validity and enforceability of any legal and enforceable provisions hereof. Should any provision of these General T&Cs be deemed unenforceable by a court of competent jurisdiction then such clause shall be re-construed to provide the maximum protection afforded by law in accordance with the intent of the applicable provision. Any provision contained herein, which by its nature should survive the termination of these General T&Cs shall survive, including, but not limited to, Section 7 “Confidentiality”, 9 “Limitation of Liability & Exclusion of Consequential

Assignment. Neither party may assign any rights or delegate any obligations hereunder, whether by operation of law or otherwise, except with the prior written consent of the other party, which consent will not be unreasonably withheld. These General T&Cs binds the parties, their respective participating subsidiaries, affiliates, successors, and permitted assigns.

principles.

Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

Compliance & Export Controls. Company shall comply fully with all applicable laws, rules, and regulations including those of the United States, and any and all other jurisdictions globally, which apply to Company's business activities in connection with these General T&Cs. Company acknowledges that the NetAlly Products and/or NetAlly Services are subject to United States Government export control laws. Company shall comply with all applicable export control laws, obtain all applicable export licenses, and will not export or re-export any part of the Products and/or Services to any country in violation of such restrictions or any country that may be subject to an embargo by the United States Government or to End-Users owned by, or with affiliation to, such countries embargoed by the United States Government.

14.5. U.S. Government Use Notice. The NetAlly Software is a "Commercial Item", as that term is defined at 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48

C.F.R. § 12.212. Consistent with 48 C.F.R. § 12.212, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government End-Users (a) only as Commercial Items and (b) with only those rights as are granted to all other End-Users pursuant to the terms and conditions herein. For some components of the Software as specified in the Exhibit, Attachment, and/or Schedule, this Software and Documentation are provided on a RESTRICTED basis. Use, duplication, or disclosure by the United States Government is subject to restrictions set forth in 48 CFR 52.227-14, as applicable.

Anti-Corruption and Anti-Bribery. Company will not make or permit to be made any improper payments and will comply with the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, the Organization for Economic Co-operation and Development ("OECD") Convention on Anti-Bribery, and other applicable local anti-bribery laws and international anti-bribery standards. Company represents and warrants that it will not pay any commission, finder's fee, or referral fee, or make any political contribution, to any person in connection with activities on behalf of NetAlly.

Applicable Law & Disputes. The parties specifically agree that the U.N. Convention on the International Sale of Goods, the Uniform Computer Information Transactions Act ("UCITA"), and the International Commercial Terms issued by the International Chamber of Commerce ("Incoterms") shall not apply to any and all actions performed by either party hereunder in furtherance of these General T&Cs. These General T&Cs and all resulting claims and/or counterclaims shall be governed, construed, enforced and performed in accordance with the laws of the Federal Laws of the United States of America, without reference and/or regard to its conflicts of laws

Waiver. Each party agrees that the failure of the other party at any time to require performance by such party of any of the provisions herein shall not operate as a waiver of the rights of such party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

*via* electronic mail (email) sent “read receipt” and “delivery receipt”. With respect to NetAlly’s receipt of electronic notice set forth in (iii) above such notice shall only be deemed received once Company receives a confirmation of “read receipt” and “delivery receipt” and such notice shall only be valid if sent to [legal@netally.com](mailto:legal@netally.com).

Notices. All notices under these General T&Cs shall be in English and shall be in writing and given to the address indicated upon the cover page and may be sent either by (i) registered airmail; (ii) overnight delivery through a reputable third-party courier; or (iii)

{End}



NETAPP, INC.  
495 E JAVA DR.  
SUNNYVALE, CA 94089

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached NetApp, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (MAY 2014). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.



v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**NETAPP, INC.**

**NETAPP, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**PROFESSIONAL SERVICES TERMS**

These Professional Services Terms ("Terms") set forth the terms and conditions under which NetApp will provide Professional Services to Customer. For Customers purchasing Professional Services directly from NetApp, the NetApp General Terms (attached herein) also apply. For Customers purchasing Professional Services from an authorized NetApp distributor or reseller, the NetApp Channel End User Terms (attached herein) also apply. To the extent there is any conflict between these Terms and those contained in the NetApp General Terms or NetApp Channel End User Terms, these Terms will control and take precedence. These Terms shall not apply if Customer has a separate applicable agreement with NetApp for the provision of Professional Services.

**DEFINITIONS.** In addition to the definitions set forth in the General Terms or Channel End User Terms, the following definitions shall apply:

**Deliverables.** Tangible materials or specific outputs expressly designated as Deliverables in the relevant Engagement Document.

**Engagement Document.** A NetApp-approved document, including but not limited to a statement of work, service brief or service description that defines the tasks, schedule of performance and/or Deliverables to be provided by NetApp.

**IP Rights.** Patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, knowhow or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

**Pre-Existing IP.** IP Rights, existing, owned, or otherwise licensed by Customer or NetApp prior to entering into these Terms.

**Professional Services.** The consulting services to be provided by or on the behalf of NetApp as specified in an Engagement Document.

**Professional Services Materials.** Deliverables, materials, software, know-how, and/or information used, generated, created, developed or reduced to practice, including any modifications thereof or thereto, by or for NetApp during the provision of the Professional Services

**Professional Services Resource.** A NetApp employee, supplier or subcontractor which NetApp utilizes to provide Professional Services to Customer.

**2. SCOPE OF SERVICES**

**2.1. Projects.** NetApp will perform Professional Services in accordance with the Order Documentation, including the Engagement Document, and these Terms. NetApp may at its sole discretion require an Engagement Document to be executed prior to commencement of the Professional Services **2.2. Change Orders.** Changes to the Professional Services specified in a statement of work will not be effective unless a change request form has been executed by authorized representatives of both Parties and NetApp has received the applicable Order Documentation supporting the change.

**2.3. No Unique Services.** Professional Services are of a scalable, repeatable nature and, as such, the same or similar Professional Services have been and will continue to be provided to other NetApp customers. Any unique services requested by Customer shall be subject to separate written agreement, No custom development activity shall be performed as Professional Services.

**2.4. No Superuser Access.** In no event will Customer grant to a Professional Services Resource root or "superuser" access at a server or network level and NetApp will have no responsibility or liability for loss or damage that results from or is related thereto. Such services shall be subject to a separate written agreement.

**FEES.** An Engagement Document or the associated price quotation will state the fees to be paid by Customer to NetApp for Professional Services rendered and any related payment schedules. Customer's execution of an Engagement Document or NetApp's acceptance of a Purchase Order, as applicable, will indicate acceptance of the stated fees and payment schedules. No changes in fees or payment schedules will be effective absent a mutually executed change order.

**EXPENSES.** Ordering Activity Licensee agrees to pay any travel expenses in accordance with FTR/JTR, as applicable. Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document.

**DURATION AND EXPIRATION OF PROFESSIONAL SERVICES BASED ON TIME AND MATERIAL ENGAGEMENT.** In relation to Time and Material ("T&M") Professional Services, NetApp will provide to Customer a Professional Services Resource qualified at the skill level purchased by Customer, to perform T&M Professional Services, at an agreed Customer site or remotely, for the total amount of hours and/or days set forth in NetApp's price quotation and Customer's Purchase Order. T&M Professional Services purchased on an hourly basis will be performed in minimum increments of four (4) consecutive hours. For T&M Professional Services purchased on a daily basis, a "day" constitutes at least four (4) hours but not more than eight (8) hours in a single calendar day; or whenever aggregate overtime hours (those exceeding eight (8) hours on a calendar day), exceed four (4) hours but not more than eight (8) hours. T&M Professional Services will be available to Customer for one (1) year from the Purchase Order date Customer payments are nonrefundable, and credit for any unused T&M Professional Services will not be available.

**PROFESSIONAL SERVICES WARRANTY.** NetApp warrants to Customer that the Professional Services will be performed in a professional, workmanlike manner consistent with generally accepted industry practices. If the Professional Services materially fail to conform to this Professional Services warranty, NetApp will re-perform such Professional Services. This is Customer's sole and exclusive remedy in relation to breach of warranty.

**INTELLECTUAL PROPERTY RIGHTS.** Each Party will retain all right, title and interest in and to its Pre-Existing IP. NetApp will retain all right, title, and interest in and to the Professional Services, Professional Services Materials, and IP Rights embodied therein. In no event will Professional Services Materials be deemed

to include Customer Pre-Existing IP or Customer Confidential Information. Customer hereby grants NetApp a nonexclusive, worldwide, royalty-free, fully paid-up license to use such Pre-Existing IP and Confidential Information for the sole purpose of performing or producing the Professional Services and Professional Services Materials. Upon receipt of full payment, NetApp hereby grants to Customer a limited,

non-exclusive, non-transferable, terminable license, with no right to sublicense, to use the Professional Services Materials for Customer's internal business purposes. Customer will not re-distribute the Professional Services Materials to any third parties without NetApp's prior written consent.

**DATA PROTECTION.** Performance of Professional Services under these Terms may result in Customer providing NetApp access to personal data. NetApp does not need nor request access to personal data in order to provide Professional Services. In the event Customer does provide personal data to NetApp, Customer accepts sole responsibility and liability for the disclosure and protection of such data in accordance with applicable data protection laws.

**TERMINATION; REMEDIES FOR NON-PAYMENT.** Customer may terminate an Engagement Document for convenience upon thirty (30) days prior written notice. Such termination will not relieve Customer from its obligations to pay NetApp any sums accrued prior to such termination, including all expenses and time and material costs incurred or expended by NetApp, which will be immediately due upon termination. Customer may request that NetApp complete the Professional Services in progress after notice of termination. NetApp may, in its sole discretion, elect to perform, and, upon completion, will be entitled to full compensation for the completion of such Professional Services. If Customer fails to make payment in accordance with the payment terms, then, in addition to any other available remedies, NetApp will have the right to decline to render further Professional Services to Customer. NetApp may terminate an Engagement Document immediately on written notice to Customer if Customer commits a material breach of these Professional Services Terms.

### SUPPORT SERVICES TERMS

These Support Services Terms ("Terms") set forth the terms and conditions under which NetApp will provide Support Services to Customer. To the extent that there is any conflict between these Terms and those contained in the Master Purchase Agreement, these Terms will control and take precedence.

**1. DEFINITIONS** In addition to the definitions set forth in the Master Purchase Agreement, the following definitions shall apply:

**AutoSupport.** NetApp's AutoSupport™ remote support diagnostic system.

**Business Day.** Monday through Friday, 8:00 a.m. to 5:00 p.m. Customer local time, except: (i) In Japan, Business Day means Monday through Friday, 9:00 a.m. to 6:00 p.m.; and (ii) in the Middle East and Israel, Business Day means Sunday through Thursday, 8:00 a.m. to 5:00 p.m. Designated local holidays are not considered Business Days.

**Customer Replaceable Unit (CRU).** Any FRU which can be replaced by Customer following guidelines and documentation provided by NetApp.

**Field Replaceable Unit (FRU).** A component or disk in the Hardware, excluding filer heads, which can be replaced at a Customer location without pre-configuration by NetApp. FRUs will be new or equivalent to new, at NetApp's reasonable discretion.

**NetApp Support Site.** <http://mysupport.netapp.com>

**Remote Technical Support.** Telephone and web-based support.

**Software Updates.** (i) Enhancements made generally available at no charge by NetApp to existing Software versions; (ii) Software releases made generally available by NetApp to resolve known issues with existing versions of Software; and (iii) Temporary software modifications developed for individual, known Software issues as part of the applicable Support Services.

**Support Services.** NetApp's generally available technical support and maintenance services for Hardware and Software, as described on the NetApp Support Site.

**Support Services Period.** The period of time specified in the Order Documentation during which NetApp will provide Support Services.

**TRO.** The Target Response Objective for timing of delivery of Support Services.

## 2. SUPPORT SERVICES

**2.1. Scope of Support Services.** NetApp agrees to provide the Support Services purchased by Customer as set forth in the Order Documentation during the Support Services Period. On a case by case basis, and as explicitly set forth in the Order Documentation, NetApp may also offer Support Services in relation to Third Party Branded Products. In such cases, references to Hardware and Software in these Terms shall also be deemed to include Third Party Branded Products. NetApp reserves the right to revise or update the scope of Support Services at its sole discretion.

**2.2. Combined Use.** Customer must purchase the same level of service entitlement for all components and controllers in a system. Customer will notify NetApp prior to any combined use of Hardware and Software initially purchased for use in separate systems, and will upgrade to the highest level of Support Services entitlement existing in the newly combined system. Customer also will pay any additional Support Services fees required by NetApp, as calculated in accordance with the Price List.

**2.3. Out-of-Scope Services.** The following services are not included in the scope of Support Services:

Subject to Section 2.1 above, services related to third party products;

Transit or relocation of Hardware and related services, including services to remediate any associated damage;

Provision of accessories, batteries, supplies or replacement of disposable parts, including without limitation power cords, rack mounting kits and cables;

Customer education, training and consulting services;

Implementation or installation assistance for hardware and software not procured from a NetApp authorized source;

Services related to any work performed at Customer's site except as specified in the Order Documentation;

Services relating to issues arising from Customer or third-party modifications, customizations, or enhancements to Software;

Services relating to issues arising from a change in Customer's system configuration which is not in conformance with the NetApp Interoperability Matrix located on the NetApp Support Site at <http://support.netapp.com/matrix/mtx/login.do>; and (i) Services relating to issues arising from Customer or third party error, use of software other than Software, or modification of Software.

**2.4. Hardware and Software Warranty Disclaimers.** All NetApp warranties related to Hardware and Software will be voided where:

(a) Hardware has been mishandled, altered, damaged or rendered inoperable (e.g., degaussed disk drives) due to willful or negligent acts or omissions, accident, force majeure, or operation of the Hardware other than as specified in the Documentation; (b) A solid state drive or flash device has been used in excess of its rated life as set forth in the Documentation and/or as determined by its original manufacturer;

(c) Services have been performed by a person or entity other than NetApp or an authorized NetApp service representative in relation to the

Hardware and Software, in the absence of a prior written agreement with NetApp; (d) A power surge or failure has occurred;

Customer has failed to provide a suitable environment for the Hardware within the range of tolerances set forth in the applicable NetApp Site Requirements Guide at <http://hww.netapp.com>;

An issue arises from cleaning, refinishing or cosmetic modification of Hardware, or any electrical or site preparation; and (g) Products or components, including without limitation, software or hardware, have been procured from a source not authorized by NetApp, and then combined with Products.

**Support Services Warranty.** NetApp warrants that for the duration of the applicable Support Services Period, Support Services will be performed in a professional and workmanlike manner consistent with generally accepted industry practices. Customer's sole and exclusive remedy in relation to a breach of this warranty is a re-performance of the Support Services by NetApp.

**Subcontracting.** NetApp may use subcontractors to provide the Support Services under these Terms.

**End of Availability and End of Support.** The NetApp Service and Support Product Programs End of Availability Index, which is located on the NetApp Support Site, details information related to the last date on which Hardware or Software will be available for quoting from NetApp ("End of Availability" or "EOA"), and the last date on which Hardware or Software will be supported by NetApp ("End of Support" or "EOS"). NetApp will not provide Support Services for any Hardware, or components thereof, or Software after

the applicable published EOS date. In relation to Hardware running Software which has passed its EOS date, NetApp may require Customer to update to a supported version of Software as a prerequisite to NetApp continuing to provide Hardware Support Services.

**Replacement of Hardware Components and Return Material Authorization.** In the event the resolution of a support case initiated with the NetApp Technical Support Center ("TSC") is a Hardware failure, Customer will notify NetApp of its intent to return such Hardware within fifteen (15) calendar days of the support case resolution. Hardware replacement is subject to the Return Material Authorization ("RMA") procedure located on the NetApp Support Site at <http://mysupport.netapp.com/NOW/products/rma/>. Failure to return the Hardware components within the fifteen (15) days specified above or their return in a condition rendering them unsupported under Section 2.3 above shall entitle NetApp to invoice Customer for the cost of the replacement Hardware components supplied, calculated in accordance with the Price List. Customer will ensure that the failed Hardware is free of any legal obligations or restrictions that could prevent its replacement and will return each CRU and FRU individually by separate shipment.

**Support Included with Original and Extended Hardware Warranty.** During the applicable Hardware warranty period, NetApp will provide Customer with access to 24/7/365 Remote Technical Support, delivery of replacement Hardware components and access to the NetApp Support Site. Customer will also have access to AutoSupport and the NetApp Remote Support Diagnostics Tool, as applicable. In relation to Support Services included with the Hardware warranty, NetApp will use reasonable commercial efforts to deliver replacement Hardware components by the next Business Day. Such delivery is subject to local country limitations, including but not limited to shipment cut-off times, and other factors beyond the reasonable control of NetApp.

**Next Business Day Schedule.** The cutoff time for next Business Day delivery of FRUs or CRUs and/or arrival of a NetApp Authorized Service Engineer is 3:00 p.m. local Customer time. Remote diagnosis completion and/or CRU/FRU ordering that occurs after 3:00p.m. local Customer time, will be deemed completed on the following Business Day and shipment and/or arrival will be scheduled accordingly. (e.g., if diagnosis occurs after 3:00 p.m. on Monday, CRU/FRU ships Tuesday to arrive on Wednesday). **2.11. Onsite Support Services.** If Customer has purchased onsite Support Services, it will receive such services as follows: When Customer initiates a technical support case with the TSC, a Technical Support Engineer ("TSE") will commence issue identification and repair as necessary. If the issue cannot be resolved remotely, and where the TSE and Customer jointly agree that onsite Support Services are necessary and appropriate, the TSE will dispatch an Authorized Support Engineer ("ASE") to the Customer site. The ASE will, at the direction of the TSC, work to diagnose and isolate the issue, make necessary changes and restore the normal operation of the systems. The TRO for onsite Support Services will be the same as that specified for replacement Hardware components in the Documentation. Subject to Section 2.13 below, in relation to onsite Software Support Services, NetApp reserves the right to define the most appropriate onsite resources to resolve the case and restore normal operation. In such cases, NetApp will communicate with Customer the estimated time of arrival for the ASE, which may or may not fall within the TRO specified above.

**Non-Returnable Disk.** If Customer has purchased the Non-Returnable Disk ("NRD") option, it will not return defective or failed disks forming part of the Hardware. Customer will retain such disks and remain solely responsible for their disposal. Customer agrees that if disks covered by the NRD option are returned to NetApp, NetApp shall have no obligation or liability whatsoever associated with any data remaining on such disks. NetApp will treat such disks like non-NRD disks and convey them into the NetApp supply chain for repair and/or destruction.

**Software Support Services.** If Customer has purchased Support Services that include a Software Support Plan ("SSP"), it is entitled to Software Support Services during the applicable Support Services Period. SSP consists of both telephone and webbased support and access to all Software Updates made generally available by NetApp. Customer shall be responsible for installing and implementing Software and Software Updates unless it has purchased a Support Services offering that includes installation of software updates by NetApp, as described in Section 2.13 below. NetApp may require Customer to implement specific Software upgrades to resolve current or prospective issues. Customer may be required to purchase additional Hardware at its own expense to make use of Software Updates and or Software upgrades.

**Installation of Software Updates.** If Customer has purchased such installation services, NetApp will install Software Updates during the provision of Support Services during the Support Services Period. The TSE will determine the method and timing of installation, with Customer's agreement and participation. NetApp may choose to dispatch an ASE to the Customer site to participate in Software Update activities.

**Software Support Services Prerequisites.** Provision of Software Support Services is conditional upon Customer having: (a) installed and operated the Software in accordance with the applicable Documentation; (b) described with sufficient specificity the nature of the Software issues Customer is experiencing and the circumstances in which they occur; (c) reproduced the Software issue such that it can be confirmed and evaluated by NetApp; (d) made no changes, additions, or modifications to the Software, directly or indirectly; and (e) installed the Software in an infrastructure/environment that adheres to the published NetApp Interoperability Matrix on the NetApp Support Site.

**2.16 AutoSupport.** AutoSupport data is deemed to be NetApp Confidential Information.

### 3. CUSTOMER RESPONSIBILITIES

**3.1. Customer Contacts.** Customer will designate up to three (3) technically qualified employees to serve as Customer's primary points of contact in relation to the receipt of the Support Services.

**3.2. Customer Information.** Immediately on receipt, Customer will register all Hardware and Software on the NetApp Support Site to create Customer's support profile. Customer will keep this profile up-to-date. TROs, if any, can be met only if Customer has provided NetApp with accurate information including delivery and on-site service addresses, names and phone numbers of key Customer contacts and access to Customer's location. If this information is inaccurate or obsolete and/or access to Customer's location is unavailable or denied to the NetApp ASE or other representatives, adherence to any applicable TRO will be measured from the time that correct information is provided by the Customer to NetApp and/or the NetApp ASE is granted access to Customer's location.

**3.3. NetApp Support Site.** During the Support Services Period, Customer will be granted access to the NetApp Support Site. A unique login and password will be assigned to Customer by NetApp, which will be deemed NetApp Confidential Information. **3.4. Miscellaneous Permissions.**

In the event that NetApp requires access to any computer systems or software owned or licensed by Customer in order to provide the Support Services, Customer will obtain all associated permissions.

**3.5. Work Environment.** Customer will provide NetApp or the NetApp ASE with a safe working environment and make all necessary arrangements as NetApp may determine is reasonably necessary to perform the Support Services.

**3.6. Equipment Relocation.** In the event that Customer wishes to relocate Hardware or Software, Customer will contact the NetApp TSC at least thirty (30) days prior to such relocation. NetApp will notify Customer if Customer's existing Support Services are available at the new location. Customer acknowledges that relocation of the Hardware or Software may result in a decrease of the scope and an increase in the pricing of Support Services. NetApp will communicate this to Customer on a case-by-case basis. If Customer fails to notify NetApp of the relocation of Hardware or Software as required above, NetApp may refuse to provide the Support Services at its sole discretion. In the event of an increase in pricing of Support Services following relocation, Customer will promptly submit a Purchase Order to NetApp and pay the associated NetApp invoice.

**3.7. Reinstatement of Lapsed Support.** In the event that Customer wishes to reinstate Support Services after a lapsed period following expiration or termination of the original Support Services Period, Customer will pay to NetApp an amount equal to the Support Services fees that would have been due for accrued Support Services during such lapsed period, as well as any applicable reinstatement fee and the amount due for the go-forward Support Services Period being purchased. All such amount will be calculated in accordance with the Price List.

**3.8 Data Protection.** Performance of Support Services under these Terms may result in Customer providing NetApp access to Personal Data. NetApp does not need nor request access to Personal Data in order to provide Support Services. In the event Customer does provide Personal Data to NetApp, Customer accepts sole responsibility and liability for the disclosure and protection of such data in accordance with applicable data protection laws.

## GENERAL TERMS

### Terms for All Transactions

These General Terms ("Terms") apply to the sale of Products and Services by NetApp, Inc., NetApp B.V. or any of their affiliates ("NetApp") directly to the Ordering Activity customer acquiring Products and Services for its own use ("Customer"), unless Customer has entered into a separate agreement with NetApp governing such sale. By both parties executing this agreement in writing, Customer agrees to these Terms. NetApp and Customer may each be referred to as a "Party" or collectively, as the "Parties."

### 1. DEFINITIONS

**1.1. Cloud-Based Offering.** Hardware, Software, and any Services offered, distributed, marketed or otherwise sold by NetApp for use through a Cloud Provider.

**1.2. Cloud Provider.** A third party designated by NetApp which offers off premises cloud-based services such as hosting, computing, networking, or storage.

**1.3. Documentation.** NetApp supplied then current technical documentation describing the features and functions of the associated Products.

**1.4. Hardware.** NetApp-branded hardware, including its components and spare parts, but excluding any firmware and Third Party Branded Products.

**1.5. Order Documentation.** The applicable NetApp price quotation (and the NetApp engagement document, if required for the purchase of applicable Services), the corresponding Purchase Order, and the associated Documentation for the Products or Services purchased or licensed hereunder.

**1.6. Price List.** NetApp's then-current list of Products and Services, and their associated prices for the country of destination.

**1.7. Products.** Hardware, Software, associated Documentation, and any Third Party Branded Products.

**1.8. Purchase Order.** A written or electronic order provided to NetApp consistent with the corresponding price quotation for the purchase of Products and Services.

**1.9. Services.** NetApp's consulting services ("Professional Services") and/or its generally available technical support and maintenance services programs ("Support Services").

**1.10. Software.** NetApp software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency, and management software.

**1.11. Third Party Branded Products.** Any hardware or software that is manufactured, developed, licensed or otherwise made available by any entity other than NetApp and is distributed or licensed by NetApp for use in conjunction with Hardware and Software.

### 2. ORDERS, DELIVERY and ACCEPTANCE

**2.1. Orders.** All Purchase Orders are subject to acceptance by NetApp.

**2.2. Changes, Cancellation, and Rescheduling.** Customer may modify or cancel Purchase Orders up to ten (10) days prior to any scheduled shipment date, and Customer may reschedule a requested delivery date one time per Purchase Order without additional charge. Product returns are subject to NetApp approval.

**2.3. Delivery.** Delivery of hardware and software pre-installed on the hardware occurs according to the applicable trade term specified on the NetApp price quotation or as agreed to by NetApp on a case by case basis. Delivery of software that is not pre-installed on hardware occurs when NetApp makes the enabling key available to

Customer or, if an enabling key is not required, when NetApp makes such software available for download or use by Customer.

**2.4. Risk of Loss.** Risk of loss or damage to the Products and title to any hardware in the Products will pass to Customer upon delivery.

**2.5. Acceptance.** Acceptance by Customer of Products will occur upon delivery, and acceptance by Customer of Services will occur when such Services are rendered, unless otherwise agreed in a NetApp engagement document.

### PRICING AND PAYMENTS 3.1. Reserved.

**Payment Terms.** Customer will make full payment in the currency specified in the invoice, without set-off and in immediately available funds, not later than thirty (30) days from the date of receipt of NetApp's invoice.

**Remedies for Non-payment.** Customer payment of an amount less than the invoice amount will not be deemed as acceptance of payment in full, nor will any endorsement or statement on any check or letter accompanying any payment or check be deemed an accord and satisfaction. NetApp may accept such payment or check without prejudice to NetApp's right to recover the balance of any amount due or pursue any other remedy provided for in these Terms or by law or in equity. NetApp has the right to apply any payment received from Customer to any account of Customer which is due and/or delinquent. **3.4. Taxes and Duties.** NetApp shall state separately on invoices taxes excluded from the fees, and the Customer agrees either



to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-

3.

#### 4. SOFTWARE LICENSE

**4.1. License Grant.** Subject to these Terms and any limitations or restrictions set forth in the corresponding Order Documentation, NetApp grants to Customer a personal, non-exclusive, nontransferable, worldwide, limited, and revocable license, without the right to sublicense, to (a) install and use the Software for Customer's internal business purposes only, and (b) use the Documentation in support of Customer's use of the Software. The Software associated with Customer's license is either bundled with a specific storage controller identified by a unique serial number ("Controller-based licenses"), or is independent of a storage controller ("Standalone licenses"), and the license is one of the following license types: (a) "Life-of-controller": Controller-based licenses granted for the period of time during which Customer's controller is operable; (b) "Perpetual": Standalone licenses granted in perpetuity; (c) "Term": Controller-based licenses or Standalone licenses granted for a fixed period of time; (d) "Capacity": Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity or usage; and (e) "Subscription": Controller-based licenses or Standalone licenses which may be purchased on a periodic basis. Certain license types may require the installation and use of NetApp's AutoSupport™ Remote support diagnostic system. Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based licenses as the other storage controllers in that cluster, high-availability pair, or group. Subject to NetApp's prior written agreement, and in the context of non-disruptive operations within a cluster, Customer may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same hardware and software support offerings in effect at all times.

**4.2. License Restrictions.** Customer will not, nor will Customer allow any third party to, (a) reverse engineer, decompile or disassemble the Software or otherwise reduce it to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses; (b) remove or conceal any product identification, proprietary, intellectual property, or other notices in the Software and Documentation; (c) use the Software and Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment; (d) assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller; (e) install Controller-based licenses on or use them with third party hardware or any second-hand or grey market Hardware that Customer has not purchased from NetApp or a NetApp partner; (f) modify, adapt, or create a derivative work of the Software or Documentation; and (g) publish or provide any Software benchmark or comparison test results.

#### 4.3. Reserved.

**4.4 Software Copyright Information and Notices.** Software copyright information and other related details are included as part of notices in the Documentation or other documentation published by NetApp (e.g. NOTICES.TXT or NOTICES.PDF).

#### 5. SERVICES

**5.1. Services.** Services are provided by or on behalf of NetApp. Additional terms and conditions applicable to Services are set forth on NetApp's How to Buy information provided above.

#### 6. DIRECT WARRANTY

**6.1. Hardware Warranty.** NetApp warrants that the Hardware will materially conform to the Documentation for a period of three (3) years from the date of delivery, unless otherwise specified in the applicable Documentation ("Hardware Warranty Period"). In the event of any material nonconformity in the Hardware during the Hardware Warranty Period that is reproducible and verifiable, NetApp will, at its sole expense, repair or replace the Hardware, or refund the amounts received by NetApp for the nonconforming Hardware. Replacement parts will be warranted for the remainder of the Hardware Warranty Period in effect for the original Hardware purchased, unless otherwise mandated by applicable law.

**6.2. Software Warranty.** NetApp warrants that (a) the initially-shipped version of the Software will materially conform to the Documentation; and (b) the Software media will be free from physical defects, for a period of ninety (90) days from the date of delivery or such other minimum period required under applicable law ("Software Warranty Period"). NetApp does not warrant that Customer's use of the Software will be error-free or uninterrupted. In the event of any material nonconformity in the Software during the Software Warranty Period that is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Software, or refund the amounts received by NetApp for the nonconforming Software. This warranty does not cover software, other items, or any services provided by persons other than NetApp.

**6.3. Limitations.** NetApp will not be liable under this warranty for claims arising from Customer's, Customer's subcontractor's, or any unauthorized third person's misuse, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use. The Hardware warranty will become void if a Hardware component is installed as an add-on to or replacement for the original Hardware, without NetApp's prior written approval. The Software warranty will become void if the Software is modified or otherwise used in violation of the Software license terms set forth in Section 4, except as authorized in writing by NetApp. The foregoing limitation of liability shall not apply to

(1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**6.4. Exclusive Warranties.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES ARE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from the Vendor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

#### 7. INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

**7.1. General.** The Software and Documentation is licensed, not sold, to Customer. It is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to Customer. No right, title or interest to any trademark, service mark, logo, or trade name of NetApp or its licensors is granted to Customer.

**7.2. IP Claims.** Subject to the terms and conditions of this Section, NetApp will defend or settle any claim brought by a third party against Customer that Hardware, Software, and Documentation sold and delivered by or for NetApp to Customer under these Terms infringe any patent, trademark, or copyright ("IP Claim"). NetApp will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, "Damages") against Customer to the extent such Damages are specifically attributable to the IP Claim, provided that Customer: (a) promptly notifies NetApp in writing of the IP Claim; (b) provides information and assistance to NetApp to defend such IP Claim; and (c) provides NetApp with sole control of the defense or settlement negotiations. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

**7.3. Remedies.** NetApp may, at its option, substitute or modify the Product, or the relevant portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the Product. If NetApp determines that none of these alternatives is reasonably available, then Customer may return the

Product and NetApp will refund Customer's purchase price. **7.4. Exclusions.** Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any claim of infringement that arises from or relates to: (a) NetApp's compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by or on behalf of Customer; (b) Product modifications made by or on behalf of Customer without NetApp's authorization; (c) Customer's failure to upgrade or use a new version of the Product, to make a change or modification requested by NetApp, or to cease using the Product if requested by NetApp; (d) the Product, or any portion thereof, in combination with any other product or service; (e) Third Party Branded Products; (f) services offered by Customer or revenue earned by Customer for such services; or (g) any content or information stored on or used by Customer or a third party in connection with a Product.

**7.5. Entire Liability.** Notwithstanding anything to the contrary in these Terms, this Section 7 states

NetApp's entire liability and Customer's sole and exclusive remedies for IP Claims. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## 8. CONFIDENTIALITY

**8.1. General.** "Confidential Information" means any information disclosed by a Party to the other Party in connection with these Terms that (a) is marked "confidential" or "proprietary at the time of disclosure; (b) if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure and summarized in a writing delivered to the receiving Party within thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. "Confidential Information" shall include any reproduction of such information, but shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving Party; (b) was in the receiving Party's lawful possession prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the receiving Party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving Party. Neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings. NetApp recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

**8.2. Treatment of Confidential Information.** Confidential Information will remain the property of the disclosing Party. Each Party will have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under these Terms. Each Party agrees (a) to hold the other Party's Confidential Information in confidence for a period of three (3) years from the date of disclosure; and (b) to disclose the other Party's Confidential Information only to those employees or agents who have a need to know in furtherance of these Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The receiving Party will protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care. The receiving Party may disclose the disclosing Party's Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided that the receiving Party gives the disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

**8.3. Return/Destruction.** Upon the disclosing Party's written request, all Confidential Information (including all copies thereof) of the disclosing Party will be returned or destroyed, unless the receiving Party is required to retain such information by law, and the receiving Party will provide written certification of compliance with this Section 8.3.

## 9. LIMITATION OF LIABILITY

**9.1. Liability Exclusions.** Regardless of the basis of claim (e.g., contract, tort, or statute), in no event will NetApp or its suppliers or subcontractors be liable to Customer for special, incidental, indirect or consequential damages; downtime costs; loss or corruption of data; loss of revenues, profits, goodwill, or anticipated savings; procurement of substitute goods and/or services; interruption of business; Customer's failure to comply with applicable "non-erasable" and "non-rewriteable" U.S. government regulations; the acts and omissions of any Cloud Provider; and Customer's failure to obtain any applicable third party licenses necessary to operate any third party software required in connection with the use of the Products and for NetApp to freely and without interruption perform the Services. This exclusion is independent of any remedy set forth in these Terms.

**9.2. Cumulative Liability.** To the extent that limitation of liability is permitted by law, NetApp's liability to Customer is limited to the amount of fees paid by Ordering Activity under the order giving rise to such liability. This limitation is cumulative and not per incident.

**9.3. Exceptions.** The limitations set forth in Sections 9.1 and 9.2 will not apply to liability for death or personal injury caused by negligence, gross negligence, willful misconduct, fraud, any other liability which cannot be excluded under applicable laws, or to IP Claims under Section 7.

## 10. COMPLIANCE WITH LAWS

**10.1. Compliance.** Each Party will comply with all applicable laws and regulations.

**10.2. Export.** Customer acknowledges that Products and Services supplied by NetApp under these Terms are subject to export controls under the laws and regulations of the United States, and other countries as applicable, and that Products and Services may include export controlled technologies, including without limitation encryption technology. Customer agrees to comply with such laws and regulations and, in particular, represents and warrants that it: (a) will not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly export or re-export Products and Services to (or use Products and Services in) countries subject to U.S. embargoes or trade sanctions programs; (b) is not a party, nor will it export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and (c) will not use Products and Services for any purposes prohibited by United States law, including but without limitation, the development, design, manufacture, or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction. Customer agrees to provide NetApp end use and end user information upon NetApp's request. Customer will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Customer agrees to obligate, by contract or other similar assurances, the parties to whom it re-exports or otherwise transfers Products and Services to comply with all obligations set forth herein.

**10.3. Anti-Bribery.** Each Party will comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

## 11. MISCELLANEOUS

**11.1. Termination.** These Terms are effective until terminated. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, NetApp shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination of these Terms, all rights to use the Software and Documentation cease and Customer will, at NetApp's request, promptly return or destroy all copies of the Software and Documentation, including any license enablement keys, in Customer's possession or under Customer's control, unless the license granted to Customer under Section 4.1 is a perpetual license and Customer remains in full compliance with these Terms. Sections 4.2. - 4.4., 6, 7, 8, 9, 10, and 11 will survive expiration or termination of these Terms.

**11.2. U.S. Federal Government Customers.** This Section 11.2 applies only to U.S. Federal Government Customers. The Software and Documentation is "commercial" computer software and documentation and is licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g. FAR, DFARS) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to applicable audit costs specified in Section 11.16. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these terms is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other Terms remain in effect as written.

**11.3. Cloud-Based Offering Notice.** Customers buying Cloud-Based Offerings must also comply with the Cloud Provider's applicable terms. Customer is responsible for its Cloud Provider selection, including but not limited to assessing Cloud Provider's services, compliance, and security. Customers using CloudBased Offerings to provide customer services may only do so if: (a) its users agree to terms limiting NetApp's liability in a manner no less protective than these Terms; (b) its users provide legally required consents for data storage, use, transfer or handling; and (c) its services comply with applicable laws and regulations, including but not limited to data protection regulations.

**11.4. Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**11.5. Data Privacy and Recovery.** Customer is solely responsible for personal data managed or stored using Products and agrees to comply with all applicable data privacy laws. Customer will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Customer assumes responsibility for undertaking the supervision, control and management of Hardware and Software including following industry-standard processes, procedures and requirements: (a) for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of a Force Majeure event or a Hardware or Software error or malfunction; and (b) for reconstruction of lost or altered files, data, and programs. NetApp will not be responsible or held liable for Customer's internal processes and procedures related to the protection, loss, confidentiality, or security of Customer's data or information.

**11.6. Hazardous Environments.** Products are not designed or intended for use in or in the design, construction, operation, or maintenance of a nuclear facility or similar hazardous environment. NetApp will not be liable for any damages resulting from such use.

**11.7. Product Evaluation.** Subject to these Terms, as amended by this Section, NetApp may loan Products to Customer at no cost for a ninety (90) day period from the initial delivery of the Products to Customer, or such other period as agreed by NetApp in writing, for evaluation purposes. Such Products may only be used in a non-production environment to assess the suitability of the Products for Customer's needs. Notwithstanding Section 6 above, these Products are provided and licensed to Customer on an "AS IS" basis and all warranties, whether express, implied, statutory or otherwise are excluded to the maximum extent permitted by applicable laws.

**11.8. Reserved.**

**11.9. Reserved.**

**11.10. Waiver.** Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either Party's exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.

**11.11. Severability.** In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.

**11.12. Assignment.** Customer and NetApp may not assign any rights or delegate any obligations under these Terms without the prior written consent of the other party. Any purported assignment by Customer or NetApp without the other party's prior written consent will be null and void.

**11.13. Subcontractors.** NetApp may use subcontractors to fulfill its obligations under these Terms.

**11.14. Independent Contractors.** The relationship of the Parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture, or employer and employee between the Parties.

Neither Party will act or represent itself, directly or by implication, as an agent of the other Party.

**11.15. Publicity.** No advertising, publicity releases, or similar public communications concerning these Terms, the Products, or the Services will be published or caused to be published by either Party without the prior written consent of the other Party to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Notwithstanding the foregoing, Customer agrees to be mentioned in the list of buyers of NetApp Products and/or Services and that its logo and trademark may be used for this purpose only.

**11.16. Audit.** Subject to applicable Government security requirements, Customer grants NetApp and its independent accountants the right to audit Customer or Customer's subcontractors once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If the audit discloses Software over-usage or any other material noncompliance, NetApp will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit.

**11.17. General.** These Terms will be construed pursuant to the Federal laws of the United States. The Parties agree to disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Customer's use of the Products. If required by NetApp's agreement with a third party licensor, NetApp's licensor will be a direct and intended beneficiary of these Terms and may enforce them directly against Customer. These Terms may not be changed except by an amendment accepted by an authorized representative of each Party. In the event of a dispute between the English and non-English version of these Terms (where translated for local requirements), the English version of the Terms will govern, to the extent permitted by applicable laws. These Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), represent the entire agreement and understanding between NetApp and Customer with respect to the Products. They supersede any previous communications, representations or agreements between NetApp and Customer and prevail over any conflicting or additional terms, acknowledgement, or similar communications between the Parties. Order Documentation(s) issued by Customer will be deemed to incorporate and be subject to these Terms, except where the Parties expressly agree in writing to variations thereto. The pre-printed terms or general terms and conditions on any Purchase Order, Order Documentation form, contractual document or other similar correspondence originating by either Party will have no effect unless the Parties expressly agree in writing. A negotiated



purchase order signed by both parties would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needs.

**11.18. Use Restriction.** Products and Services are for Customer's use and are not for resale or redistribution.

### CHANNEL END USER TERMS

These Channel End User Terms ("Terms") set forth the direct terms and conditions between NetApp, Inc., NetApp B.V., or any of their affiliates ("NetApp") and "Ordering Activity" under GSA Schedule contracts ("Customer") in connection with NetApp Products and Services purchased by Customer from an authorized NetApp reseller, unless Customer has entered into a separate agreement with NetApp in connection with such Products or Services. By both parties executing these Terms in writing, Customer agrees to be bound by these Terms. NetApp and Customer may each be referred to as a "Party" or collectively, as the "Parties."

## 1. DEFINITIONS

**1.1. Cloud-Based Offering.** Hardware, Software, and any Services offered, distributed, marketed, or otherwise sold by NetApp or a NetApp authorized distributor, reseller, or partner for use through a Cloud Provider.

**1.2. Cloud Provider.** A third party designated by NetApp which offers off premises cloud-based services such as hosting, computing, networking, or storage.

**1.3. Documentation.** NetApp supplied then current technical documentation describing the features and functions of the associated Products.

**1.4. Hardware.** NetApp-branded hardware, including its components and spare parts, but excluding any firmware and Third Party Branded Products.

**1.5. Products.** Hardware, Software, associated Documentation, and any Third Party Branded Products.

**1.6. Services.** NetApp's consulting services ("Professional Services") and/or its generally available technical support and maintenance services programs ("Support Services").

**1.7. Software.** NetApp software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency, and management software.

**1.8. Third Party Branded Products.** Any hardware or software that is manufactured, developed, licensed, or otherwise made available by any entity other than NetApp and is distributed or licensed by NetApp for use in conjunction with Hardware and Software.

## 2. SOFTWARE LICENSE

**2.1. License Grant.** Subject to these Terms and any limitations or restrictions set forth in the corresponding Documentation, NetApp grants to Customer a personal, non-exclusive, non-transferable, worldwide, limited, and revocable license, without the right to sublicense, to (a) install and use the Software for Customer's internal business purposes only, and (b) use the Documentation in support of Customer's use of the Software. The Software associated with Customer's license is either bundled with a specific storage controller identified by a unique serial number ("Controller-based licenses"), or is independent of a storage controller ("Standalone licenses"), and the license is one of the following license types: (a) "Life-of-controller": Controller-based licenses granted for the period of time during which Customer's controller is operable; (b) "Perpetual": Standalone licenses granted in perpetuity; (c) "Term": Controller-based licenses or Standalone licenses granted for a fixed period of time; (d) "Capacity": Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity or usage; and (e) "Subscription": Controller-based licenses or Standalone licenses which may be purchased on a periodic basis. Certain license types may require the installation and use of NetApp's AutoSupport<sup>TM</sup> remote support diagnostic system. Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based licenses as the other storage controllers in that cluster, high-availability pair, or group. Subject to NetApp's prior written agreement, and in the context of nondisruptive operations within a cluster, Customer may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same hardware and software support offerings in effect at all times.

**2.2. License Restrictions.** Customer will not, nor will Customer allow any third party to (a) reverse engineer, decompile, or disassemble the Software or otherwise reduce it to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses; (b) remove or conceal any product identification, proprietary, intellectual property, or other notices in the Software and Documentation; (c) use the Software and Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment; (d) assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller; (e) install Controller-based licenses on or use them with third party hardware or any second-hand or grey market Hardware that Customer has not purchased from NetApp or a NetApp partner; (f) modify, adapt or create a derivative work of the Software or Documentation; and (g) publish or provide any Software benchmark or comparison test results.

### 2.3. Reserved.

**2.4. Software Copyright Information and Notices.** Software copyright information and other related details are included as part of notices in the documentation published by NetApp (e.g. NOTICES, TXT or NOTICES, PDF).

## 3. SERVICES

**3.1. Services.** Services are provided by or on behalf of NetApp. Additional terms and conditions applicable to Services are set forth on NetApp's How to Buy information provided above.

## 4. DIRECT WARRANTY

**4.1. Hardware Warranty.** NetApp warrants that the Hardware will materially conform to the Documentation for a period of three (3) years from the date of delivery, unless otherwise specified in the applicable Documentation ("Hardware Warranty Period"). In the event of any material nonconformity in the Hardware during the Hardware Warranty Period that is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Hardware, or refund amounts received by NetApp for the nonconforming Hardware. Replacement parts will be warranted for the remainder of the Hardware Warranty Period in effect for the original Hardware purchased, unless otherwise mandated by applicable law. For purposes of this Section 4.1 delivery is made pursuant to the applicable trade terms specified on the quotation or as agreed to by NetApp.

**4.2. Software Warranty.** NetApp warrants that (a) the initially-shipped version of the Software will materially conform to the Documentation; and (b) the Software media will be free from physical defects, for a period of ninety (90) days from the date of delivery or such other minimum period required under applicable law ("Software Warranty Period"). NetApp does not warrant that Customer's use of the Software will be error-free or uninterrupted. In the event of any material nonconformity in the Software during the Software Warranty Period that is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Software, or refund the amounts received by NetApp for the nonconforming Software. This warranty does not cover software, other items, or any services provided by persons other than NetApp or a NetApp authorized distributor, reseller or partner. For the purposes of this Section 4.2, if Software is pre-installed on the Hardware, delivery is made pursuant to the applicable trade terms specified on

the quotation or as agreed to by NetApp. If the Software is not pre-installed on the Hardware, then for the purposes of this Section 4.2, delivery is made when NetApp makes the enabling key available to a Customer or, if an enabling key is not required, otherwise makes such Software available for download or use by the Customer.

**4.3. Limitations.** NetApp will not be liable under this warranty for claims arising from Customer's, Customer's subcontractor's, or any unauthorized third person's misuse, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use. The Hardware warranty will become void if a Hardware component is installed as an add-on to or replacement for the original Hardware, without NetApp's prior written approval. The Software warranty will become void if the Software is modified or otherwise used in violation of the Software license terms set forth in Section 2, except as authorized in writing by NetApp.

**4.4. Exclusive Warranties.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES ARE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

## 5. INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

**5.1 General.** The Software and Documentation is licensed, not sold, to Customer. It is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to Customer. No right, title, or interest in any trademark, service mark, logo, or trade name of NetApp or its licensors is granted to Customer.

**5.2. IP Claims.** Subject to the terms and conditions of this Section, NetApp will defend or settle any claim brought by a third party against Customer that Hardware, Software, and Documentation sold and delivered by or for NetApp to Customer under these Terms infringe any patent, trademark, or copyright ("IP Claim"). NetApp will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, "Damages") against Customer to the extent such Damages are specifically attributable to the IP Claim, provided that Customer: (a) promptly notifies NetApp in writing of the IP Claim; (b) provides information and assistance to NetApp to defend such IP Claim; and (c) provides NetApp with control of the defense or settlement negotiations.

**5.3. Remedies.** NetApp may, at its option, substitute or modify the Product, or the relevant portion thereof, so that it becomes noninfringing; procure any necessary license; or replace the Product. If NetApp determines that none of these alternatives is reasonably available, then Customer may return the Product and NetApp will refund Customer's purchase price.

**5.4. Exclusions.** Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any claim of infringement that arises from or relates to: (a) NetApp's compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by or on behalf of Customer; (b) Product modifications made by or on behalf of Customer without NetApp's prior written authorization; (c) Customer's failure to upgrade or use a new version of the Product, to make a change or modification requested by NetApp, or to cease using the Product if requested by NetApp; (d) the Product, or any portion thereof, in combination with any other product or service; (e) Third Party Branded Products; (f) services offered by Customer or revenue earned by Customer for such services; or (g) any content or information stored on or used by Customer or a third party in connection with a Product.

**5.5. Entire Liability.** Notwithstanding any Term to the contrary in these Terms, this Section 5 states NetApp's entire liability and Customer's sole and exclusive remedies for IP Claims.

## 6. CONFIDENTIALITY

**6.1. General.** "Confidential Information" means any information disclosed by a Party to the other Party in connection with these Terms that (a) is marked "confidential" or "proprietary at the time of disclosure; (b) if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure and summarized in a writing delivered to the receiving Party within thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. "Confidential Information" shall include any reproduction of such information, but shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving Party; (b) was in the receiving Party's lawful possession prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the receiving Party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving Party.

**6.2. Treatment of Confidential Information.** Confidential Information will remain the property of the disclosing Party. Each Party will have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under these Terms. Each Party agrees (a) to hold the other Party's Confidential Information in confidence for a period of three (3) years from the date of disclosure; and (b) to disclose the other Party's Confidential Information only to those employees or agents who have a need to know in furtherance of these Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The receiving Party will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care. The receiving Party may disclose the disclosing Party's Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided that the receiving Party gives the disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

**6.3. Return/Destruction.** Upon the disclosing Party's written request, all Confidential Information (including all copies thereof) of the disclosing Party will be returned or destroyed, unless the receiving Party is required to retain such information by law, and the receiving Party will provide written certification of compliance with this Section 6.3.

## 7. LIMITATION OF LIABILITY

**7.1. Liability Exclusions.** Regardless of the basis of claims (e.g., contract, tort, or statute) in no event will NetApp or its suppliers or subcontractors be liable to Customer for special, incidental, indirect or consequential damages; downtime costs; loss or corruption of data; loss of revenues, profits, goodwill or anticipated savings; procurement of substitute goods and/or services; interruption of business; Customer's failure to comply with applicable "non-erasable" and "non-rewriteable" U.S. government regulations; the acts and omissions of any Cloud Provider; and Customer's failure to obtain any applicable third party licenses necessary to operate any third party software required in connection with the use of the Products and for NetApp to freely and without interruption perform the Services. This exclusion is independent of any remedy set forth in these Terms.

**7.2. Cumulative Liability.** To the extent that limitation of liability is permitted by law, NetApp's liability is limited to the amount of fees paid by Ordering Activity under the order giving rise to such liability. This limitation is cumulative and not per incident.

**7.3. Exceptions.** The limitations set forth in Sections 7.1 and 7.2 above will not apply to liability for death or personal injury caused by negligence, gross negligence, willful misconduct, fraud, any other liability which cannot be excluded under applicable laws, or to IP Claims under Section 5.

## 8. COMPLIANCE WITH LAWS

**8.1. Compliance.** Each Party will comply with all applicable laws and regulations.

**8.2. Export.** Customer acknowledges that Products and Services supplied by NetApp under these Terms are subject to export controls under the laws and regulations of the United States, and other countries as applicable, and that Products and Services may include export controlled technologies, including without limitation encryption technology. Customer agrees to comply with such laws and regulations and, in particular, represents and warrants that it: (a) will not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly export or re-export Products and Services to (or use Products and Services in) countries subject to U.S. embargoes or trade sanctions programs; (b) is not a party, nor will it export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and (c) will not use Products and Services for any purposes prohibited by United States law, including but without limitation, the development, design, manufacture, or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction. Customer agrees to provide NetApp with end use and end user information upon NetApp's request. Customer will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Customer agrees to obligate, by contract or other similar assurances, the parties to whom it re-exports or otherwise transfers Products and Services to comply with all obligations set forth herein.

**8.3. Anti-Bribery.** Each Party shall comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

## 9. MISCELLANEOUS

**9.1. Termination.** These Terms are effective until terminated. Customer may terminate these Terms at any time upon written notice to NetApp. NetApp may terminate these Terms immediately upon written notice to Customer if Customer commits a material breach of these Terms, including failure to remit payments when due (whether payable to NetApp or its authorized third party financing partners in connection with an Approved Financing Agreement, described in Section 9.7 below) and, in the event that the breach is remediable, Customer fails to remedy it within thirty (30) days of NetApp's written notice requiring Customer to do so. Upon termination of these Terms, all rights to use the Software and Documentation cease and Customer will, at NetApp's request, promptly return or destroy all copies of the Software and Documentation, including any license enablement keys, in Customer's possession or under Customer's control, unless the license granted to Customer under Section 2.1 is a perpetual license and Customer remains in full compliance with these Terms.

**9.2. U.S. Federal Government Customers.** This Section 9.2 applies only to U.S. Federal Government Customers. The Software and Documentation is "commercial" computer software and documentation and is licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g. FAR, DFARs) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to applicable audit costs specified in Section 9.15. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these terms is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other Terms remain in effect as written.

**9.3. Cloud-Based Offering Notice.** Customers buying Cloud-Based Offerings must also comply with the Cloud Provider's applicable terms. Customer is responsible for its Cloud Provider selection, including but not limited to assessing Cloud Provider's services, compliance, and security. Customers using Cloud-Based Offerings to provide customer services may only do so if: (a) its users agree to terms limiting NetApp's liability in a manner no less protective than these Terms; (b) its users provide legally required consents for data storage, use, transfer or handling; and (c) its services comply with applicable laws and regulations, including but not limited to data protection regulations.

**9.4. Force Majeure.** Neither Party will be liable to the other for any alleged loss or damages resulting from acts of God, acts of civil or military authority, governmental priorities, fire, floods, earthquakes, epidemics, quarantine, energy crises, strikes, labor trouble, terrorism, war, riots, accidents, shortages, delays in transportation or any other causes beyond the reasonable control of a Party (collectively, "Force Majeure").

**9.5. Data Privacy and Recovery.** Customer is solely responsible for personal data managed or stored using Products and agrees to comply with all applicable data privacy laws. Customer will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Customer assumes responsibility for undertaking the supervision, control, and management of NetApp Hardware and Software including following industry-standard processes, procedures, and requirements: (a) for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of a Force Majeure event or a Hardware or Software error or malfunction; and (b) for reconstruction of lost or altered files, data, and programs. NetApp will not be responsible or held liable for Customer's internal processes and procedures related to the protection, loss, confidentiality, or security of Customer's data or information.

**9.6. Hazardous Environments.** Products are not designed or intended for use in or in the design, construction, operation, or maintenance of a nuclear facility or similar hazardous environment. NetApp will not be liable for any damages resulting from such use.

**9.7. Product Evaluation.** Subject to these Terms, as amended by this Section, NetApp may loan Products to Customer at no cost for a ninety (90) day period from the initial delivery of the Products to Customer, or such other period as agreed by NetApp in writing, for evaluation purposes. Such Products may only be used in a non-production environment to assess the suitability of the Products for Customer's needs. Notwithstanding Section 4 above, the evaluation Products are provided and licensed to Customer on an "AS IS" basis and all warranties, whether express, implied, statutory or otherwise are excluded to the maximum extent permitted by applicable laws.

**9.8. NetApp Approved Financing.** These Terms also apply to "Financed Software," which means Software and Documentation licensed to Customer for a limited period of use pursuant to the terms of a financing agreement between Customer and NetApp or its authorized third party financing partner (an "Approved Financing Agreement" or "AFA"), subject to the following: (a) the particular Financed Software, period of use, installation site, and other transaction-specific conditions will be as agreed in the applicable AFA; and (b) notwithstanding anything to the contrary in these Terms, all licenses for Financed Software terminate at the expiration of the term of the AFA unless otherwise expressly agreed in the AFA, or when sooner terminated by NetApp (whether in accordance with these Terms or the AFA). Customer agrees that the license granted under Section 2 above and NetApp's termination rights under Section 9.1 above may be affected by an authorized third party financing partner's rights under the applicable AFA, even if such partner has paid to NetApp all or any portion of the license fees for the Financed Software.

**9.9. Modification, Substitution, Discontinued Product.** NetApp will have sole discretion, at any time, to change, substitute, or discontinue Products. NetApp will use commercially reasonable efforts to provide sixty (60) calendar days' prior notice of any such changes.

**9.10. Waiver.** Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either Party's exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.

**9.11. Severability.** In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.

**9.12. Assignment.** Customer may not assign any rights or delegate any obligations under these Terms without the prior written consent of NetApp. Any purported assignment by Customer without NetApp's prior written consent will be null and void. NetApp may use subcontractors to fulfill its obligations under these Terms.

**9.13. Independent Contractors.** The relationship of the Parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture, or employer and employee between the Parties. Neither Party will act or represent itself, directly or by implication, as an agent of the other Party.

**9.14. Publicity.** No advertising, publicity releases, or similar public communications concerning these Terms, the Products, or the Services will be published or caused to be published by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, Customer agrees to be mentioned in the list of buyers of NetApp Products and/or Services and that its logo and trademark may be used for this purpose only.

**9.15. Audit.** Subject to Government security requirements, Customer grants NetApp and its independent accountants the right to audit Customer or Customer's subcontractors once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If the audit discloses Software over-usage or any other material noncompliance, NetApp will invoice Customer any fees.

**9.16. General.** These Terms will be construed pursuant to the Federal laws of the United States, excluding its conflicts of law provisions. The Parties agree to disclaim the application of the United Nations Convention on Contracts for the International Sale of

Goods. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Customer's use of the Products. If required by NetApp's agreement with a third party licensor, NetApp's licensor will be a direct and intended beneficiary of these Terms and may enforce them directly against Customer. These Terms may not be changed except by an amendment accepted by an authorized representative of each Party. In the event of a dispute between the English and non-English version of these Terms (where translated for local requirements), the English version of these Terms will govern, to the extent permitted by applicable laws. These Terms represent the entire agreement and understanding between NetApp and Customer with respect to the Products. They supersede any previous communications, representations or agreements between NetApp and Customer and prevail over any conflicting or additional terms in any quote, purchase order, acknowledgement, or similar communications between the Parties.

**9.17. Use Restriction.** Products and Services are for Customer's use and are not for resale or redistribution.

**APPENDIX 1 TO KEYSTONE FLEX SUBSCRIPTION ADDENDUM**  
**U.S. GOVERNMENT END USER RIDER**

The parties agree that the following provisions shall apply to U.S. Government End User that purchase Subscription Services via Customer:

1. Termination for convenience:

End User may terminate for convenience at any time in accordance with FAR Clause 552.212-4(l) and FAR notice procedures. Any termination for convenience following this period shall be subject to payment in full of (A) any past due amounts up to and including the termination date.

2. Non-Appropriation:

If sufficient funds are not appropriated to make payments for Fees required under a Keystone Order, such Keystone Order shall terminate and End User shall not be obligated to make payments under such Keystone Order beyond the then current fiscal year for which funds have been appropriated. Upon the occurrence of such non-appropriation (an "**Event of Non-Appropriation**") End User shall, no later than the end of the fiscal year for which payments have been appropriated, deliver possession of the Subscription Products under such Keystone Order to NetApp. If End User fails to deliver possession of the Subscription Products to NetApp upon termination of such Keystone Order by reason of an Event of Non-Appropriation, the termination shall nevertheless be effective.

3. The Subscription Term of the Exhibit B form of Keystone Order shall be for twelve (12) months.

4. The Extensions/Renewals Section of the Exhibit B form of Keystone Order shall be removed in its entirety. The Subscription Term can only be extended in writing by the Parties.

All other terms of the Keystone Flex Subscription Addendum between NetApp and Customer remain in full force and effect and shall be passed to U.S. Government End Users by Customer.



### Keystone Flex Subscription Addendum

This Keystone Flex Subscription Addendum (this “**Agreement**”) is entered into by and between NetApp and Customer Ordering Activity a under GSA Schedule contracts effective as of the later of the two signature dates below, or the date set forth in the Purchase Order, as applicable (“**Effective Date**”) and provides additional terms and conditions regarding use of NetApp’s Subscription Services (as defined below). The “**Agreement**” consists of this Agreement and the Purchase Terms.

<b>“Purchase Terms”</b>	[The GSA Schedule Contract, GSA Schedule Pricelist and Purchase Order.	
<b>“NetApp”</b>	<b>“Customer”</b>	
[Insert Full legal name]	See Purchase Order	
[Insert Jurisdiction of organization]		
[Insert Postal address for legal notices]		
[Insert Email address for legal notices]		

**1. Definitions.** Capitalized terms used but not defined in this Agreement have the meanings set forth in the Purchase Terms.

1.1 **“Committed Capacity”** means the amount of data storage capacity that is specified in a Keystone Order. Committed Capacity is defined in the type of Performance Level and the units increments identified in Exhibit A.

1.2 **“Consumed Capacity”** has the meaning set forth in Exhibit A.

1.3 **“Customer Information”** means any information provided by or on behalf of Customer, whether or not it includes Personal Information, that is uploaded onto or used with the Subscription Products.

1.4 **“Documentation”** means NetApp supplied technical documentation describing the features and functions of the Subscription Services.

1.5 **“Fees”** means the applicable fees set forth in a Keystone Order as further described in Exhibit A.

1.6 **“Keystone Order”** means the customer order for Subscription Services entered into by the Parties under this Agreement. A “Keystone Order” constitutes a “Purchase Order” under the Purchase Terms.

1.7 **“Performance Level”** has the meaning set forth in Exhibit A.

1.8 **“Portal”** means the web-based tool provided by NetApp through which usage of the Subscription Services can be monitored as further described in Exhibit A.

1.9 **“Rate”** means the applicable rates set forth in a Keystone Order that are used to calculate the Fees.

1.10 **“Service Levels”** mean the applicable service levels described in Exhibit A.

1.11 **“Subscription Hardware”** means hardware, including its components and spare parts, that is used by NetApp as part of the Subscription Services.

1.12 **“Subscription Product(s)”** means any part or all of the Subscription Hardware and Subscription Software used by NetApp as part of the Subscription Services, whether as part of the original configuration, or subsequently added in the ordinary course of NetApp’s performance of the Subscription Services.

1.13 **“Subscription Services”** means certain NetApp storage and/or compute capacity, together with any additional services, that are purchased under a Keystone Order and made available to Customer on a subscription basis as described in more detail in Exhibit A. The “Subscription Services” constitute “Services” under the Purchase Terms.

1.14 **“Subscription Software”** means the software that is used by NetApp as part of the Subscription Services (whether delivered on or with Subscription Hardware or on a standalone basis).

1.15 **“Subscription Term”** means the use term specified in a Keystone Order, including any renewal or extension periods.

**2. Scope of Keystone Flex Subscription.** Subject to Customer’s compliance with the terms and conditions of this Agreement, NetApp will provide Customer with the Subscription Services identified in each Keystone Order entered into by the Parties. At a minimum, each Keystone Order will set forth the Subscription Term, the Committed Capacity (including relevant minimum payments), the applicable Performance Level, and the applicable Rates. A sample Keystone Order is attached as Exhibit B. Keystone Orders may be modified only with NetApp’s express written consent. Customer acknowledges and agrees that a Keystone Order is binding and sufficient for the GSA Schedule Contract holder on behalf of NetApp to calculate and invoice Customer for the related Fees. Purchase orders submitted by Customer may (but need not) be accepted by NetApp as an administrative accommodation to Customer, but will not be a necessary condition for invoicing.

**3. Delivery and Consumption of Subscription Services.**

3.1 **Subscription Products.** NetApp will determine the Subscription Products used to deliver Subscription Services. In making such determination NetApp may: (a) choose, substitute, and modify Subscription Product configurations; (b) configure, control, and direct the use of Subscription Products; (c) scale Subscription Services by adding or removing any part of the Subscription Products provided by NetApp to adjust to variations in utilization; and (d) refresh Subscription Products with new technology when reasonably deemed appropriate. Customer will cooperate with NetApp to enable the installation, documentation, and utilization, of Subscription Products, including providing such access and authorization as is reasonably necessary to complete the installation. NetApp reserves the right to deinstall Subscription Products that NetApp deems unnecessary to fulfill the Service Level requirements at any time. Notwithstanding the foregoing,

NetApp will have no obligation to meet the applicable Service Levels, nor add Subscription Products needed to meet such Service Levels, if Customer increases usage of the Subscription Services during the final 90 days of the Subscription Term, unless the Parties have agreed in writing to renew or otherwise extend the Subscription Term prior to or during such final 90 day period.

**3.2 Location and Use of Subscription Services.** Customer may only use Subscription Services (a) on the Subscription Products used by NetApp in connection with the applicable Keystone Order, and (b) at the specific physical location identified on a Keystone Order where the Subscription Products are installed and maintained, whether such location is owned by or under the control of Customer or any third party (each such location, a “Customer Site”). Unless otherwise expressly permitted in Exhibit A or the applicable Keystone Order, Customer will not, nor will Customer permit any third party to, combine, commingle, or otherwise use the Subscription Services or the Subscription Products with any hardware storage products or services (including any NetApp hardware storage products or services supplied by NetApp under a separate Keystone Order or agreement).

**3.3 Changes to the Subscription Services.** The processes for adjusting the Committed Capacity and the Subscription Services are described in Exhibit A.

**4. Fees and Payment Terms for Subscription Services.** The GSA Schedule Contract holder on behalf of NetApp will invoice Customer for Fees that Customer owes for Subscription Services purchased under each Keystone Order and incurred during the applicable billing period, and Customer will pay such Fees, as described in Exhibit A.

#### **5. Rights of Use for and Ownership of Subscription Products**

**5.1 Right to Subscription Products.** The Subscription Services provide Customer with the right to use Subscription Products, and do not transfer any ownership or title to Customer. The Subscription Services are provided to Customer for Customer’s use for internal business purposes and are not for resale or redistribution.

**5.2 Right to Subscription Software.** NetApp grants Customer a non-exclusive, non-transferable and revocable right to use the Subscription Software associated with the Subscription Services during the applicable Subscription Term. The Subscription Software may include software that is openly and freely licensed under the terms of a public license designated by a third party. Nothing in this Agreement grants Customer rights that supersede those contained in an applicable license for the open source software.

#### **5.3 Customer as Partner (if applicable).**

(a) Subject to the relevant NetApp partner program guide (“Program Guide”), the parties agree that Customer’s “business purposes” may include use of the Subscription Services for the delivery by Customer of the Subscription Services to Customer’s own end users (“End Users”). Except as otherwise provided herein, references to “Customer” in this Agreement that by their sense and context are intended to apply to the ultimate beneficiary of the Subscription Services shall include the End User designated in the Keystone Order.

(b) As between NetApp and Customer, Customer shall at all times remain primarily liable for its obligations under any Keystone Order entered into pursuant to this Agreement. However, where an End User is

approved by NetApp, the following conditions apply:

(i) Customer may delegate to End User certain of Customer’s responsibilities under this Agreement, the Service Description and the relevant Keystone Order, including without limitation those described in Sections 5, 6 and 9, and the Service Description;

(ii) For purposes of Section 9, Customer Information will include End User information; and

(iii) Reserved.

(c) Customer in its capacity as Partner may deliver certain portions of Subscription Services (or other services) to eligible End Users; provided that:

(i) Customer has attained the appropriate Services Certified or Operations Specialized Partner Program status as governed by the relevant Program Guide; and

(ii) Reserved.

**5.4 Additional Restrictions.** In addition to restrictions set forth in the Purchase Terms, Customer will not, nor will Customer permit any third party to: (a) relocate any of the Subscription Products from the Customer Site(s) without the prior written consent of NetApp, which consent will not be unreasonably withheld; (b) reconfigure, modify, add to or impair any portion of Subscription Products, whether with third party products or otherwise, except as expressly permitted in the Keystone Order or as mutually agreed in writing by the Parties; (c) publish or provide any benchmark or comparison test results that pertain to the Subscription Products or the Subscription Services; (d) reverse engineer, decompile or disassemble the Subscription Products, or otherwise reduce Subscription Software to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open source software licenses; (e) modify, adapt, or create a derivative work of the Subscription Products or the Subscription Services; (f) remove, conceal, or modify any identification, proprietary, intellectual property, or other notices in the Subscription Products and related documentation; (g) use the Subscription Products or Subscription Services in breach or excess of any limitations prescribed by NetApp in this Agreement or the associated Keystone Order or related documentation; (h) use the Subscription Products or Subscription Services and related documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment unless otherwise agreed to in writing by NetApp;

(i) assign or otherwise transfer, in whole or in part, Customer’s licenses to the Subscription Services, the Subscription Products, or the related documentation to another party, unless otherwise agreed to in writing by NetApp; (j) use the Subscription Services or Subscription Products

(i) in violation of laws or regulations, (ii) to violate the rights of others, (iii) to try to gain unauthorized access to or interrupt any service, device, data, account or network, or (iv) in high-risk, hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems, or any other application in which the failure of the Subscription Services or Subscription Products could lead to severe physical or environmental damages. Customer understands and acknowledges that the Subscription Services and the Subscription Products are not designed or intended for use in or in the design, construction, operation, or maintenance of a nuclear facility or similar hazardous



environment. NetApp will not be liable for any damages resulting from such uses and Customer assumes the risk of any such uses.

5.5 **Risk of Loss; Title.** NetApp retains sole and exclusive title to the Subscription Products and all of its components. Customer is solely responsible for any loss or damage to the Subscription Products from the date of delivery to the date of final disposition of the Subscription Products as provided in Section 9.2(a) and the applicable Keystone Order. No such loss or damage will relieve Customer of any of its obligations under this Agreement or the applicable Keystone Order.

## 6. Customer Responsibilities.

6.1 **Ongoing Cooperation.** Customer will, at all times during the period from the date of delivery of any Subscription Products to the date of final disposition of such Subscription Products under Section 9.2(a) and the applicable Keystone Order: (a) promptly notify NetApp if the Subscription Products or any part of them are lost, stolen, destroyed or damaged beyond repair, or are the subject of condemnation, confiscation, seizure or requisition of title to or use of the same; (b) ensure that the Subscription Products do not suffer any loss or damage caused, whether directly or indirectly, by Customer or any party acting by or through Customer; (c) permit NetApp to inspect the Subscription Products at any time during Customer's regular business hours, with reasonable prior notice, subject to Customer's reasonable security procedures; (d) promptly notify NetApp in writing of any proposed changes to any of the Subscription Products, or of changes caused by planned or unplanned events impacting Customer's environment (such as space, power, network, security, etc.) that may impact the Subscription Products (e.g., maintenance, upgrades); and (e) provide NetApp remote access to perform implementation and monitoring services beyond basic installation.

6.2 **Portal.** Customer will at all times during the Subscription Term keep the Portal remote client connection fully operational, without disabling, blocking, modifying or otherwise interfering with its functionality or its ability to communicate with NetApp. If the Portal does not function due to Customer interference or conflict with any thirdparty products that Customer uses, then Customer will promptly remove the interference or the conflicting products. If Customer fails to do so within seven days of notice from NetApp of such failure, or if the Portal is unavailable because of the acts or omissions of Customer for more than 30 days, then NetApp may (i) suspend the provision of Subscription Services until the Portal operability is restored, or (ii) terminate the Subscription Services. In either event, Customer will owe and be invoiced for the Fees for the previous billing period, calculated by multiplying the applicable Rate by 120% ("**Holdover Rate**"), until active monitoring is restored or the Subscription Products are returned in accordance with Section 9.2(a).

## 7. Service Levels and Disclaimers.

7.1 **Service Levels.** NetApp will provide the Subscription Services in accordance with the Service Levels.

7.2 **Disclaimer of Warranties.** OTHER THAN IN SECTION 7.1 ABOVE, NETAPP MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SUBSCRIPTION PRODUCTS AND SUBSCRIPTION SERVICES PROVIDED UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING. TO THE

EXTENT PERMITTED BY APPLICABLE LAWS, THE SERVICE LEVEL REMEDIES SET FORTH IN EXHIBIT A ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE ON BEHALF OF NETAPP TO PROVIDE THE SUBSCRIPTION PRODUCTS AND THE SUBSCRIPTION SERVICES IN ACCORDANCE WITH THE SERVICE LEVEL COMMITMENTS SET FORTH THEREIN.

## 8. Intellectual Property Rights and Protection.

8.1 **General.** NetApp and its licensors reserve and retain all rights, title, and interest (including any intellectual property rights therein) in and to the Subscription Services and Subscription Products not expressly granted to Customer.

8.2 **IP Claims.** For purposes of IP Claims (as defined in the Purchase Terms), Subscription Services are included in the definition of Covered Products.

## 9. Termination.

9.1 **Termination for Cause.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, NetApp shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

9.2 **Effects of Termination.** In addition to the terms set forth in the Purchase Terms:

(a) Upon termination or expiration of this Agreement, the Agreement, or any applicable Keystone Order, Customer will:

(i) promptly discontinue use of, and delete, all data uploaded on the Subscription Products by Customer within the affected Subscription Services; and (ii) return in accordance with the guidelines provided or otherwise make available to NetApp any Subscription Hardware provided by NetApp as part of the affected Subscription Services in the same condition as when originally delivered, ordinary wear and tear excepted. Customer must either (1) be responsible for erasing, without destroying or damaging the storage media, all Customer Information from the Subscription Hardware before it is returned to NetApp or (2) if Customer has purchased the Non-Returnable Disk ("NRD") option, it will not return defective or failed disks solid state drives and other non-volatile memory components as defined on the NetApp Support Site that are part of the Subscription Hardware. Customer will retain such non-volatile components and remain solely responsible for their disposal or destruction and will promptly deliver a certificate of destruction certifying that Customer has destroyed or disabled such components. Customer agrees that if components covered by the NRD option are returned to NetApp, NetApp shall have no obligation or liability whatsoever associated with any data remaining on such components. NetApp will treat such components like other returned parts and convey them into the NetApp supply chain for repair and/or destruction. Failure to return the Subscription Hardware within 15 calendar days following the expiration of the Subscription Term in accordance with the guidelines provided to Customer will entitle NetApp, in its sole discretion, to invoice Customer for (A) the cost of the replacement for such Subscription Hardware, calculated in accordance with NetApp's then current price list, or (B) the Fees accruing (at the Holdover Rate) until final return. For purposes of (B) in the previous sentence, the Fees

will not be less than the applicable minimum payment amounts payable immediately prior to the expiration of the Subscription Term.  
Customer

must also, at NetApp's request, promptly return or destroy all copies of the Subscription Software and related Documentation, including any license enablement keys, in Customer's possession or under Customer's control, with all Customer Information or proprietary and confidential information removed. Customer acknowledges that any Customer Information remaining on any Subscription Hardware returned to NetApp may be disposed of or destroyed by or on behalf of NetApp in accordance with Federal data protection laws. All Customer use of the Subscription Services after the scheduled expiration of the Subscription Term will be subject to Fees calculated and billed at the Holdover Rate until the return of all related Subscription Products to NetApp.

(b) In the event of termination or expiration of a Keystone Order, NetApp may also, in its sole discretion, (i) cease the supply of the Subscription Services under any or all affected Keystone Orders, (ii) suspend or terminate delivery of the Subscription Services, and terminate all rights to use the Subscription Software and related documentation, (iii) recover NetApp's reasonable costs of associated with any damage or loss of Subscription Hardware that occurred while in Customer's possession, and (iv) require Customer to disable use of and/or access to the Subscription Products, and return the Subscription Products in accordance with this Section 9.2.

(c) If NetApp terminates this Addendum or an applicable Keystone Order for cause under Section 9.1, Customer will promptly pay to NetApp: (i) any past due amounts; (ii) reserved; (iii) reserved; and (iv) any costs associated with any damage or loss of Subscription Hardware that occurred while in Customer's possession.

9.3 Survival. In addition to such terms that survive by their nature, the following Sections will survive termination or expiration of this Agreement: 1, 3.2, 4, 5.4, 6.1, 7.2, 8, 9.1, 9.2, and 10.

## 10. Miscellaneous.

10.1 Assignment. NetApp may not assign the Keystone Order without the Customer's prior written consent

10.2 General. This Agreement, together with the Keystone Order and the Purchase Terms (a) represent the entire agreement and understanding between the Parties with respect to the Subscription Products and Subscription Services; (b) supersede any previous communications, representations or agreements between the Parties; and (c) prevail over any conflicting or additional terms in any quote, purchase order, acknowledgement, or similar communications between the Parties. Except as otherwise provided for in this Agreement, to the extent there is a conflict between the Purchase Terms and this Agreement, this Agreement will control. Except as otherwise provided

for in this Agreement, to the extent there is a conflict between the Keystone Order and this Agreement, this Agreement will control. Keystone Order(s) will be deemed to incorporate and be subject to this Agreement, except where the Parties expressly otherwise agree in writing. Customer will deliver to NetApp such information, instruments and documents (including waivers from third parties with ownership or possessory interests in real property upon which the Subscription Products may be located) and will do all such things from time to time as NetApp may reasonably request to carry into effect the provisions and intent of this Agreement, and to comply with all applicable statutes and laws.

10.3 The parties agree that this Agreement is to apply only to the following jurisdictions (the "Territory" or "Territories," as applicable). The parties acknowledge that the provision of Subscription Services to Customer or to any Affiliate of Customer in various national jurisdictions outside the foregoing Territory or Territories may be subject to starkly varying costs, tax and/or customs and tax law risks as well as political risks. This Agreement will only apply to the provision of Subscription Services in such other jurisdictions if the parties have executed a jurisdiction-specific amendment, such amendment to appear either within the applicable Keystone Order or in a separate writing in the form of a participation agreement or as otherwise mutually agreed.

10.4 NetApp and Customer agree that, from time to time, an Affiliate of Customer may execute a Keystone Order under this Agreement as "Customer," and such Keystone Order will incorporate all of the terms and conditions contained herein and bind such Affiliate hereto. It is agreed that, unless expressly agreed in writing, the party executing this Agreement as Customer shall: (a) without notice or demand from NetApp, be jointly and severally liable with such Affiliate for all of the terms and conditions of any Keystone Order executed by it, including, without limitation, all terms and conditions negotiated by such Affiliate with respect thereto and the prompt payment of Fees thereunder, and (b) hold NetApp and any assignee harmless from and against any and all liability, losses, damages and expenses which NetApp may incur by reason of any failure to so perform.

"Affiliate" means any entity which, directly or indirectly, controls, is controlled by, or is under common control with, a party, where "control" means the power to direct or cause the direction of the management and policy of any entity.



Each individual signing below represents that she/he has the authority to bind Customer or NetApp, as the case may be, to the terms of the Agreement.

**NetApp**

**Customer**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A Services Description

### 1. Scope of Subscription Services.

1.1 **General.** This Service Description describes the Subscription Services available to Customer pursuant to the Agreement. The monitoring, operation and management of the Subscription Products can either be administered by Customer (“**Customer Operated**”) or by NetApp (“**NetApp Operated**”) as expressly agreed in a Keystone Order.

1.2 **Definitions.** The following additional defined terms apply to this Exhibit A.

(a) “**Burst**” means, for any Performance Level, the amount by which the Consumed Capacity exceeds the Committed Capacity during a billing period.

(b) “**Burst Limit**” means 120% of Customer’s then-current Committed Capacity. The Burst Limit represents the maximum amount of Usable Capacity available for use by Customer within the Subscription Products for which NetApp will continue to meet associated Service Levels applicable to the then-current Committed Capacity.

(c) “**Capacity Report**” means the report generated by NetApp from the Portal summarizing the Consumed Capacity for the prior billing period.

(d) “**Consumed Capacity**” means, for the Subscription Products made available for use under the terms of a Keystone Order, the sum of the logical sizes of all volumes (ONTAP®) or buckets (StorageGrid®). Consumed Capacity is measured as described in Section 3.2 of this Service Description.

(e) “**Performance Level**” refers to performance levels defined in terms of target input/output operations per second (“**IOPS**”) per tebibyte (“**TiB**”) ratio, latency and availability, as specified in Section 5 of this Service Description. Applicable Performance Levels and the related Rates to be applied to the Consumed Capacity are as identified in the applicable Keystone Order. Customer’s Subscription Services may be subject to more than one Performance Level.

(f) “**Service Level**” means any of the service level commitments made by NetApp in Sections 5.3 and 5.4 of this Service Description, as applicable.

(g) “**Usable Capacity**” means the capacity (as measured by NetApp in increments of TiB) available for data to be written on the Subscription Products.

### 2. Protocols.

2.1 The Subscription Services offer the following storage protocols:

(a) *File and Block:* Provides unified File (NFS, CIFS) and Block (iSCSI, FC) protocol-based storage capacity based on NetApp’s ONTAP® software platforms.

(b) *Object (S3):* Provides S3 protocol-based storage capacity and based on NetApp’s StorageGrid® Web Scale platform.

(c) *Block:* Provides Block (iSCSI, FC) protocol-based storage capacity based on NetApp’s E-Series platform.

2.2 Supported protocol versions are based on the Subscription Hardware platform and Subscription Software OS version deployed to deliver the Subscription Services.

### 3. Monitoring and Measuring Consumed Capacity.

#### 3.1 Committed Capacity.

(a) Use of the Subscription Services requires Customers to subscribe to a certain Committed Capacity for each Performance Level selected. Committed Capacity is defined in increments of TiB. Committed Capacities for each Performance Level are set forth in the applicable Keystone Order and are on per Customer Site basis.

(b) Committed Capacities and Rates (including the corresponding Minimum Payments) that may be selected via a Keystone Order may be included in an exhibit to the Agreement, or as otherwise expressly agreed between NetApp and Customer in such Keystone Order.

#### 3.2 Monitoring and Measuring the Consumption of Subscription Services.

(a) *Consumed Capacity.* For purposes of the Subscription Services, Consumed Capacity is measured in increments of TiB, and, where applicable, includes snapshots, clones, mirroring and vaulting.

(b) *Measuring Consumed Capacity.* The amount of Consumed Capacity for an applicable billing period is determined by summing the sizes of all then existing volumes, disks and buckets on Subscription Products, on a per Performance Level basis as further described in the Documentation.

(c) *Portal; Capacity Reports.* The Subscription Services and Subscription Products are monitored and managed through the Portal. Consumed Capacity is recorded daily and is available for Customer to review through the Portal. For each billing period, NetApp will generate a



Capacity Report and NetApp will either provide Customer with such Capacity Report through the Portal or with each invoice. NetApp will use the Capacity Reports to calculate the Fees due under each invoice for Subscription Services and such Capacity Reports will be deemed to contain the final and conclusive summary of the Consumed Capacity used by Customer during the applicable billing period, unless Customer can establish that such Capacity Report contains a material error.

(d) *Bursts.* The Subscription Services are designed to allow Customer’s Consumed Capacity to exceed the Committed Capacity up to the Burst Limit. Customer may in its discretion use the Subscription Services to exceed the Burst Limit, if available.

(e) *No Commitment Over Burst Limit.* NetApp makes no commitment to Customer that there will be capacity available in excess of the Burst Limit. Notwithstanding anything to the contrary in the Agreement, if available and Customer’s use of the Subscription Services exceeds the Burst Limit, NetApp is not responsible for meeting, and will have no liability with respect to, the Service Levels described below during any such time that Customer’s use of the Subscription Services exceeds the Burst Limit.

**3.3 Fees.**

(a) *Minimum Payment.* Each Committed Capacity selected via a Keystone Order is subject to a minimum payment amount for the corresponding Performance Level that is payable during the applicable billing period identified in the Keystone Order (“**Minimum Payment**”).

(b) *Rates for Bursts.*

(i) All Consumed Capacity up to the Burst Limit will be invoiced at the applicable Rate, as may be included in an exhibit or as otherwise specified in the Keystone Order and corresponding to the applicable Performance Level.

(ii) In the event Customer’s Consumed Capacity exceeds the Burst Limit, such excess Consumed Capacity above the Burst Limit amount will incur a premium charge and will be invoiced at a Rate factor of 1.5 (i.e., 150% of the applicable Rate).

(c) *Invoicing.*

(i) Fees are determined for each billing period by Performance Level and will include Minimum Payments for the Committed Capacity together with any additional amounts payable for any Bursts as described in Section (b) above. Fees will begin to accrue on the earlier of (A) the first day of the calendar month following the date on which NetApp notifies Customer that NetApp has made the Subscription Services available for access and use by Customer, (B) if the installation of the Subscription Products is delayed beyond 15 days from the date of delivery as a result of Customer’s acts or omissions, then the first day of the calendar month following the expiration of such 15 day period, (C) the date designated by NetApp in accordance with Section 8.2(a) of this Service Description, or (D) such other date agreed to by the Parties in writing (“**Start Date**”).

(ii) Customer will be invoiced in accordance with the billing frequency selected in the Keystone Order. For example, if Customer elects to be billed on a monthly basis, following the Start Date, Customer will be invoiced monthly in arrears within following the end of the applicable month for the applicable Fees (including without limitation any Fee amounts for Bursts) owed for the prior month. If Customer elects to be billed on an annual basis, (A) Minimum Payment invoices will be issued on or prior to the Start Date for the initial year and, for subsequent years, Minimum Payment invoices will be issued thirty days prior to the anniversary of the Start Date, and (B) invoices for Bursts will be issued after the end of each 3-month period of the Subscription Term (commencing on the Start Date). The below table summarizes the invoice schedules under each invoicing option:

<b>Fees</b>	<b>Monthly in Arrears</b>	<b>Annual (in advance)</b>
<b>Minimum Payment</b>	Invoices issued following the month for which the Subscription Service is delivered. For clarity, the Minimum Payment plus Fee amounts attributable to Burst will be billed in one invoice as Consumed Capacity.	First invoice due and payable on the Start Date  Subsequent invoices due and payable on the anniversary of the Start Date for each 12-month period of the Subscription Term (where the Subscription Term is greater than one year)
<b>Burst</b>		Invoices issued at the end of each 3-month period of the Subscription Term (commencing on the Start Date)

**4. Data Protection.**

4.1 Scope of Data Protection; Base Protection. Each order for Subscription Services for file and block Performance Levels includes the Base Data Protection Package. The Base Data Protection Package provides Customer with the ability to clone or generate snapshots. Provisioning of capacity and volumes for snapshots and cloning will count towards the volumes provisioned for the purposes of determining Consumed Capacity.

4.2 **Options.** In addition to the Base Data Protection Package included in all Subscription Services, Customer may choose from the following enhanced NetApp data protection services for file and block Performance Levels ("**Optional Data Protection Packages**" and together with the Base Data Protection Package, the "**Data Protection Packages**"):

(a) **Standard Data Protection Package:** Includes the ability to use SnapMirror® unified replication (asynchronous mirroring) and SnapVault® backup. Fees for the Standard Data Protection Package are based on TiB of capacity to be protected and are set forth in the applicable Keystone Order. Customer can use non-Keystone targets with this package.

(b) **Advanced Data Protection Package:** Includes the ability to use NetApp MetroCluster™. MetroCluster synchronous mirroring is based on TiB of capacity to be protected. The Advanced Data Protection Package is required for the source capacity. Target capacity must also be subject to a separate Keystone Order. Fees for the Standard Data Protection Package are based on TiB to be protected and are as set forth in the applicable Keystone Order. Additional Fees may apply for configurations requiring Long Range (> 2km) SFPs.

4.3 **Fees for Optional Data Protection Packages.** The Rates to be used to determine the Fees payable for Optional Data Protection Packages may be included in an exhibit to the Agreement, or as otherwise expressly agreed between NetApp and Customer in such Keystone Order. Such Fees will be invoiced in accordance with the billing frequency selected in the Keystone Order.

**5. Performance Levels for the Subscription Services.**

5.1 **Performance Levels.** The table below defines the available Performance Levels for the Subscription Services:

	File and Block						Object	Block		
	Extreme	Extreme w/ data tiering	Premium	Premium w/ data tiering	Standard	Value	Object	Extreme	Premium	Standard
Workload Type	Analytics, databases		VDI, virtualization apps, SW dev		File shares, web servers	Backup target	Media repository, archiving	HPC	Video surveillance	Backup
Target IOPS/TiB	6,144	6,144	2,048	2,048	128	N/A	N/A	N/A	N/A	N/A
Max IOPS/TiB	12,288	12,288	4,096	4,096	512	N/A	N/A	5,500	4,000	N/A
Max throughput MBps (32KB/IOP)	384	384	128	128	16	N/A	N/A	43	31	N/A
Latency	<1 ms	<1 ms	< 2 ms	< 2 ms	<17 ms	N/A	N/A	< 0.5 ms	<0.5 ms	N/A
Minimum capacity	100TiB						1 PiB	100 TiB	100 TiB	300 TiB
Protocols	NFS, CIFS, iSCSI, FC						S3	FC, iSCSI		

5.2 **IOPS per TiB.** Subject to the terms of this Service Description and the applicable Keystone Order, Performance Levels are defined in terms of target input/output operations per second ("**IOPS**") per terabyte ("**TiB**") ratio and latency. See the Documentation for more information.

5.3 **Service Level Objective.** NetApp will use reasonable commercial efforts to provide the targeted IOPS/TiB at the specified block sizes and configured volume size, per the related Performance Level set forth in the Keystone Order ("**SLO**"). Customer inquiries regarding this SLO should be directed to NetApp technical support, or email [xdl-americas-revenue@netapp.com](mailto:xdl-americas-revenue@netapp.com). Customer should include the following minimum information:

- (a) NetApp Subscription Services ID; (b) volume impacted; (c) Customer Site; and (d) time, date, and description of the issue.

5.4 **Data Access Availability Service Level Agreement (applies to NetApp Operated Only)**

(a) If Customer selects NetApp Operated Subscription Services, NetApp will use commercially reasonable efforts to provide access to Usable Capacity with a monthly uptime percentage of at least 99.999% during any monthly billing period ("**SLA**"). For purposes of this SLA:

monthly uptime percentage = [(maximum available minutes – downtime) / maximum available minutes] x 100%

maximum available minutes = total number of minutes in a billing period

downtime

= total accumulated minutes that a client which is directly connected to a controller data point has no volume connectivity in a given system, excluding a period when the Subscription Services are not available due to scheduled or mutually agreed upon time for NetApp maintenance and upgrades

(b) Customer inquiries regarding this SLA should be directed to NetApp technical support, or email [xdl-americas-revenue@netapp.com](mailto:xdl-americas-revenue@netapp.com). Customer should include the following information: (i) NetApp Subscription Services ID; (ii) volume(s) impacted; (iii) Customer Site; (iv) time, date, and description of the issue; (v) service details such as (A) service provider name: NetApp Flex Subscription Operations, and (B) Product: Keystone Flex Subscription; (vi) date and time of occurrence; (vii) calculated downtime; (viii) measurement tool and method; and (ix) all applicable documentation which will corroborate Customer's claimed outage.

(c) NetApp will provide a service credit to Customer under this SLA if monthly uptime percentage in a particular month is less than 99.999%. If a service credit is owed for a missed SLA, such service credit will be applied to future Fees and will be calculated in accordance with the following table:

Monthly Availability	Service Credit (as a percentage of the Fees billable for Consumed Capacity under affected Keystone Order)
< 99.999 %	5%
< 99.99 %	10%
< 99.9 %	15%
< 99 %	20%

(d) To be eligible for a service credit, Customer must initiate an inquiry with NetApp technical support within four weeks of the missed SLA, and Customer may receive no more than one service credit per month per account. The service credit may only be applied towards Customer's future Fees and may not exceed 20% of the applicable Minimum Payment for the Committed Capacity for the applicable Performance Level for the affected volume. Availability will be measured and reported separately for each system. This SLA only covers systems comprised of NetApp's FAS and AFF Subscription Products.

(e) This SLA does not apply to any issues attributable to: (i) scheduled NetApp maintenance and upgrades; (ii) a force majeure event or factors outside NetApp's reasonable ability to control; (iii) Customer's equipment, software or other technology and/or third party equipment, software or other technology (other than Subscription Products within its direct control); (iv) Customer's use of the Subscription Services after having been advised by NetApp to discontinue or modify Customer's use of the Subscription Services, if Customer did not modify its use as advised; (v) preview, pre-release, early access, alpha, beta or trial versions of the Subscription Services or trial features within the Subscription Services; (vi) Customer's failure to adhere to restrictions set forth in the applicable Keystone Order or the Agreement; (vii) data in transit authentication and/or encryption (signing and/or sealing); and (viii) any suspension and termination of Customer's right to use the Subscription Services in accordance with the applicable Keystone Order or the Agreement.

## 6. Changes in Subscription Services.

### 6.1 Committed Capacity Changes

(a) Customer may increase the amount of Committed Capacity at any time during the Subscription Term by providing a written request to NetApp. NetApp will provide Customer with a written confirmation letter of such increase; provided that NetApp will have no obligation to confirm such increase if such increase would require the addition of Subscription Products within 90 days of the expiration of the Subscription Term, unless the Parties have agreed in writing to renew or otherwise extend the Subscription Term prior to or during such final 90 day period. Any such increases will not be effective until Customer signs and returns the applicable NetApp confirmation letter. Once effective, any increases will remain in effect for the remainder of the Subscription Term, and the corresponding Minimum Payment applicable to the new Committed Capacity will be adjusted in accordance with the new agreed upon Committed Capacity. Where Customer has selected annual billing and increases Committed Capacity during the Subscription Term in accordance with this Section, NetApp will promptly invoice Customer for any increases in Minimum Payments owed for the remainder of the Subscription Term.

(b) In addition to the right to increase the Committed Capacity at any time described in Section 6.1(a) above, where Customer has selected annual billing and a Subscription Term of at least 24 months, Customer may also decrease the Committed Capacity for each 12-month period following the initial 12 months of the Subscription Term, subject to the following: (i) Customer requests for decreases must be in writing and received by NetApp not less than 60 days prior to the start of the 12-month period for which the adjustment will apply; (ii) no such decrease may reduce the Committed Capacity by an amount greater than 25% of the then-current Committed Capacity, and such decrease will be effective only on the commencement of the subsequent 12-month period; (iii) the 90 day restriction relating to the addition of Subscription Products described in Section 6.1(a) applies; and (iv) any reduction under this Section 6.1(b) is subject to written NetApp approval.

6.2 Data Protection Package Changes. Customer may upgrade the then-current Data Protection Package at any time during the Subscription Term by providing a written request to NetApp. Customer cannot downgrade the then-current Data Protection Package during the Subscription Term; provided that, where Customer has selected annual billing and a Subscription Term of at least 24 months, Customer may downgrade the then-current

Data Protection Package by not more than a single level at the time and in the manner prescribed in Section 6.1(b) above.

6.3 Transition Services. Customer may request an extension for transition Subscription Services beyond the Subscription Term for a period of one calendar month to facilitate an orderly transfer of data out of Subscription Services. This request shall be made in writing and at least 90 days prior to expiration of the current Subscription Term and must be accepted by NetApp.

7. **Keystone Success Manager (“KSM”).** The Subscription Services include the assignment of a KSM having the following responsibilities: (a) serving as a single point of contact and customer satisfaction owner for the Subscription Services; (b) conducting review calls, including (i) capacity consumption, forecasting, planning review, (ii) performance consumption, forecasting, planning review, (iii) maintenance review, (iv) incident review, (v) billing review, and (vi) best practices review; (c) teaming with service delivery manager (if applicable); (d) serving as escalation point of contact; and (e) serving as a Customer advocate.

#### 8. Responsibilities.

8.1 NetApp Responsibilities. In delivering the Subscription Services, NetApp will provide: (a) required Subscription Products; (b) deployment of the Subscription Services; (c) remote capacity, performance, and health monitoring; (d) technical support; (e) routine maintenance; (f) capacity, performance, and health management; (g) storage capacity consumption dashboards, and billings reports; and (h) KSM.

#### 8.2 Customer Responsibilities.

(a) Customer represents and warrants to NetApp that, on or prior to delivery of the Subscription Products, the Customer Site will be prepared and ready for the prompt installation and deployment of the Subscription Products, including without limitation, all necessary power requirements, racks, cooling, network connectivity, security access, etc. NetApp agrees to provide reasonable assistance to Customer to complete such preparation and installation; provided that NetApp may, in its discretion, provide written notice to Customer that no further action is required upon the part of NetApp for the commencement of the Subscription Term, and designate a Start Date. Such Start Date will be deemed effective upon Customer’s receipt of such notice, and NetApp will be authorized to commence invoicing Customer for the Fees. Chronic or sustained failure by Customer or any authorized agent to ensure and facilitate the prompt installation of any Subscription Products may constitute a material breach under the Agreement.

(b) In addition to the obligations set forth in the Agreement, Customer will be responsible for providing: (i) space, power, cooling; (ii) racks and PDUs; (iii) cabling to storage controller ports; (iv) Internet connectivity to enable (A) continuous outbound transfer of service consumption, health, and other telemetry data to enable delivery of the Subscription Services, and (B) on-demand inbound connection to remotely administer, manage, troubleshoot, repair and update Subscription Products; and (v) Customer network configurations including a (X) DNS Server, (Y) NTP Server, and (Z) firewall.

(c) In addition to the obligations set forth in the Agreement, Customer is solely responsible for: (i) backup, recovery, business continuity and disaster recovery of its data and applications; (ii) conversion and migration of data to the Subscription Products; (iii) integration and or automation of the Subscription Services with Customer environment or applications; and (iv) migration, deletion and wiping of data from the Subscription Products upon the expiration or termination of the Subscription Term and prior to returning the Subscription Products to NetApp.

(d) In addition to the restrictions set forth in the Agreement, Customer may not: (i) modify ONTAP version; (ii) disable or turn OFF ASUP; (iii) add or remove NICs, or alter the Subscription Hardware in any manner; (iv) remove NetApp’s physical or logical access to controller’s management ports; (v) disable data efficiencies, including compression, compaction, deduplication, thin provisioning; or (vi) disable or remove NetApp’s ability to monitor consumption or health.

8.3 Initial Migration Period. Notwithstanding Section 8.2(d) of this Service Description or Section 3.2 of the Agreement, Subscription Products and non-Keystone NetApp ONTAP systems can be part of the same cluster for the limited purposes of initial data migration only, and for up to a maximum of 90 days following the Start Date.

**EXHIBIT B**

**Keystone Order**

**(form)**

\*\*\*\*\*

**Keystone Order # [1234567800-XX-Y-Z]**

Re: **Keystone Flex Subscription [Addendum | Agreement] dated [\_\_\_\_\_] (“Agreement”)**

This Keystone Order is submitted by Customer pursuant to the Agreement and, once accepted by NetApp, will constitute a separate and independent agreement for the supply of the Subscription Services specified herein.

<b>Customer:</b>	[Partner   End User]
<b>Customer Address:</b>	[full entity legal name and registered address]
<b>Customer Primary Contact:</b>	Name, Position, Address, Email, Phone

<b>Bill-to Address: (if different)</b>	
<b>Bill-to Primary Contact:</b>	Name, Position, Address, Email, Phone

<b>Site Location:</b>	[ship to address]
<b>End User (if not Customer):</b>	[full entity legal name] Customer is providing a Service Provider Offering for the benefit of the End User

<b>Subscription Term:</b>	[Twelve (12) months], commencing on the Start Date
<b>Invoice Period:</b>	Charges are due within thirty (30) days of invoice receipt, payable [monthly, in arrears   annually, at time of purchase+ quarterly in arrears to address Consumed Capacity where there is Burst]
<b>Customer POs:</b>	<i>(check if applicable)</i> .. Customer prefers to receive invoices against a Customer generated purchase order, and agrees to issue and deliver a purchase order to NetApp in the amount of not less than 120% of the aggregate total of Minimum Payments due and owing over the Subscription Term not less than ten (10) days prior to the Start Date. Invoicing by NetApp which references any Customer purchase order is done for Customer’s administrative accommodation only.
<b>Renewals / Extensions:</b>	The Subscription Term may be renewed for successive twelve (12) month   month-to-month] extensions, by both parties exercising an option in writing, or executing a new Purchase Order in writing.

Performance Levels, Minimum Payments and Rates: *	Unified File and Block Storage					
	Extreme	Extreme w/Tiering	Premium	Premium w/Tiering	Standard	Value
Primary Committed Capacity (TiB) †	XXX	XXX	XXX	XXX	XXX	XXX
Minimum Payment (\$/mo): †	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00
Rate (\$/TiB/mo): †	XX	XX	XX	XX	XX	XX
Secondary Committed Capacity (TiB): †	XXX	XXX	XXX	XXX	XXX	XXX
Minimum Payment (\$/mo): †	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00
Rate (\$/TiB/mo): †	XX	XX	XX	XX	XX	XX
Data Protection Basic (\$/TiB): †	XXX	XXX	XXX	XXX	XXX	XXX
Minimum Payment (\$/mo): †	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00
Rate (\$/TiB/mo): †	XX	XX	XX	XX	XX	XX
Data Protection Advanced (\$/TiB): †	XXX	XXX	XXX	XXX	XXX	XXX
Minimum Payment (\$/mo): †	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00	X,XXX.00
Rate (\$/TiB/mo): †	XX	XX	XX	XX	XX	XX
<b>Block Storage</b>						
	<b>Extreme</b>	<b>Premium</b>	<b>Standard</b>			
Committed Capacity (TiB) †	0	0	0			
Minimum Payment (\$/mo): †	X,XXX.00	X,XXX.00	X,XXX.00			
Rate (\$/TiB/mo): †	XX	XX	XX			
<b>Object Storage</b>						
Committed Capacity (TiB): †	0					
Initial Minimum Payment (\$/mo): †	X,XXX.00					
Rate (\$/TiB/mo): †	XX					



Additional Services: *	Committed Capacity (TiB) †	Minimum Payment (\$/mo) †	Rate (\$/TiB/mo) †
Non-Returnable Disk	XXX	XX	XX
SnapLock	N/A	XX	XX
<b>Notes:</b> * initial values only – subject to adjustment pursuant to the terms of the Service Description			
<b>Operation Model:</b>	[NetApp Operated] [Partner/Customer Operated]		

**Minimum Payment :** \$\_\_\_\_\_/mo † (total amount for this Keystone Order)

**Additional Terms and Conditions:** The terms and conditions of the Keystone Flex Subscription Addendum are incorporated herein. In addition, the following terms apply to this Keystone Order: [If no additional terms, then enter "N/A"]

**[CUSTOMER]**

**[NETAPP]**

By: **[DO NOT SIGN – FORM ONLY]** By: **[DO NOT SIGN – FORM ONLY]**

Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

## NetApp Cloud Services Global Terms of Service

These Global Terms of Service ("Terms") set forth the direct terms and conditions under which NetApp, Inc., NetApp B.V. or any of their affiliates ("NetApp") provides You a right to access and use its identified Services. "You" or "Your" means the entity you represent in accepting these Terms. If You are accepting these Terms on behalf of another person, company, or other legal entity, whether as an employee, contractor, distributor, reseller, partner, agent or otherwise, You represent and warrant that You have the full authority to bind that entity. If You electronically accept these Terms, then You agree that these Terms exclusively govern NetApp's delivery of the Services unless You have a separate written agreement with NetApp that specifically governs the Services. If You do not agree to these Terms, then do not subscribe to, access, or use the Services.

### CLOUD SERVICES

**1.1. Scope.** A list of NetApp Cloud Services subject to these Terms is available at <https://www.netapp.com/us/howto-buy/stc.aspx> (each a "Service").

**1.2. Access Rights.** Subject to these Terms and during the specified period of continuous time during which You are duly authorized ("Subscription Term"), You may access and use the Service for Your own internal use, including in support of service offerings You may provide to Your end customers (but, for clarity, not as a standalone product or service). This includes the right, as part of Your authorized use of the Service, to download and use any software that is solely necessary to facilitate Your use of the Service ("Service Enabling Software") use any technical documentation describing the features and functions of the Service ("Documentation"). The rights granted in this section are nonexclusive, non-transferable, non-sublicensable, and revocable.

**1.3. Use Limitations.** You will not, nor will You allow any third party, to: (a) modify the Service, any applicable Service Enabling Software, or Documentation; (b) publish or provide any benchmark or comparison test results that pertain to the Service; (c) reverse engineer, decompile or disassemble the Service or any applicable Service Enabling Software, or otherwise reduce either to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses; (d) modify, adapt, or create a derivative work of the Service, any applicable Service Enabling Software, or Documentation; (e) use the Service or any applicable Service Enabling Software in excess of any limitations (e.g., user limits, time limits, capacity limits, free trials) prescribed by NetApp; (f) remove, conceal, or modify any identification, proprietary, intellectual property, or other notices in the Service, any applicable Service Enabling Software, or Documentation; (g) access and use the Service in violation of laws or regulations; (h) use the Service to violate the rights of others; (i) use the Service to gain unauthorized access to or interrupt any service, device, data, account, or network; or (j) use the Service in high-risk, hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems in which the failure of the Service could lead to severe physical or environmental damages.

**1.4. Unauthorized Use.** Use of the Service, Service Enabling Software, or Documentation outside of the scope of these terms may constitute a material breach as determined in accordance with the Contract Disputes Act, and Customer agrees to promptly pay to NetApp upon notice any additional fees calculated in accordance with the negotiated GSA Schedule Price List of NetApp's Products and Services.

**1.5. Software Notices.** Notwithstanding other statements in this Section 1, third-party software components, including free, copyleft and open-source software components, if any, embedded in the Service or Service Enabling Software ("Third-Party Embedded Software") are distributed in compliance with the licensing terms and conditions attributable to such Third-Party Embedded Software. Copyright notices and licensing terms and conditions applicable to Third-Party Embedded Software are available for review with the Documentation at <https://mysupport.netapp.com/> or may be included on the media on which Customer receives the Service Enabling Software, within a "NOTICE" file (e.g., NOTICE.PDF or NOTICE.TXT) or included within the downloaded files, and/or reproduced within the materials or Documentation accompanying the Service or Software.

### ORDERS

**2.1. Pay Per Use, Monthly, Annual, and Multi-Year Service Subscriptions.** The Services offered may be ordered by either a pay per use basis, monthly subscription basis, annual subscription basis, or multi-year subscription basis.

**2.2. Order Acceptance.** NetApp may also require additional information before accepting or processing any order. NetApp will provide You with an email confirmation upon receipt of Your Service order. Such order confirmation only represents NetApp's confirmation of receipt, and does not signify NetApp's acceptance of Your order, nor does it constitute confirmation of NetApp's offer to sell. However, if NetApp cancels an order after You have submitted payment, NetApp will refund the amount paid.

**2.3. Changes, Cancellation, and Renewals.**

**2.3.1. Monthly Service Subscriptions.** Unless otherwise agreed to in writing, monthly Service subscription will automatically renew for an additional one-month term not to exceed the annual term in the order or September 31<sup>st</sup> of the current Fiscal Year unless cancelled in accordance with this agreement. You must cancel Your monthly subscription no later than 14 days prior before Your monthly billing date. Your monthly billing date is the earlier of (i) the date of the month you originally started your subscription on or (ii) the last day of the month. For instance, if You signed up for Your product on January 31st, Your monthly billing date would be the 31st of any month with 31 days, or the day the relevant month ends, which -may be the 28th, 29th or 30th depending on the month in which You decide to cancel. In the event You cancel Your monthly subscription, You will not receive a refund, but You will receive the Service for the remainder of the billing month You cancel in, and no further charges will be incurred.

**2.3.2 Annual and Multiyear Subscriptions.** Your Annual Service subscription may be renewed for additional successive terms equal to the current term by executing a written order for the subsequent Renewal Term.

**2.4. Delivery.** Delivery of a Service occurs when NetApp makes the enabling key or access credentials available electronically via e-mail or otherwise to You or, if an enabling key is not required, when NetApp makes such Service available for Your use electronically via e-mail or otherwise.

## PRICING, PAYMENT AND TAXES

**3.1. Invoicing.** NetApp is entitled to invoice You for a Service on a periodic basis, as determined by NetApp, upon the start of a Subscription Term. If You are using a Service on a pay per use basis, NetApp calculates and bills fees and charges monthly based on Your actual usage of the Service, and NetApp will be entitled to invoice you for the Service on a periodic basis, as determined by NetApp, in arrears.

**3.2 Payment Terms.** You will make full payment in the currency specified in the invoice, without set-off and in immediately available funds, not later than 30 days of the receipt date of NetApp's invoice.

**3.3. Remedies for Non-Payment.** Your payment of an amount less than the invoice amount will not be deemed as acceptance of payment in full, nor will any endorsement or statement on any check or letter accompanying any payment or check be deemed an accord and satisfaction. NetApp may accept such payment or check without prejudice to NetApp's right to recover the balance of any amount due or pursue any other remedy provided for under these Terms or by law or in equity.

**3.4. Taxes and Duties.** Vendor shall state separately on invoices taxes excluded from the fees, and the You agree either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k). If You are tax-exempt, then You will provide NetApp with tax exemption certificates or other documentation acceptable to the taxing authorities not later than 30 days from the start of the Subscription Term. If You do not provide such documentation to NetApp, NetApp reserves the right to include such taxes in the invoice.

**3.5. Third Party Payment Processing.** NetApp may make available a third-party payment processor as a means of payment for a Service and use of such processors will be subject to the processor's own terms and conditions. NetApp reserves the right, in its sole and absolute discretion, to change the permitted methods of payment, including without limitation, the credit cards and/or other types of payment options NetApp will accept, at any time. NetApp is not responsible for, any liability resulting from the acts or omissions of any third-party payment processor.

## BETA, NO-CHARGE, AND TRIAL SERVICES

**4.1. Beta Service.** NetApp may make a Service or feature of a Service available to You that is identified as alpha, beta, pre-release, demonstration, or preview (each a "Beta Service"). Unless otherwise agreed in writing by NetApp, a Beta Service may only be used in non-production environments and not for commercial purposes.

**4.2. No Charge Services.** NetApp may offer a Service at no cost to You, up to certain limits prescribed by NetApp ("No Charge Service"). You acknowledge and agree that these Terms are applicable and binding upon You for Your access and use of a No Charge Service.

**4.3. Trial Services.** NetApp may offer a no cost, no obligation trial to a Service ("Trial Service") to You. The Trial Service will commence on the initial date You access the Trial Service and will conclude at the end of the trial period delineated by NetApp, or sooner if: (a) You purchase a pre-paid subscription to the Service, (b) You use the Service on a pay as you go basis, or (c) NetApp terminates Your use of the Trial Service. You acknowledge and agree that these Terms are applicable and binding upon You for Your access and use of a Trial Service.

## CUSTOMER CONTENT AND SECURITY

**5.1. Ownership.** You retain all right, title, and interest in any information that You provide to NetApp, including personal information (as defined in NetApp's Privacy Policy as "*information relating to, directly or indirectly, an identified or identifiable natural person or household*"), that NetApp manages, and where such management is on the Your behalf as part of providing the Service ("Customer Content"). NetApp acquires no rights in Customer Content, other than the rights You grant to NetApp to provide the Service.

**5.2. Use.** NetApp will use Customer Content solely to provide the Service and, if applicable, related technical support.

**5.3. Disclosure.** NetApp will not disclose Customer Content outside of NetApp or its subsidiaries and affiliates except to the extent required to make the Service available for Your use or to the extent such disclosure is required by applicable law. NetApp will give You reasonable notice of a request of a governmental or regulatory body for Customer Content to allow You to seek a protective order or other legal remedies (except to the extent NetApp's compliance with this section would cause it to violate a court order or other legal requirement).

**5.4. Security.** NetApp will implement reasonable technical and organizational safeguards designed to protect Customer Content against unauthorized loss, destruction, alteration, access, or disclosure. NetApp may modify such safeguards from time to time, provided that such modifications will not materially reduce the overall level of protection for Customer Content. NetApp also maintains a compliance program that includes independent third-party audits and certifications.

**5.5. Security Incident.** If NetApp discovers that a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Content in the possession or control of NetApp (a "Security Incident") has occurred, NetApp will notify You promptly and without undue delay, unless otherwise prohibited by law or otherwise instructed by a law enforcement or supervisory authority. In addition to providing such notification, NetApp will promptly take reasonable steps to mitigate the effects of the Security Incident and to minimize any damage resulting from the Security Incident. You must notify NetApp promptly about any possible misuse of its accounts or authentication credentials of which it becomes aware related to the Service.

## PERFORMANCE AND OPERATIONS

**6.1. Service Level Agreements.** NetApp's commitment to uptime and connectivity for applicable Services are set forth at <https://www.netapp.com/us/how-to-buy/stc.aspx>.

- 6.2. Support.** During the Subscription Term, NetApp will provide You support for the Service in accordance with the Documentation.
- 6.3. Professional Services.** Customer may purchase Professional Services pursuant to the NetApp Professional Services terms associated with the Immix GSA schedule for NetApp, Inc.

## WARRANTY

**7.1. Warranty and Remedy.** NetApp warrants that during the Subscription Term, the Service will perform substantially in accordance with the applicable Service Level Agreement. If NetApp does not meet this limited warranty, then Your sole and exclusive remedy is as set forth in the applicable Service Level Agreement.

**7.2. Disclaimer.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING ARE YOUR SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. NETAPP DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE RELATED TO THE SERVICE AND SOFTWARE. NETAPP AND ITS SUPPLIERS DO NOT WARRANT THAT SERVICES WILL BE UNINTERRUPTED OR FREE FROM DEFECTS OR ERRORS, OR THAT SERVICES WILL MEET OR ARE DESIGNED TO MEET YOUR BUSINESS REQUIREMENTS. ANY BETA, NO-CHARGE OR TRIAL SERVICE THAT NETAPP PROVIDES TO YOU IS PROVIDED "AS IS".

## INTELLECTUAL PROPERTY RIGHTS AND PROTECTIONS

**8.1. General.** The Service, Service Enabling Software, and Documentation are protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to You. No right, title or interest to any trademark, service mark, logo, or trade name of NetApp or its licensors is granted to You.

**8.2. IP Claims.** Subject to the terms and conditions of this section, NetApp will have the right to intervene to defend or settle any claim brought by a third party against You that the Service, Service Enabling Software, or Documentation sold or delivered to You under these Terms infringe any patent, trademark, or copyright ("IP Claim"). NetApp will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, "Damages") against You to the extent such Damages are specifically attributable to the IP Claim, if You:

(a) promptly notify NetApp in writing of the IP Claim; (b) provide information and assistance to NetApp to defend such IP Claim; and (c) provide NetApp with control of the defense or settlement negotiations. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

**8.3. Remedies.** NetApp may, at its option, substitute or modify the applicable Service, Service Enabling Service Enabling Software or Documentation, or the relevant portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the Service, Service Enabling Software or Documentation, if NetApp determines that none of these alternatives is reasonably available, then You may terminate Your subscription and NetApp will refund Your purchase price less any Services already rendered.

**8.4. Exclusions.** Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any claim of infringement that arises from or relates to: (a) NetApp's compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by You or on behalf of You; (b) modifications made by or on behalf of You without NetApp's prior written authorization; (c) Your failure to upgrade or use a new version of the Service Enabling Software; (d) to make a change or modification requested by NetApp, implement or configure the Service or Service Enabling Software in a manner set forth by NetApp, or to cease using the Service or Service Enabling Software, if requested by NetApp; (e) the Service or Service Enabling Software, or any portion thereof, in combination with any other product or service; (f) Your breach of the use limitations prescribed by NetApp; or (g) any content or information stored on or used by You or a third party in connection with the Service.

**8.5. Entire Liability.** Notwithstanding any term to the contrary in these Terms, this section states NetApp's entire liability and Your sole and exclusive remedies for IP Claims.

## CONFIDENTIALITY

**9.1. General.** "Confidential Information" means any information disclosed by a party to the other party in connection with this Agreement that (a) is marked "confidential" or "proprietary" at the time of disclosure; (b) if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure and summarized in a writing delivered to the receiving party within thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. "Confidential Information" shall include any reproduction of such information, but shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the receiving party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving party. Each party ("Disclosing Party") may disclose Confidential Information to the other party ("Receiving Party"). Confidential Information will remain the exclusive property of the Disclosing Party. Each party will have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under these Terms. The Receiving Party agrees to disclose the Disclosing Party's Confidential Information only to those employees or agents who have a need to know in furtherance of these Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The Receiving Party will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care.

**9.2. Period of Disclosure.** Each party's obligations regarding the other Party's Confidential Information will expire 3 years from the date of disclosure.

**9.3. Legally Compelled Disclosure.** The Receiving Party may disclose the Disclosing Party's Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided that, unless prohibited by applicable law, the Receiving Party gives the Disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

**9.4. Return/Destruction.** Upon the Disclosing Party's written request, all Confidential Information (including all copies thereof) of the Disclosing Party will be returned or destroyed, unless the Receiving Party is required by law to retain such information, and the Receiving Party will provide written certification of compliance with this Section. NetApp recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

## LIMITATIONS

**10.1. Limitation of Liability.** Regardless of the basis of the claim (e.g., contract, tort, or statute), the total liability of NetApp under or in connection with these Terms will not exceed the amounts received by NetApp for the applicable Service in the 12 months preceding the event that gave rise to the claim or the minimum amounts permitted by applicable laws, if greater. NetApp will not be liable for: (a) any indirect, consequential, incidental, exemplary, or special damages; (b) loss or corruption of data; (c) loss of revenues, profits, goodwill, or anticipated savings; (d) procurement of substitute goods and/or services; or (e) interruption to business. The limitations and exclusions will not apply to liability for death or bodily injury caused by negligence, gross negligence, willful misconduct, fraud, IP Claims under Section 8.2, or any other liability that cannot be excluded under applicable laws. To the extent permitted by law, NetApp disclaims all liability arising out of Your use of a Beta, No-Charge, or Trial Service. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## SUSPENSION OF SERVICES, EXPIRATION, OR TERMINATION OF TERMS

**11.1. Suspension.** NetApp may suspend or terminate Your access and use of any Service in accordance with the Contract Disputes Act if You (a) fail to remit payments when due; (b) otherwise breach these Terms; or (c) use the Services in a manner that violates the law. NetApp will provide reasonable notice before suspending or Your access to a Service unless NetApp, in its sole discretion, believes an immediate suspension or termination is required.

**11.2. Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, NetApp shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

**11.3. Effect of Service Expiration or Termination.** Termination or expiration of these Terms will not (a) relieve You from your payment obligations with respect to any sums accrued prior to termination or expiration, which will become immediately due and payable, or (b) entitle You to any refund. NetApp will use commercially reasonable efforts to notify You that your access to the Service will be discontinued and that all Customer Content will be deleted, at a time to be determined by NetApp, without the option of recovery. NetApp expressly disclaims all liability if You do not receive or act in accordance with this notice, or if any Customer Content is deleted. Any provision that by its nature extends beyond termination or expiration of the Terms will remain in effect until fulfilled and will apply to each party's successors and permitted assigns.

## COMPLIANCE WITH LAWS

**12.1. Compliance.** Each party will comply with all applicable laws and regulations.

**12.2. Export.** You acknowledge that the Services and any applicable Service Enabling Software are subject to export controls under the laws and regulations of the United States, the European Union, and other countries (as applicable), and the Services may include technology controlled under export and import regulations, including encryption technology. You agree to comply with such laws and regulations and to provide NetApp destination end use and end user information upon NetApp's request. You agree to obligate, by contract or other similar assurances, the parties to whom You re-export or otherwise transfer the Services or Service Enabling Software to comply with all obligations set forth in this section.

**12.3. Anti-Bribery.** Each party will comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

**12.4. Privacy.** In the event You provide NetApp with access to personal information (as defined above) for NetApp to provide the Service, the parties will ensure that such personal information is disclosed and handled in accordance with all applicable data protection laws and the confidentiality provisions set forth in these Terms. Article 28 (1) of the European Union General Data Protection Regulation ("GDPR") requires an agreement between a controller and processor, and between a processor and sub processor, that processing of personal information be conducted in accordance with technical and organizational measures that meet the requirements of the GDPR and ensure the protection of the rights of data subjects. To the extent NetApp acts as a data processor of personal information on Your behalf: (a) additional terms and conditions applicable to NetApp acting in a role as a data processor are set forth at <https://www.netapp.com/how-to-buy/sales-terms-and-conditions/>; and (b) NetApp will not retain, use, or disclose such personal information for any purpose other than providing or improving the Service in accordance with these Terms. NetApp certifies that it understands the foregoing restrictions and will comply with them.

## MISCELLANEOUS

- 13.1. U.S. Federal Government Customers.** This section applies only to U.S. Federal Government customers. The Services and any applicable Service Enabling Software are “commercial” computer software and are licensed to You in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g., FAR, DFARs) pertaining to commercial computer software. Any dispute will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these Terms is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other provisions of these Terms remain in effect as written.
- 13.2. Force Majeure.** Excusable delays shall be governed by FAR 552.212-4(f).
- 13.3. Waiver.** Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either party’s exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.
- 13.4. Severability.** In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.
- 13.5. Assignment and Subcontracting.** You may not assign any rights or delegate any obligations under these Terms without the prior written consent of NetApp. Any purported assignment by You without NetApp’s prior written consent will be null and void. NetApp may use subcontractors to fulfill its obligations under these Terms, provided that NetApp shall remain liable for the actions and services provided by such subcontractors at all times unless Subcontractor is acting under the direction of the customer.
- 13.6. Independent Contractors.** The relationship of the parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture, or employer and employee between the Parties. Neither party will act or represent itself, directly or by implication, as an agent of the other party.
- 13.7. Publicity.** No advertising, publicity releases, or similar public communications concerning these Terms, the Services or any applicable Service Enabling Software will be published or caused to be published by either party without the prior written consent of the other party. Notwithstanding the foregoing, You agree to be mentioned in the list of buyers of the Service to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71 and that Your name may be used for this purpose only.
- 13.8. Audit.** You grant NetApp and its independent accountants the right to audit You or Your subcontractors once annually during regular business hours upon reasonable notice and subject to Government security requirements to verify compliance with these Terms. If the audit discloses Service or applicable Service Enabling Software over-usage or any other material noncompliance, You will promptly pay to NetApp any fees.
- 13.9. Governing Law and Enforcement Rights.** These Terms will be construed pursuant to the Federal laws of the United States.
- 13.10. Functional Data.** NetApp retains all right, title and interest in data which is generated in the performance of the Service and that informs NetApp in the development, deployment, operations, maintenance, and securing of the Service. Without limiting the foregoing, NetApp may collect and use Functional Data to improve and enhance the Services and NetApp’s other products and services.
- 13.11. Improvements.** You are entitled to provide NetApp with any suggested improvements to the Service (“Suggestions”). If You provide any Suggestions, NetApp will be entitled to use the Suggestions without restriction.



NETREO INCORPORATED  
7171 WARNER AVE, STE B787  
HUNTINGTON BEACH, CA 92647

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Netro Incorporated (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.



- h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
  - s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
  - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
  - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## **MASTER SUBSCRIPTION AGREEMENT (MSA)**

This Master Subscription Agreement (“Agreement”), effective as of the date last signed below (“Effective Date”), is made by and between the Ordering Activity purchasing under the GSA Schedule contract identified in the Order Form (hereafter “Customer”) and Netreo Incorporated, a Delaware corporation, with a principal place of business at 7171 Warner Avenue, Suite B787, Huntington Beach, CA 92647 (hereafter “Netreo”). All references to Netreo in this Agreement should be read as “Contractor (EC America, Inc.), acting by and through its supplier, Netreo.” Customer and Netreo may be referred to individually as a “Party” and collectively as “Parties”.

THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER’S ACQUISITION AND USE OF NETREO SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

BY ACCEPTING THIS AGREEMENT, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT.

IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

The Services can be accessed for purposes of monitoring their availability, performance or functionality, but not for any other benchmarking or competitive purposes.

Netreo’s direct competitors are prohibited from accessing the Services, except with Netreo’s prior written consent.

It is effective between Customer and Netreo as of the date of Customer’s accepting this Agreement.

### **1. DEFINITIONS**

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “**Control**,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**“Agreement”** means this Master Subscription Agreement.

**“Beta Services”** means Netro services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

**“Content”** means information obtained by Netro from publicly available sources or its third party content providers and made available to Customer through the Services, Beta Services or pursuant to an Order Form.

**“Customer”** means the Ordering Activity, defined as the entity authorized to order under GSA Schedule contracts as set forth in GSA Order OGP 4800.2I, which have entered into Order Forms.

**“Customer Data”** means electronic data and information submitted by or for Customer to the Services, excluding Content and Non-Netreo Applications.

**“Free Services”** means Services that Netro makes available to Customer free of charge. Free Services exclude Services offered as a free trial and Purchased Services.

**“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

**“Netreo”** means the Netro company described in the “Netreo Contracting Entity, Notices, Governing Law, and Venue” section below.

**“Non-Netreo Application”** means a Web-based, mobile, offline or other software application functionality that interoperates with a Service, that is provided by Customer or a third party and/or listed on a Marketplace including as Netro Labs or under similar designation. Non-Netreo Applications, other than those obtained or provided by Customer, will be identifiable as such.

**“Order Form”** means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and Netro or any of their Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

**“Purchased Services”** means Services that Customer or Customer’s Affiliate purchases under an Order Form or online purchasing portal, as distinguished from Free Services or those provided pursuant to a free trial.

**“Services”** means the products and services that are ordered by Customer under an Order Form or online purchasing portal, or provided to Customer free of charge (as applicable) or under a free trial,

and made available online by Netreo, including associated Netreo offline or mobile components.

**“Services”** exclude Content and Non-Netreo Applications.

**“User”** means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription (or in the case of any Services provided by Netreo without charge, for whom a Service has been provisioned), and to whom Customer (or, when applicable, Netreo at Customer’s request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

## **2. NETREO RESPONSIBILITIES**

### **2.1 Provision of Purchased Services**

Netreo will

- (a) make the Services and Content available to Customer pursuant to this Agreement, and the applicable Order Forms,
- (b) provide applicable Netreo standard support for the Purchased Services to Customer at no additional charge, and/or upgraded support if purchased,
- (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for:
  - (i) planned downtime (of which Netreo shall give advance electronic notice), and
  - (ii) any unavailability caused by circumstances beyond Netreo’s reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Netreo employees), Internet service provider failure or delay, Non-Netreo Application, or denial of service attack, and
- (d) provide the Services in accordance with laws and government regulations applicable to Netreo’s provision of its Services to its customers generally (i.e., without regard for Customer’s particular use of the Services), and subject to Customer’s use of the Services in accordance with this Agreement, and the applicable Order Form.

### **2.2 Protection of Customer Data**

Netreo will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users). Upon request by Customer made within 30 days after the effective date of termination or expiration of this Agreement, Netreo will make Customer Data available to Customer for export or download. After such a 30-day period, Netreo will have no

obligation to maintain or provide any Customer Data, and will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited.

### **2.3 Netreo Personnel**

Netreo will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Netreo's obligations under this Agreement, except as otherwise specified in this Agreement.

### **2.4 Beta Services**

From time to time, Netreo may make Beta Services available to Customer at no charge. Customer may choose to try such Beta Services or not in its sole discretion.

### **2.5 Reserved.**

### **2.6 Reserved.**

## **3. USE OF SERVICES AND CONTENT**

### **3.1 Subscriptions**

Unless otherwise provided in the applicable Order Form,

- (a) Purchased Services and access to Content are purchased as subscriptions for the term stated in the applicable Order Form or in the applicable online purchasing portal,
  - (b) subscriptions for Purchased Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and
  - (c) any added subscriptions will terminate on the same date as the underlying subscriptions.
- Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Netreo regarding future functionality or features.

### **3.2 Usage Limits**

Services and Content are subject to usage limits specified in Order Forms. If Customer exceeds a contractual usage limit, Customer will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Netreo's request, and/or pay any invoice for excess usage. If Customer is unable to pay for the excess usage, Netreo may work with Customer to reduce Customer's usage so that it conforms to the contracted usage limit.

### **3.3 Customer Responsibilities**

Customer will

- (a) be responsible for Users' compliance with this Agreement and Order Forms,

(b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-Netreo Applications with which Customer uses Services or Content,

(c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Netreo promptly of any such unauthorized access or use,

(d) use Services and Content only in accordance with this Agreement, the Acceptable Use and External Facing Services Policy at <https://www.netreo.com/legal>, Order Forms and applicable laws and government regulations, and

(e) comply with terms of service of any Non-Netreo Applications with which Customer uses Services or Content. Any use of the Services in breach of the foregoing by Customer or Users that in Netreo's judgment threatens the security, integrity or availability of Netreo's services, may result in Netreo's immediate suspension of the Services, however Netreo will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

### 3.4 Usage Restrictions

Customer will not

- (a) make any Service or Content available to anyone other than Customer or Users, or use any Service or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form,
- (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering,
- (c) use a Service or Non-Netreo Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-Netreo Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit, or use any Services to access or use any of Netreo intellectual property except as permitted under this Agreement, an Order Form,
- (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof,
- (i) copy Content except as permitted herein or in an Order Form,
- (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes,
- (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to
  - (1) build a competitive product or service,
  - (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or



(4) determine whether the Services are within the scope of any patent.

### **3.5 Removal of Content and Non-Netreo Applications**

If Customer receives notice that Content or a Non-Netreo Application must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, or the Acceptable Use and External Facing Services Policy, Customer will promptly do so. If Customer does not take required action in accordance with the above, or if in Netreo's judgment continued violation is likely to reoccur, Netreo may disable the applicable Content, Service and/or NonNetreo Application. If requested by Netreo, Customer shall confirm such deletion and discontinuance of use in writing and Netreo shall be authorized to provide a copy of such confirmation to any such third party claimant or governmental authority, as applicable. In addition, if Netreo is required by any third party rights holder to remove Content, or receives information that Content provided to Customer may violate applicable law or third-party rights, Netreo may discontinue Customer's access to Content through the Services.

## **4. NON-NETREO PRODUCTS AND SERVICES**

### **4.1 Non-Netreo Products and Services**

Netreo or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-Netreo Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-Netreo provider, product or service is solely between Customer and the applicable Non-Netreo provider. Netreo does not warrant or support Non-Netreo Applications or other Non-Netreo products or services, whether or not they are designated by Netreo as "certified" or otherwise, unless expressly provided otherwise in an Order Form. Netreo is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-Netreo Application or its provider.

### **4.2 Integration with Non-Netreo Applications**

The Services may contain features designed to interoperate with Non-Netreo Applications. Netreo cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-Netreo Application ceases to make the Non-Netreo Application available for interoperation with the corresponding Service features in a manner acceptable to Netreo.

## **5. RESERVED**

## **6. PROPRIETARY RIGHTS AND LICENSES**

### **6.1 Reservation of Rights**

Subject to the limited rights expressly granted hereunder, Netreo, its Affiliates, its licensors and

Content Providers reserve all of their right, title and interest in and to the Services and Content, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

### **6.2 Access to and Use of Content**

Customer has the right to access and use applicable Content subject to the terms of applicable Order Forms and this Agreement.

### **6.3 License by Customer to Netreo**

Customer grants Netreo, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-Netreo Applications and program code created by or for Customer using a Service or for use by Customer with the Services, and Customer Data, each as appropriate for Netreo to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. If Customer chooses to use a Non-Netreo Application with a Service, Customer grants Netreo permission to allow the Non-Netreo Application and its provider to access Customer Data and information about Customer's usage of the Non-Netreo Application as appropriate for the interoperation of that Non-Netreo Application with the Service.

Subject to the limited licenses granted herein, Netreo acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non-Netreo Application or such program code.

### **6.4 License by Customer to Use Feedback**

Customer grants to Netreo and its Affiliates a worldwide, perpetual, irrevocable, royalty free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of Netreo's or its Affiliates' services.

### **6.5 Federal Government End Use Provisions**

Netreo provides the Services, including related software and technology, for ultimate federal government end use in accordance with the following: The Services consist of "commercial items," as defined at FAR 2.101. In accordance with FAR 12.211-12.212, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services shall be as provided in this Agreement, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights.

## **7. CONFIDENTIALITY**

### **7.1 Definition of Confidential Information**

“Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Netreo includes the Services and Content. Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that

- i. is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party,
- ii. was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party,
- iii. is received from a third party without breach of any obligation owed to the Disclosing Party, or Netreo
- iv. was independently developed by the Receiving Party.

For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Netreo services. Netreo recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

## 7.2 Protection of Confidential Information

As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to

- (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and
- (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein.

Neither party will disclose Confidential Information to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section.

Notwithstanding the foregoing, Netreo may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-Netreo Application Provider to the extent necessary to perform Netreo’s obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

### **7.3 Compelled Disclosure**

The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

### **7.4 Marketing and Publicity**

Each party may use the other party's Brand Features in connection with this Agreement only as permitted in the Agreement. Customer may state publicly that it is a Netreo customer and display Netreo Brand Features in accordance with the Trademark Guidelines. To the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71, Netreo may (a) orally state that Customer is a Netreo customer and (b) include Customer's name or Customer Brand Features in a list of Netreo customers in Netreo's promotional materials. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features with written notice to the other party and a reasonable period to stop the use.

## **8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

### **8.1 Representations**

Each party represents that it has validly entered into this Agreement and has the legal power to do so.

### **8.2 Netreo Warranties**

Netreo warrants that during an applicable subscription term

(a) this Agreement and the Order Forms will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data,

(b) Netreo will not materially decrease the overall security of the Services,

(c) the Services will perform materially in accordance with this Agreement, and

(d) subject to the "Integration with Non-Netreo Applications" section above, Netreo will not materially decrease the overall functionality of the Services.

For any breach of a warranty above, Customer's exclusive remedies are to terminate the Order Form and receive a refund of any prepaid fees covering the remainder of the term after the effective date of termination.

### **8.3 Disclaimers**

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED “AS IS,” AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

## **9. INDEMNIFICATION**

### **9.1 Indemnification by Netreo**

Netreo will have the right to intervene to defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Purchased Service infringes or misappropriates such third party’s intellectual property rights (a “Claim Against Customer”), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Netreo in writing of, a Claim Against Customer, provided Customer

- (a) promptly gives Netreo written notice of the Claim Against Customer,
- (b) gives Netreo control of the defense and settlement of the Claim Against Customer (except that Netreo may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and
- (c) gives Netreo all reasonable assistance, at Netreo’s expense.

Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

If Netreo receives information about an infringement or misappropriation claim related to a Service, Netreo may in its discretion and at no cost to Customer

- (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Netreo’s warranties under “Netreo Warranties” above,
- (ii) obtain a license for Customer’s continued use of that Service in accordance with this Agreement, or (iii) terminate Customer’s subscriptions for that Service upon 30 days’ written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions.

The above defense and indemnification obligations do not apply if

- (1) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer;
- (2) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by Netreo, if the Services or use thereof would not infringe without such combination;

(3) a Claim Against Customer arises from Services under an Order Form for which there is no charge; or (4) a Claim against Customer arises from Content, a Non-Netreo Application or Customer's breach of this Agreement or applicable Order Forms.

## **9.2 Reserved.**

## **9.3 Exclusive Remedy**

This "Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third party claim described in this section.

## **10. RESERVED**

## **11. TERM AND TERMINATION**

### **11.1 Term of Agreement**

This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

### **11.2 Term of Purchased Subscriptions**

The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions may be renewed for additional periods equal to the expiring subscription term or one year (whichever is shorter) by executing an Order Form to renew the subscription. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Netreo's applicable GSA Schedule list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior term will result in re-pricing at renewal, in accordance with then current GSA Schedule pricelist, without regard to the prior term's per-unit pricing.

### **11.3 Reserved**

### **11.4 Reserved**

### **11.5 Surviving Provisions**

The sections titled "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Indemnification," "Removal of Content and Non-Netreo Applications," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement, and the section titled "Protection of Customer Data" will survive any termination or expiration of this Agreement for so long as Netreo retains possession of Customer Data.

## **12. GENERAL PROVISIONS**

### **12.1 Export Compliance**

The Services, Content, other Netreo technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Netreo and Customer each represent that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use any Service or Content in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation.

### **12.2 Anti-Corruption**

Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement.

### **12.3 Entire Agreement and Order of Precedence.**

This Agreement, together with the GSA Schedule contract and Schedule pricelist, is the entire agreement between Netreo and Customer regarding Customer's use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be:

- (1) the applicable Order Form, and
- (2) this Agreement.

Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

### **12.4 Relationship of the Parties**

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

### **12.5 Third-Party Beneficiaries**

There are no third-party beneficiaries under this Agreement.

### **12.6 Waiver**

No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

### **12.7 Severability**

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.



### **12.8 Assignment**

Assignments are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld). Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

### **12.9 Netreo Contracting Entity, Notices, Governing Law, and Venue.**

The Netreo entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, would be to

Netreo, Inc.

7171 Warner Avenue, Suite #B787, Huntington Beach, CA  
92647, USA

Attention: General Counsel

Governing Law: United States Federal Law

### **12.10 Manner of Giving Notice**

Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon

- (a) personal delivery,
- (b) the second business day after mailing, or
- (c) except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall

clearly be identifiable as Legal Notices, the day of sending by email.

Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.

### **12.11 Agreement to Governing Law and Jurisdiction**

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

NETSCOUT SYSTEMS, INC.  
310 LITTLETON ROAD  
WESTFORD, MA 01886

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **NetScout Systems, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**NETSCOUT SYSTEMS, INC.**

**NETSCOUT SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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Definitions

"APIs" mean the software application interfaces and workflow methods made generally available by Contractor through NetScout in certain Products to enable integration, implementation, and interoperability with third party hardware and software.

"Documentation" means any installation guides, reference guides, operation manuals and release notes provided with the Product in printed, electronic, or online form.

"Enterprise" means an entity that has been assigned a Maintenance account number. In the event an entity has multiple Maintenance account numbers, each Maintenance account is a separate Enterprise and requires a separate Enterprise License.

"Enterprise License" means the Software identified in the Quotation as an Enterprise License.

"Evaluation Product" shall have the meaning set forth below in Section 8.

"Hardware" means hardware products generally available on the schedule price list.

"Maintenance" means technical support services for the Products that Contractor through NetScout makes available upon purchase in accordance with the support services terms described herein.

"Managed Services" means your use of Products to perform network management and monitoring services for Service Provider Customers. Title to the Hardware and licenses to Software remain with you and are not resold to Service Provider Customers.

"Outsourcer" means a third party facility manager or outsourcer who has entered into a then-current services agreement with you in which you may permit access to and operation of the Products at your authorized data center and access to Maintenance for Outsourcer solely to perform Outsourcing Services.

"Outsourcing Services" means network management and monitoring services performed by Outsourcer strictly for you and as described in Section 6.

"Pre-Released Products" shall have the meaning set forth below in Section 8.

"Product" means Software and Hardware provided by Contractor through NetScout.

"Quotation" means the document under which Contractor offers for sale and license its Products, Maintenance, and associated services.

"Service Provider" means Ordering Activity when acting in the capacity of providing Managed Services to Service Provider Customers.

"Service Provider Customer" means a third party, who has an agreement with You for Managed Services, provided that such Managed Services would not be a violation of United States ("U.S.") export restrictions.

"Software" means NetScout proprietary programs in object code and the firmware contained on the Hardware. The term Software does not include APIs.

"Software Development Kit" or "SDK" means the NetScout API, together with applicable documentation, any sample code, and any sample applications provided with the API.

"Unsupported Products" shall have the meaning set forth below in Section 8.

"Updates" means maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Ordering Activities generally as part of Maintenance pursuant to a valid Maintenance contract.

"You" or "Your" means Ordering Activity.

1. License Grant. Subject to payment of the applicable license fee and the terms set forth in this Attachment A, Contractor grants You a limited, non-exclusive, non-transferable license to use the Software and the Documentation for Your own internal business purposes. Such usage is limited to the number of licenses for which You paid the applicable license fee and is subject to the limitations set forth in the Documentation. You may make a copy of the Software for archival or backup purposes only ("Copy"). The Copy may not be used to implement fault tolerant, redundant, or contingency environments (collectively "Redundant Environments").

If You are purchasing an Enterprise License, the foregoing license grant is hereby extended to allow You to install, copy, and use an Enterprise License throughout your Enterprise for Your internal use only, subject to the terms and limitations set forth in this Attachment A and the Documentation.

2. License Restrictions.

(a) Without limiting this Attachment A, Contractor retains all right, title, and interest in and to the Software, including without limitation the Enterprise License, and all Updates, Documentation, and Copies, and all patents, copyrights, trade secrets, trademarks, and other intellectual property rights therein. Contractor retains all rights to the intellectual property associated with the Hardware except as expressly granted in this Attachment A, and the above Software restrictions will apply to Hardware to the extent applicable. The Software, Documentation, and Copies are protected under copyright laws, and any permitted Copies must include all copyright, government-restricted rights, and other proprietary notices or legends included on the Software when it was shipped or first provided to You.

Without limiting the generality of the foregoing, You, Your employees, and Your consultants will not and will not authorize or permit any third party to: copy or reproduce any part of the Software or Documentation, except as permitted above; transfer the Software without Contractor's prior written authorization. Transfers will only be permitted for products with no more than minimal differences in price, features and functionality and provided that the transfer does not increase the number of licensed copies; sell, market, distribute, sublicense, lease, provide timeshares, rent, or grant other rights in the Software to others or permit third parties to access the Software, without the written consent of Contractor; or modify, develop, port, translate, localize, reverse engineer, de-compile, disassemble, or create derivative works based on the Software, except to the extent expressly permitted by applicable law and solely to extent the parties shall not be permitted by that applicable law to exclude or limit such rights.

(b) In the event You are purchasing an Enterprise License and if You use the Enterprise License Software on or with hardware that does not meet the technical specifications set forth in the Documentation, then: (i) Contractor will not warrant the performance or results obtained by using the Enterprise License Software and Contractor disclaims all liability with respect to the foregoing, (ii) You assume the risk as to the results and performance of the Enterprise License Software, and (iii) Your rights and Contractor's obligations with respect to Maintenance, warranty, and indemnification for the Enterprise License Software are waived. The Enterprise License is strictly limited to the NetScout Software identified in a Quotation as an Enterprise License and does not apply to any other NetScout Software. An Enterprise License may not be deployed for government entities, for which the scope of the license must be separately determined in each case.

(c) For Service Providers, the Software License may be used for Service Provider's internal business purposes only, including for monitoring and managing Service Provider's own networks and to perform Managed Services for Service Provider Customers. Separate Enterprise Licenses must be purchased for deployment and use for each end user customer of such Service Provider. Service Provider will maintain MasterCare Maintenance for Products associated with the Managed Services on behalf of its Service Provider Customers and, if Service Provider has signed a Partner Enabled Support addendum, will provide directly to Service Provider Customer technical telephone support, Updates identified for such Service Provider Customer and received under a valid Maintenance contract, return material authorization, Maintenance, and shipping and telephone logistical support. Service Provider will provide the name and address of the Service Provider Customer for whom Service Provider is purchasing Hardware or licenses to Software for Managed Services.

Service Provider will not replace or make repairs or modifications to (collectively "Repairs") the Hardware or any of its components. Transfers of Products from an identified location to a different location will require Contractor's prior written consent, and Service Provider will notify Contractor of the name and new address the Service Provider Customer associated with such transfer.

3. License Term. The license is effective until terminated. You may terminate the license at any time by destroying the Software, Documentation, and Copies, and providing written certification to Contractor that all of the foregoing have been destroyed.

4. Limited Warranty. Contractor warrants that the media on which the Software is recorded will be free from defects in materials and workmanship under normal use and service for a period of 90 days from the original date of shipment of the Software ("Media Warranty Period"). Contractor warrants that the Software for a period of 90 days ("Software Warranty Period") and the Hardware for a period of 12 months ("Hardware Warranty Period"), in either case from its original date of shipment or when first made available to You for download, will substantially conform to the Documentation. If, during (a) the Media Warranty Period, a defect in the media occurs and is reported to Contractor, the media may be returned to Contractor, and Contractor will replace the media without charge to You, or (b) the Software Warranty Period or Hardware Warranty Period, a failure of the Software or Hardware to conform as warranted occurs and is reported to Contractor, Contractor, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware.

The foregoing warranties will apply provided You give Contractor prompt written notice of the material defect or nonconformity within the warranty period specified above and return the defective media or non-conforming Software or Hardware to Contractor in accordance with Contractor's return process.

5. Warranty Limit. The warranty set forth in Section 4 does not apply to any failure of the Software or Hardware caused by (a) Your failure to follow NetScout's installation, operation, or maintenance instructions, procedures, or Documentation; (b) Your mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (c) unauthorized modifications or repairs; (d) use of the Products in combination with equipment or software not supplied by Contractor or authorized in the Product Documentation; and (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside Contractor's reasonable control. Contractor cannot and does not warrant the performance or results that may be obtained by using the Products, nor does Contractor warrant that Products are appropriate for Your purposes or error-free.

EXCEPT AS OTHERWISE PROVIDED IN SECTION 4, THE WARRANTY SET FORTH IN SECTION 4 IS YOUR REMEDY AND CONTRACTOR'S LIABILITY FOR DEFECTIVE MEDIA OR NONCONFORMING PRODUCTS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

6. Outsourcing. Outsourcer may perform Outsourcing Services, provided that (a) Outsourcer accesses such Products and Maintenance to process Your data solely for Your internal business purposes and does not use such Products and Maintenance to perform any services for customers other than You, (b) Outsourcer uses the Products and Maintenance in accordance with the terms of this Attachment A, and (c) You provide written notification to Contractor of the proposed transaction and identification of the proposed Outsourcer and the affected Products and Maintenance. In any event, You will remain responsible for all payment and other obligations hereunder, which will remain in full force.

If You want to relocate any Products from Your own site(s) to the data processing facility of Outsourcer, the installation and operation of the Products will be strictly limited by You and Outsourcer to computer processors exclusively dedicated for access, use and benefit solely for You and as to which access, use or benefit for any other person or entity is precluded. You acknowledge and agree that the Software cannot, at any time, be (a) simultaneously operating on more than a single computer, unless otherwise indicated in Section 1, or (b) copied to implement a Redundant Environment without collective payment of the applicable GSA fee.

7. U.S. Government Restricted Rights. All NetScout Software, including the Documentation and technical data, sold or delivered pursuant to this Attachment A for Government use are commercial as defined in Federal Acquisition Regulation ("FAR") 2.101 and any supplement and further is provided with RESTRICTED RIGHTS. All Software was fully developed at private expense. Use, duplication, release, modification, transfer, or disclosure (for purposes of this section, "Use") of the Software is restricted by the terms of this Attachment A and further restricted in accordance with FAR 52.227-14 for civilian Government agency purposes and 252.227-7015 of the Defense Federal Acquisition Regulations Supplement ("DFARS") for military Government agency purposes, or the similar acquisition regulations of other applicable Government organizations, as applicable and amended. The Use of the Product is restricted by the terms of this Attachment A, in accordance with DFARS Section 227.7202 and FAR Section 12.212. All other Use is prohibited except as described herein.

8. Additional Terms and Limitations for Unsupported Products.



(a) Evaluation Products. Prior to You making a decision to purchase Products, Contractor through NetScout may distribute Product for testing, evaluation, or demonstration purposes ("Evaluation Product"). Subject to the terms of this Attachment A, if NetScout provides You with an Evaluation Product, then NetScout grants You a temporary, revocable, non-exclusive, non-transferable license to use the Evaluation Product set forth in the applicable NetScout Evaluation Request Form and the Documentation solely for testing, evaluation, or demonstration purposes ("Purpose"). Evaluation Product that is Software contains a license key that disables the Software after 30 days, or other term as agreed to by the parties, and which will render the Evaluation Product unusable. If, after using the Evaluation Product, you wish to continue such use, you must purchase the Product.

(b) Pre-Released Product. Subject to the terms of this Attachment A, if the product You have received with this license is not yet commercially available ("Pre-Released Product"), then Contractor grants you a temporary, revocable, nonexclusive, non-transferable license to use the Pre-Released Product as provided to You by Contractor and the associated Documentation, if any, solely for testing purposes at the direction of Contractor. Additionally, You acknowledge that (i) Contractor has not promised or guaranteed to You that the Pre-Released Product will be announced or made available to anyone in the future; (ii) Contractor has no express or implied obligation to You to announce or introduce the Pre-Released Product; and (iii) You understand that Contractor may not introduce a product similar to or compatible with the Pre-Released Product. Accordingly, You acknowledge that any use of the Pre-Released Product or any product associated with the Pre-Released Product is done entirely at Your own risk. During the term of this Attachment A, if requested by Contractor, You will provide feedback to Contractor regarding use of the Pre-Released Product, including error or bug reports. If You have been provided the Pre-Released Product pursuant to a separate written agreement, Your use of the Pre-Released Product is also governed by such agreement. Upon receipt of a later, unreleased version of the Pre-Released Product or release by Contractor of a publicly released commercial version of the Pre-Released Product, whether as a stand-alone product or as part of a larger product, You agree to return or destroy all copies of earlier Pre-Released Product received from Contractor and to abide by the terms of this Attachment A for any such later versions of the Pre-Released Product.

(c) APIs. Contractor through NetScout may make APIs generally available. You may use the SDK to design, develop, and test software programs; make a single copy of the SDK for back-up purposes only; copy the runtime components of the SDK ("Runtime Component") into software code created through your use of the SDK; and reproduce and distribute such Runtime Component solely as a component of Your software code. You may not use the SDK to develop a product or service that competes with products or services offered by NetScout, or incorporate the Runtime Component in a product that competes with the products offered by NetScout.

(d) Unsupported Products. If the product You have received with this license is or includes (i) Evaluation Products, (ii) Pre-Released Products, or (iii) SDKs (collectively "Unsupported Products"), then You acknowledge and agree that You will take all precautions and safeguards necessary to protect Your data and systems from loss or damage. Additionally, to the extent that any provision in this section is in conflict with any other term or condition in this Attachment A, this section shall supersede such other term(s) and condition(s) with respect to the Unsupported Products, but only to the extent necessary to resolve the conflict. Furthermore, You acknowledge that the Unsupported Products may contain bugs, errors and other problems that could cause system or other failures and data loss. Consequently, Unsupported Products are provided to You "AS-IS" and Contractor disclaims any warranty obligations to You of any kind. Maintenance is not available for the Unsupported Products. Contractor through NetScout may change, suspend, or discontinue any aspect of the Unsupported Products at any time, including the availability of any Unsupported Product, and impose limits on certain features and services or restrict Your access to parts or all of Pre- Released and SDK Products. Your Use of the Evaluation or Pre-Release Product is limited to 30 days unless otherwise agreed to in writing by Contractor. The restrictions in Section 2 herein, apply to Your use of Unsupported Products.

(e) Contractor's ownership rights in Section 2 apply to Unsupported Products, including any output such as the Runtime Component, but do not include any original software code you may develop. The inclusion of the Runtime Components in Your original code created through your use of the SDK in no way alters Contractor's ownership rights in the Runtime Component. Contractor may develop software programs substantially similar or identical to those developed by You through Your use of the SDK and reserves the right to sell and distribute those software programs.

9. Product Returns. Prior to returning Evaluation Products or Pre-released Products to Contractor through NetScout, You must remove any (i) confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information (as such is defined under applicable local law, regulation or directive, including without limitation, in the U.S., the Gramm-Leach- Bliley Act, and Health Insurance Portability and Accountability Act, HITECH Act), and (ii) removable media such as floppy disks, CDs, or PC Cards. In addition, You are responsible for backing up Your data on the Evaluation Products or Pre- Released Products. NetScout is not responsible for any of your confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

## **EXHIBIT A – MAINTENANCE AND SUPPORT SERVICES**

**Maintenance Descriptions.** Contractor through NetScout offers the following Maintenance support services. Remote access to NetScout Products and systems, networks, and equipment may be necessary to perform Maintenance services. "Normal Business Hours" are Monday through Friday, 8:00 a.m. – 8:00 p.m. EST for North America and 8:00 a.m. – 5:00 p.m. local time for all other regions. Unless otherwise agreed to in writing by NetScout, Product is eligible for Maintenance support services provided such Product remains in the location to which such Product was originally shipped, and with respect to Hardware, provided such Hardware is within the Hardware Coverage Period.

A. **MasterCare Support.** Subject to the terms herein, MasterCare Support services includes: 24x7 access to technical support engineers; one hour priority response on severity 1 technical support calls; maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Ordering Activities generally as part of Maintenance pursuant to a valid maintenance contract (collectively referred to as "Updates") for covered Products; access to electronic incident submission and technical documentation such as user guides, frequently asked questions, and release notes; advanced replacement or onsite repair of Hardware during the Coverage Period; 24x7 access to self-help on the MasterCare portal for technical answers; knowledge transfer through NetScout's online learning center; electronic MasterCare newsletter; discount on unlimited registrations to NetScout's user forum conference; and registered access to the MasterCare portal. Live technical telephone support is provided 24x7 for severity 1 issues received by telephone and non-severity 1 issues received by telephone during Normal Business Hours. All non-severity 1 issues received by telephone message, email or web outside of Normal Business Hours will be returned next business day. NetScout's service level guidelines are located at [http://www.netscout.com/library/Support/NetScout\\_mc\\_Mastercare\\_Support.pdf](http://www.netscout.com/library/Support/NetScout_mc_Mastercare_Support.pdf).

B. **Gold Support.** Subject to the terms herein and for existing Ordering Activities who wish to renew previously purchased legacy Gold Support services, Gold Support services include: live telephone technical support during Normal Business Hours; Updates for covered Products; 72-hour return repair or onsite repair of Hardware, depending on the Product family; 24x7 access to self-help on the MasterCare portal for technical answers; knowledge transfer through NetScout's online learning center; electronic MasterCare newsletter; and registered access to the MasterCare portal. 72-hour return repair on

Hardware means the time from which the Hardware is received at Contractor through NetScout to the time the repairs are completed. It does not include the shipping time back to the Ordering Activity. 72-hour return repair on Hardware is on a per Hardware unit basis. If multiple Hardware units are returned for repair, additional time may be required.

C. **Supplemental Maintenance Offerings.** Ordering Activities purchasing MasterCare Support may also purchase one of the following Supplemental Maintenance Offerings. If an engineer or technical account manager is not available due to a holiday, paid time off, or training, a Contractor through NetScout remote back-up support engineer or technical account manager will provide remote back-up coverage during that time and to the extent practicable.

**OnSite Engineer Services.** Onsite Engineer Services ("OSE Services") are provided by a Contractor through NetScout technical support engineer located at customer's designated site and may include any one or more of the following, as agreed to by the parties: local assistance with day-to-day administration of customer's network performance management environment, including: (i) installation of operating system and Software upgrades; (ii) Hardware maintenance, Software patches, and service pack installation, and (iii) oversight of monitored element changes; backup maintenance such as regular configuration, password and community string backups, and offsite storage of the data required during disaster recovery efforts; customization assistance for designing new reports and workspaces, discovering and configuring complex, custom or unknown applications, and integrating third-party tools; implementation assistance for installing and configuring new NetScout Products; beta testing new NetScout Products and features when requested; and resolving support issues, and escalating service needs. The OSE Services will be performed 40 hours a week from 9:00 a.m. to 5:00 p.m. local time, Monday through Friday, excluding Ordering Activity holidays and paid time off, provided the number of Ordering Activity holidays is at least equal to the number of holidays NetScout provides to its employees in the applicable territory. For a maximum period of two weeks during the initial term and renewal terms, the onsite engineer will not be at Ordering Activity's designated site performing the OSE Services due to training at NetScout's corporate headquarters.

**Remote Site Engineer Services.** Remote Site Engineer Services ("RSE Services") is an annual service available to Ordering Activities, provided by a Contractor through NetScout shared remote technical support engineer located at a NetScout facility, and may include any one or more of the following, as agreed to by the parties: daily health and stability check on both devices and data; remote assistance with day-to-day administration of customer's NetScout performance management environment, including operating system and Software upgrades, Hardware maintenance, Software patches and service pack installation, and oversight of monitored element changes; backup maintenance, such as regular configuration, password and community string backups, and off-site storage of the data required during disaster recovery efforts; customization assistance for designing new reports, defining targeted workspaces, discovering and configuring complex, custom and unknown applications, and integrating third-party tools; implementation assistance installing and configuring new NetScout Products; facilitation of beta testing of new Products and features when requested; and annual onsite technical review visit to assist with planning, migration, implementation and resolution of outstanding support issues. The RSE Services will be performed 20 hours per week, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. local time in Westford, Massachusetts, and excluding NetScout holidays and paid time off.

**Technical Account Manager Services.** Technical Account Manager Services ("TAM Services") are provided by a Contractor through NetScout shared remote technical account manager located at a NetScout facility as the point of contact for all technical issues regarding NetScout Products and includes the following: 24x7 remote assistance; support for five Ordering Activity contacts; escalation of technical service requests as required; ownership of all client Ordering Activity care issues; acting as a direct liaison to NetScout engineers, quality assurance and other technical support experts; communication and knowledge transfer on product introductions, updates, new features, filters, and patches; provide a conduit for networking and sharing best practices; managing weekly status calls to discuss open issues, upcoming rollouts, or other projects affecting Ordering Activity's NetScout environment; providing monthly NetScout server "health checks" to ensure products are stable and running efficiently; unlimited free registration for NetScout User Forum events.

**Term and Renewal.** Unless otherwise agreed to by the parties in writing, the initial term for (i) MasterCare Support will be 12 months commencing on the date specified in Contractor's quote, (ii) OSE Services will be 12 months commencing on the date the engineer arrives at Ordering Activity's designated site, and (iii) RSE and TAM Services will be 12 months commencing on the date that the account becomes active, or as agreed to by the parties. MasterCare or Gold Support may be renewed for up to two years after discontinuation of sale of the applicable Product.

**Continuing Availability.** If Contractor through NetScout discontinues a Product, NetScout will continue to make MasterCare or Gold Support available for no less than two years from the date of discontinuation of sale. For Software, such MasterCare or Gold Support will include bug fixes and telephone technical support for the then-current Software release and immediately preceding release.

**Substitutions; Software Updates.** Contractor through NetScout reserves the right to substitute functionally compatible products not affecting network configurations. Updates include all bug fixes and enhancements which become elements of the standard Product.

**Warranty.** Contractor warrants that Maintenance support services will be performed in a good and workmanlike manner. Ordering Activity's remedy for breach of this warranty will be for Contractor to re-perform the Maintenance support services at no expense to Ordering Activity. NetScout Products are warranted in accordance with these Attachment A terms. EXCEPT FOR THE FOREGOING WARRANTY, CONTRACTOR MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, RELATED TO MAINTENANCE. CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH MAINTENANCE.

**Limitations and Exclusions.** Contractor through NetScout is not obligated to provide Updates containing additional features and enhancements other than defect corrections, or to provide MasterCare or Gold Support on Software beyond one release back from the current version. NetScout is not liable for delays caused by third parties. Geographical restrictions or limitations may apply to the Maintenance support services described herein and such services may not be available in all areas. If Ordering Activity has a party other than NetScout make repairs to the Products, such acts will void any warranty related to the Products. NetScout is not obligated to provide Maintenance support services with respect to claims resulting from the fault or negligence of Ordering Activity or a third party; improper or unauthorized use of the Products; repair of Products by a party other than NetScout or its authorized contractor; a force majeure event and any causes external to the Product such as power failure or electric power surge; modification to factory default configurations; or use of the Products in combination with equipment or software not supplied by NetScout or recommended in the Product documentation. Functional upgrades such as faster processors, increased memory / flash, etc. are not covered under MasterCare or Gold Support and are separately chargeable at the then-current GSA price.



**Repairs.** A Return Material Authorization ("RMA") number must be obtained prior to the return of defective Products for repair or replacement. If Contractor through NetScout receives Products without a valid or correct RMA number identified on the outside of the packaging of such Products, NetScout will have no obligation to provide MasterCare or Gold Support with respect to such Products. Prior to returning defective Products to NetScout for repair or replacement, Ordering Activity must remove any confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information, as such is defined under applicable local law, regulation or directive, including without limitation, in the United States, the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act, and HITECH Act. In addition, Ordering Activity is responsible for backing up Ordering Activity's data on the hard drive(s) and any other storage device(s) in the hardware. NetScout is not responsible for any of Ordering Activity's confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

#### **Ordering Activity Obligations.**

A. **Access to Products.** Ordering Activity will grant the Contractor through NetScout engineer reasonable access to NetScout Products and any related systems, networks or equipment reasonably necessary to enable the engineer to perform MasterCare or Gold Support. Additionally during any OSE Services term, Ordering Activity will (i) make available to the engineer a dedicated office space, telephone, and telephone line in a location that is within a reasonable proximity of the Products ("Office Area"), and (ii) designate an employee of Ordering Activity to act as a central point of contact for the engineer to coordinate the performance of OSE Services.

B. **MasterCare Support Coverage for Products.** OSE, RSE and TAM Services are an extension of MasterCare Support, therefore, Ordering Activity must purchase and continuously maintain throughout the OSE, RSE or TAM Services term MasterCare Support coverage on all NetScout Products it has provisioned from Contractor through NetScout. Contractor will not be obligated to provide OSE, RSE or TAM Services if customer does not fulfill its payment obligations, or procure and continuously maintain MasterCare Support coverage on all NetScout Products owned or in the possession of Ordering Activity.

### **ATTACHMENT A – ARBOR NETWORKS, INC.**

#### **LICENSING AGREEMENT**

THIS LICENSING AGREEMENT ("Agreement") is entered into by and between Arbor Networks, Inc., a Delaware corporation with its principal office at 76 Blanchard Road, Burlington, MA 01803 ("Arbor") and the Ordering Activity under GSA Schedule contracts ("You/Your" or "Ordering Activity"). Arbor and You are also referred to individually as a "Party" and collectively as "Parties." PURPOSE AND SCOPE. This Agreement sets forth the terms and conditions under which Arbor agrees to grant a license to use Arbor's Product ("Software") and to provide related Services to You. It is intended by the Parties that this Agreement govern any purchase made during the term of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

**1. License to Use.** Arbor grants You a limited, revocable, non-exclusive, non-transferable license (the "License") to use Arbor's software in machine-readable form that is shipped to You and/or identified on the attached form ("Form") and accompanying documentation (collectively "Product") on the machines on which the software has been installed or authorized by Arbor. The term of the license shall be as stated on the Form. Your affiliate(s), purchasing agents, and outsourcing vendors ("Affiliates") may on your behalf purchase or use Product so long as each is bound to terms as in this Agreement and You indemnify Arbor for their breach of this Agreement. Any future trial or purchase of Product and services is governed exclusively by this Agreement and may be effected by You or Your Affiliates providing a purchase order or trial request. Trial term licenses for Product shall be for the longer of thirty (30) days from date of Product's delivery to You or as stated on the Form supplied by Arbor. Any feed, release, revision or enhancement to the Software that Arbor may furnish to You becomes a part of Product and is governed by this Agreement. Specifically for Product, if You have not purchased a license by the end of a Product trial term or You breach this Agreement, You agree to return Product and any machine provided by Arbor to Arbor in its original condition less normal wear and tear in original packaging or equivalent and in accordance with Arbor's RMA process within 10 days. You agree to pay for any damage to Product occurring prior to receipt by Arbor. If You purchase a license to Product, this Agreement will control that purchase and title to machines (where applicable) provided hereunder vests in You.

**2. Proprietary Rights and Restrictions.** Arbor and/or its licensors and outsourcing vendors (together, "Vendors") retain all right, title, and interest in the Software and in all copies thereof, and no title to the Software or any intellectual property or other rights therein, are transferred to You other than as specified herein. No right, title or interest to any trademarks, service marks or trade names of Arbor or its Vendors is granted by this Agreement. Software is copyrighted and contains proprietary information and trade secrets belonging to Arbor and/or its Vendors. You will only use Software for Your own internal business purposes. You may not make copies of the Software, other than a single copy in machine-readable format for back-up or archival purposes. You may make copies of the associated documentation for Your internal use only. You shall ensure that all proprietary rights notices on Software are reproduced and applied to any copies. Licenses are limited to use in accordance with the "Description" on the Form and user documentation. You agree not to cause or permit the reverse engineering or decompilation of the Software or to derive source code therefrom. You may not create derivative works based upon all or part of Software. You may not transfer, lend, lease, assign, sublicense, and/or make available through timesharing, Software, in whole or in part. If you are purchasing spare Product, you are only licensed to use such spare during such time as another Product is removed from service for repair.

**3. Confidentiality.** When disclosing information under this Agreement, the disclosing party will be the "Disclosing Party" and the receiving party will be the "Receiving Party." The term "Confidential Information" includes: (a) a party's technical, financial, commercial or other proprietary information including without limitation product roadmaps, pricing, software code and documentation, Software, techniques or systems and (b) information or data that is confidential and proprietary to a third party and is in the possession or control of a party. The Receiving Party will not disclose any of the Disclosing Party's Confidential Information to any third party except to the extent such disclosure is necessary for performance of the Agreement or it can be documented that any such Confidential Information is in the public domain and generally available to the general public without any restriction or license, or is required to be disclosed by any authority having jurisdiction so long as Disclosing Party is provided advance notice of such disclosure by the Receiving Party. Each party's respective Confidential Information shall remain its own property. Notwithstanding the foregoing, Arbor may use anonymized data from the Product for its business purposes provided that Arbor shall not identify You to any third party as the source of such data.

**4. Product Warranty, Indemnification.** Arbor warrants, for sixty (60) days from shipment, that Product will perform in compliance with user manuals accompanying Product. If, within sixty (60) days of shipment, You report to Arbor that Product is not performing as described above, and Arbor is unable to correct it within sixty (60) days of the date You report it, You may return the non-performing Product at Arbor's expense, and Arbor will refund amounts paid for such Product. The foregoing is Your sole and exclusive remedy. Arbor agrees to defend You from and against any third party claim or action based

on any alleged infringement of any U.S. patent or copyright arising from use of the Product according to the terms and conditions of this Agreement ("Claim"), and Arbor agrees to indemnify You from damages awarded against You in any such Claim or settlement thereof, provided that (i) Arbor is promptly notified in writing of such Claim, (ii) You grant Arbor sole control of the defense and any related settlement negotiations, and (iii) You cooperate with Arbor in defense of such Claim. Notwithstanding the foregoing, Arbor shall have no liability to You if the infringement results from (a) use of the Product in combination with software not provided by Arbor; (b) modifications to the Product not made by Arbor; (c) use of the Product other than in accordance with the Documentation or this Agreement; or (d) failure to use an updated, non-infringing version of the applicable Product. The foregoing states the entire liability of Arbor with respect to infringement.

**5. Limitations.** EXCEPT AS OTHERWISE PROVIDED HEREIN, ARBOR AND ITS THIRD-PARTY VENDORS MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ARBOR'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF PRODUCT PROVIDED HEREUNDER, AND/OR ARBOR'S PERFORMANCE OF SERVICES, SHALL NOT EXCEED THE AMOUNT PAID UNDER THIS AGREEMENT FOR PRODUCT WITHIN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM, WHETHER A CLAIM IS BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE. IN NO EVENT SHALL ARBOR OR ITS VENDORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF PROFITS, DATA, OR BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ARBOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ARBOR BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. YOUR SOLE RECOURSE HEREUNDER SHALL BE AGAINST ARBOR AND YOU SHALL HOLD THIRD PARTY VENDORS HARMLESS.

**6. Product Installation and Support.** Installation purchased directly from Arbor with Product is governed by this Agreement, but Arbor shall not be required to continue any installation for longer than 90 days following receipt of Product. If a perpetual license is granted hereunder, You agree to purchase support ("Support") for at least the initial year from shipment. Thereafter, Arbor will invoice approximately sixty (60) days prior to the end of the Support term for additional one-year periods so long as Product is covered by Support. Failure to pay such invoice will result in a lapse of Your Support. If Support lapses, upon renewal of Support a 10% reinstatement fee will be assessed and you shall pay all Support fees back to the date Support lapsed. Each annual renewal service price shall be no less than the previous service price. With Support, Arbor will provide You (i) telephone and email based technical support in accordance with the level purchased and (ii) all new maintenance releases to Product when and if available during Your participation in Support. Arbor shall not be required to provide Support on any Product (i) for more than twelve months after its general release, or (ii) more than one release behind the currently shipping release. Arbor shall be permitted to subcontract any or all of its services or Support obligations under this Agreement to an affiliated company including, without limitation, Arbor Networks, Inc. in the United States.

**7. Export Regulation and Government Rights.** You agree to comply strictly with all U.S. export control laws, including the U.S. Export Administration Act and Export Administration Regulations ("EAR"). Product is prohibited for export or re-export to the list of terrorists supporting countries or to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists. If Product is being shipped by Arbor, then it is exported from the U.S. in accordance with the EAR. Diversion contrary to U.S. law is prohibited. If You are licensing Product or its accompanying documentation on behalf of the U.S. Government, it is classified as "Commercial Computer Product" and "Commercial Computer Documentation" developed at private expense, contains confidential information and trade secrets of Arbor and its licensors, and is subject to "Restricted Rights" as that term is defined in the Federal Acquisition Regulations ("FARs"). Contractor/Manufacturer is: Arbor Networks, Inc., and its subsidiaries, Burlington, Massachusetts, USA.

**8. General.** This Agreement is made under the laws of the Commonwealth of Massachusetts, USA, excluding the choice of law and conflict of law provisions. You consent to the federal and state courts of Massachusetts as sole jurisdiction and venue for any litigation arising from or relating to this Agreement. This Agreement is the entire agreement between You and Arbor relating to Product and supersedes all prior, contemporaneous and future communications, proposals and understandings with respect to its subject matter, as well as without limitation terms and conditions of any past, present or future purchase order. No modification to this Agreement is binding unless in writing and signed by a duly authorized representative of each party. The waiver or failure of either party to exercise any right provided for herein shall not be deemed a waiver of any further right hereunder. If any provision of this Agreement is held invalid, all other provisions shall continue in full force and effect. All licenses and rights granted hereunder shall terminate upon expiration of the term or Your breach of this Agreement. Neither party shall be liable for the failure to perform its obligations under this Agreement due to events beyond such party's reasonable control including, but not limited to, strikes, riots, wars, fire, acts of God or acts in compliance with any applicable law, regulation or order of any court or governmental body. Neither party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other party and any attempt to do so shall be void; except to a successor by merger, acquisition or restructuring that assumes the rights and duties of this Agreement. The following sections survive termination or expiration of this Agreement: Proprietary Rights and Restrictions, Confidentiality, Limitations, Export and Government Rights, and General. All Product shipments are FCA Shipping Point and title to machines shall pass upon shipment.

IN WITNESS WHEREOF, the duly authorized officers or representatives of the parties have executed this Agreement as of this day \_\_\_\_\_, 20\_\_\_, intending legally to be bound.

Arbor Networks, Inc.	Company Name
BY: _____	BY: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**NNDATA CORPORATION**  
**5402 CHEYENNE KNOLL PLACE**  
**ALEXANDRIA, VA 22312**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

**Scope.** This Rider and the attached NNData Corporation ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates antideficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms

shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the AntiDeficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS  
NNDATA CORPORATION**

**NNDATA CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS**

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**NNCOMPASS TERMS & CONDITIONS**

These Terms & Conditions ("Agreement" or "Terms") govern your acquisition and use of NNData's NNCompass software. You agree to the terms and conditions outlined herein. This Agreement replaces any prior agreement(s) and is effective between the Ordering Activity under GSA Schedule contracts ("Ordering Activity", "You" or "Your") and the GSA Multiple Award Schedule Contractor acting by and through its supplier, NNData, as of the date of execution of a proper Order of NNCompass.

**INTELLECTUAL PROPERTY**

The Software, including without limitation all copyrights, patents, trademarks, trade secrets, and other intellectual property rights are, and shall remain, the sole and exclusive property of NNData. The Software incorporates confidential and proprietary information developed or acquired by or licensed to NNData and that in performing under this Agreement you will learn additional information that is confidential and proprietary to NNData and the NNCompass software (the "Confidential Information"). The User will take all commercially reasonable precautions necessary to safeguard the confidentiality of the Confidential Information, including (i) those taken to protect your own confidential information and (ii) those which NNData may reasonably request from time to time. The User will take all commercially reasonable precautions necessary to not allow the removal or defacement of any confidentiality or proprietary notice placed on the Software or other items of Confidential Information. The placement of copyright notices on these items will not constitute publication or otherwise impair their confidential nature.

**LIMITED LICENSE TO USERS**

NNData grants you a revocable, non-exclusive, non-transferable, limited license to (i) download, install, and use the Software solely to perform internal testing, development, and use inside your corporate environment or (ii) use the Software solely to perform internal testing, development, and use inside the NNCompass cloud computing environment, and for purposes strictly in accordance with the terms of this Agreement, so long as you have satisfied your obligations under it. NNData retains all rights to NNData Software not granted to you in this Paragraph. "NNData Software" means any software programs, tools, add-ons, databases, libraries, guides, manuals, documentation, code including source code, object code, and binary code, and other related materials developed by NNData including any modifications, enhancements, or upgrades made thereto at any time.

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**TRADEMARKS**

The trademarks, logos, and service marks ("Marks") displayed within the Software are the property of NNData Corporation, or other third parties. You are not permitted to use the Marks without the prior written consent of NNData Corporation, or such third party that may own the Marks.

**RESTRICTIONS**

You agree not to perform any of the following prohibited activities, including but not limited to:  
license, sell, rent, lease, assign, distribute, transmit, host, outsource, disclose, access, or otherwise commercially exploit the Software or make the Software available to any third party;  copy or use the Software for any purpose other than as permitted under the above section 'License';  
modify, make derivative works of, disassemble, decrypt, reverse compile, or reverse engineer any part of the Software;  
remove, alter, deface, or obscure any proprietary notice (including any notice of patent, copyright, or trademark) of NNData or its affiliates, partners, suppliers, or the licensors of the Software;  
use the Software to distribute viruses, scripts, Trojan horses, worms, malware, timebombs, or other harmful components to or from NNData's or other systems; and  
transmit, store, or distribute any material that violates any applicable law, including export or encryption laws or regulations.

**LIMITED RIGHT TO USE**

You must only use the Software for your own lawful internal business purposes, in accordance with these Terms and any notice sent by NNData. You may use the Software on behalf of others or in order to provide services to others but if You do so you must ensure that You are authorized to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to You. The viewing, printing or downloading of any content, graphic, form or document from the Site grants you only a limited, nonexclusive license for use solely by you for your own personal use and not for republication, distribution, assignment, sublicense, sale, preparation of derivative works or other use. No part of any content, form or document may be reproduced in any form or incorporated into any information retrieval system, electronic or mechanical, other than for your personal use (but not for resale or redistribution). NNData reserves the right to revoke the authorization to view, download, and print the NNData Content and User Content available on this Site at any time, and any such use shall be discontinued immediately upon notice from NNData. The rights granted to you constitute a license and not a transfer of title.

**NONTRANSFERABLE**

Your right to use the Software is not transferable. Any password or right given to you to obtain information or documents is not transferable.

**DISCLAIMER AND LIMITS**

NNData warrants that the software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with the NNData written materials accompanying it. Except as expressly set forth in the foregoing, the NNCompass software is provided "as-is," "as available," and all

warranties, express or implied, are disclaimed (including but not limited to the disclaimer of any implied warranties of merchantability and fitness for a particular purpose). The software may contain bugs, errors, problems or other limitations. No advice or information, whether oral or written, obtained by you from us through the use of the software shall create any warranty, representation or guarantee not expressly stated in this agreement.

**MISCELLANEOUS**

This Agreement shall be governed by and construed in accordance with the Federal law of the United States. Should any part of this Agreement be held invalid or unenforceable, that portion shall be construed consistent with applicable law and the remaining portions shall remain in full force and effect. Our failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision nor of the right to enforce such provision.

**NORTHROP GRUMMAN SYSTEMS CORPORATION**  
7575 COLSHIRE DRIVE  
MCLEAN, VA 22102

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Northrop Grumman Systems Corporation**, acting through Systems Modernization and Services Division ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.



**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**NORTHROP GRUMMAN SYSTEMS CORPORATION**

**NORTHROP GRUMMAN LICENSE, WARRANTY AND SUPPORT TERMS**

This License Agreement ("Agreement") is made and entered into and effective as of the last signature below (the "Effective Date") by and between Northrop Grumman Systems Corporation, a corporation incorporated under the laws of the State of Delaware, United States of America, by and through its Information Systems Sector, Civil Division with offices at \_\_\_\_\_ (hereinafter referred to as "Licensor") and the United States of America ("Government"), acting through \_\_\_\_\_, with offices at \_\_\_\_\_ (hereinafter referred to as "Licensee") either or both of which may be referred to as "Party" or "Parties".

1. Commercial Items. The software and documentation provided hereunder are "Commercial Items" as defined by Federal Acquisition Regulation ("FAR") 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation" as defined in FAR 12.212. No other regulation or data rights clause applies to the delivery of this software and documentation to the Government. Accordingly, the terms and conditions of this License govern the Government's use and disclosure of the Software, and supersede any conflicting terms and conditions of any contract pursuant to which the software and documentation is delivered to the Government.

2. Grant of License. Licensor hereby grants to Licensee for the term identified in Schedule A, non-exclusive, non-transferable and personal, irrevocable, indivisible right and license to use the licensed subject matter (software and documentation) specified in Schedule A in accordance with the terms and conditions of this Agreement. Licensee shall use the licensed subject matter solely as installed in sites listed in Schedule A on the number of workstations for which Licensee has paid a license fee. Licensee shall not decompile, disassemble, or otherwise reverse engineer the licensed software. The right to revise, modify or enhance the licensed software is expressly prohibited. All terms and conditions of this Agreement are material terms of the license granted by this Agreement.

2. Permitted Use. The Permitted Use is set forth in Schedule A and has the meaning set forth below.

Named Users: The number of users is limited to those for whom Licensee has paid a license fee in accordance with Schedule A. For purposes of this Agreement, a "Named User" is a person who has usage rights to the software. Named users who directly or indirectly use the Software must be counted towards the number of named users for whom Licensee has paid a license fee. Further, each person accessing the software's functionality is a user of the software, whether or not using software components to access the software's functionality, and must be counted towards the number of authorized named users.

Concurrent Users: The number of users is limited to those for whom Licensee has paid a license fee in accordance with Schedule A. For purposes of this Agreement, a "Concurrent User" is any person recognized by the Licensee who has usage rights to the software. Users who directly or indirectly use the Software must be counted towards the number of concurrent users for whom Licensee has paid a license fee. Further, each person accessing the software's functionality is a user of the software, whether or not using software components to access the software's functionality, and must be counted towards the number of authorized concurrent users who may use the Software at the same time without regard to the number of different "registered" or "named" users. Each concurrent user may make unlimited use of Software from any computers or devices at any locations worldwide.

Core-Based Server License: The number of Cores is limited to those for whom Licensee has paid a license fee in accordance with Schedule A for each such license. For purposes of this Agreement, an unlimited (until Core capacity is reached) number of authorized users may use the software, provided that the total number of Cores residing on all computers where the software is installed does not exceed the permitted number of Cores identified on Schedule A. When the Software is installed and distributed across multiple computers, all the Cores in each of these computers count toward the total number of Cores licensed. "Core" means the processor or execution core contained in the same integrated circuit within a computer's central processing unit, whether such Cores are virtual or physical. Licensee may not permit any unauthorized third party to access or to use the software. Licensee may not use the Software in the operation of a service bureau, commercial time sharing or in any other resale capacity.

3. Proprietary Rights. Licensee acknowledges that the licensed software contains valuable trade secrets of the Licensor. Licensee shall not assign, license, disclose or otherwise transfer the licensed software or any copy thereof without the written consent of Licensor. All copyright, patent, trade secret, confidential information and other intellectual and proprietary rights in the licensed software are and shall remain the valuable property of Licensor. Title to the licensed subject matter and all rights therein, including rights in patents, trade secrets and copyrights shall remain vested in Licensor.

4. Copies. Licensee may make copies of the licensed software solely for archival and backup purposes. All archival and backup copies of the software are subject to the provisions of this Agreement. Licensee shall reproduce all titles, trademarks, copyright and restricted rights notices in such copies. Except as provided in this section, Licensee may not copy the licensed subject matter (software and documentation) in whole or in part, for any purpose. Licensee agrees not to extract ideas, algorithms or procedures from the licensed subject matter (software and documentation) for any purpose, including without limitation, for the purpose of creating any works that are intended to be used as a substitute for the software or to be used by or for a third party.

5. Export. Licensee agrees to comply with all applicable export laws and regulations including those of the United States of America (US). Licensee shall not export, re-export or transmit, directly or indirectly, the licensed subject matter or any part thereof to any country for which US Export Administration Regulations or US International Traffic in Arms Regulations require prior authorization unless such prior authorization is obtained.

6. Confidentiality. The licensed subject matter, including the design and elements of the database tables, as well as any information that is marked confidential and those rights designated proprietary in Section 3, is confidential information, the disclosure of which would harm Licensor. Licensee agrees, to the full extent permitted by law: (i) to hold the confidential information in strict confidence; (ii) not to disclose any confidential information to any third party unless authorized in writing by Licensor; (iii) not to disclose any confidential information to any third party unless required by law or court order; and (iv) to use the confidential information solely in accordance with the terms of this Agreement.

7. Warranty. Licensor warrants for a period of thirty (30) days that the licensed software will substantially conform to the applicable technical specifications for the Software that is published in the documentation supplied to Customer. Except as expressly stated in the foregoing, Licensor furnishes the licensed subject matter, and Licensee agrees to accept same, on a strictly "as is" basis. Licensor makes no representations, warranties, guarantees, affirmations or obligations as to the uses, suitability, performance, capabilities, reliability or accuracy of the licensed subject matter for use in any fashion by Licensee. **Licensor expressly disclaims any warranty of merchantability and warranty of fitness for a particular purpose.** Notwithstanding the foregoing, Licensor agrees to repair defects in the licensed software for a period of ninety (90) days from delivery of the licensed software. Licensor does not warrant that the operation of the licensed software will be uninterrupted or error-free.

8. Limitation of Liability. Licensor shall have no liability to Licensee for any loss, claim, remedy, suit, action, damages, and/or liability under any cause of action whatsoever whether in contract or tort including but not limited to action by agents or employees of Licensee or third party bodily injury, or property damage based on products liability, strict liability, or negligence concerning any defects, bugs or deficiencies or lack thereof of any nature in the licensed subject matter. Licensor shall not be liable to Licensee for special, indirect, incidental or consequential loss or damage including, without limitation, any punitive damages arising out of or in connection with the license granted under this or any business activity of Licensee. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

9. **Services.** The license fees do not include any maintenance, online help, implementation support or other support services. The Parties will enter into a separate software maintenance agreement. The manner and periods in which, and the terms and conditions under which, such maintenance will be performed will be solely as set forth in that agreement. Under a separate agreement, Licensor will make training available to Licensee pursuant to Licensor's standard training procedures, at Licensor's standard rates at a location to be mutually determined by the Parties. Licensee shall limit use of the licensed software to its employees who have been appropriately trained.

10. **Governing Law.** Any allegation that the Licensor has breached this Agreement shall be governed by the Contract Disputes Act, 41 U.S.C. § 7101 et seq. Any dispute under this License may be resolved only in a forum expressly authorized by federal law for that dispute. The statute of limitations for, and the resolution of, such disputes will be governed by applicable federal law.

11. **General.** This Agreement may be modified or amended solely in writing by both Parties. The provisions of this Agreement shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any other provisions. Licensee may not assign or otherwise transfer this Agreement or any of the rights granted therein without the prior written consent of Licensor. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver, and no waiver will be effective unless it is in writing and signed by the waiving party. Any provision of this Agreement that imposes or contemplates continuing obligations on a party will survive termination of this Agreement. This Agreement is separate and distinct from any services associated with the software delivered hereunder.

**SCHEDULE A**

**The Licensed Subject Matter consists of the following:**

**A. Licensed Software.**

<b>Product</b>	<b>License Term</b>	<b>Permitted Use License Metric</b>	<b>License Quantity</b>

**B. Licensed Documentation.**

Document

**C. License Fee.** The License Fee of \$\_\_\_\_\_ is payable upon the Effective Date of this Agreement.

**D. Delivery.** Licensor shall deliver the licensed subject matter electronically within thirty (30) days of the Effective Date of this Agreement.

**E. Terms and Conditions.** The terms and conditions applicable to term software licenses (special item number 132-32), perpetual software license (special item number 132-33) and maintenance as a service (Special item number 132-34) of general purpose commercial information technology software per GSA Schedule GS-35F-0511T.

**NUTANIX**  
1740 TECHNOLOGY DRIVE, SUITE 150  
SAN JOSE, CA 95110

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

**Scope.** This Rider and the attached **Nutanix** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

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**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**NUTANIX**

**NUTANIX LICENSE, WARRANTY AND SUPPORT TERMS**

**NUTANIX END USER LICENSE AGREEMENT  
IMPORTANT – READ CAREFULLY**

**READ THIS END USER LICENSE AGREEMENT (THE "AGREEMENT") BEFORE DOWNLOADING, INSTALLING, COPYING, CONFIGURING, ACCESSING, DEPLOYING, USING NUTANIX SUPPORT AND/OR USING THE SOFTWARE. BY EXECUTING THIS AGREEMENT IN WRITING, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU FURTHER AGREE THAT YOU ARE BOUND BY AND ARE A PARTY TO THIS AGREEMENT, AND, IF YOU ARE ACCEPTING THESE**



**TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. YOUR USE OF THE SOFTWARE IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT: DO NOT ORDER OR PURCHASE THE SOFTWARE DO NOT DOWNLOAD, INSTALL, COPY, CONFIGURE, ACCESS, DEPLOY, CLICK ON AN "ACCEPT" BUTTON, USE NUTANIX SUPPORT AND/OR OTHERWISE USE THE SOFTWARE DELETE THE UNUSED SOFTWARE AND RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT**

This Agreement is between You, on behalf of the company, partnership or business entity that You represent ("You" or "Your") and either (a) Nutanix, Inc. a Delaware corporation, with offices located at 1740 Technology Drive, Suite 150, San Jose, CA 95110, USA if the Software was purchased in the United States, Mexico or Canada; or (b) Nutanix Netherlands, B.V. incorporated and registered in The Netherlands with its registered office at Scorpius 100, 2132 LR Hoofddorp, The Netherlands, if the Software was purchased in any other country ((a) and (b) are referred to herein as "Nutanix").

"Software" means any Nutanix software, library, utility, tool or other computer or program code, in object (binary) or source-code form provided, directly or indirectly to You as well as to any copies (whether complete or partial) made by or on Your behalf, including without limitation firmware. The term "Software" also includes any updates, upgrades or other new features, functionality or enhancements to the Software made available directly or indirectly to You. "Documentation" means any on-line read me, help files, or other explanatory materials related to the Software.

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#### **Use.**

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You must not cause, encourage or permit any third party to do any of the foregoing.

If You believe that any of the foregoing restrictions are prohibited by Federal law, You agree to provide Nutanix with at least ninety (90) days advance written notice of Your belief and provide all reasonably requested information from Nutanix to evaluate Your claim. Nutanix may, in its discretion, impose reasonable conditions, on such use of the Software, or offer to provide alternatives to ensure that Nutanix's proprietary rights in the Software are protected and to reduce any adverse impact on Nutanix's proprietary rights.

**Third Party Software.** You acknowledge that the Software may contain copyrighted software of third parties which are obtained under a license from such parties ("Third Party Software"). All third party licensors retain all right, title and interest in and to such Third Party Software and all copies thereof, including all copyright and other intellectual property rights. Your use of any Third Party Software shall be subject to, the terms and conditions of this Agreement, and the applicable restrictions and other terms and conditions set forth in any Third Party Software documentation or printed materials, including without limitation an end user license agreement.

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**Support.** Nutanix's support obligations for the Software, if any, are set forth in the Support Terms and Conditions, which may be found at <http://www.nutanix.com/support/support-terms/>. Nutanix does not provide any product maintenance or support services under this Agreement. Product maintenance and support services, if any, will be provided under a separate agreement. This Agreement does not entitle You to any product updates at any time in the future.

**Term and Termination.** This Agreement and Your right to use the Software and Documentation may be terminated by You at any time upon written notice. Upon expiration or termination of this Agreement for any reason: (a) all licenses granted by Nutanix shall immediately terminate; (b) You shall immediately discontinue use of the applicable Software and products; (c) You shall promptly remove Your confidential data, if any, and immediately return the products and related materials to Nutanix or the party from whom the product was obtained; (d) You shall destroy all copies of the Software and Documentation in Your possession, custody or control; and (e) if requested, You shall certify to Nutanix in writing that such return or destruction has occurred. The preamble as well as Section 2, 4, 6, 7, 8, 10, 12, 14, 15 and 16 shall survive any expiration or termination of this Agreement.

**NO WARRANTY.** EXCEPT AS PROVIDED IN THE NUTANIX LIMITED WARRANTY, WHICH MAY BE FOUND AT [AT EXHIBIT B \(ATTACHED\)](#) YOU AGREE THAT THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND THAT NUTANIX AND ITS LICENSORS MAKE NO OTHER WARRANTIES AS TO THE SOFTWARE OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION UNINTERRUPTED USE, ACCURACY, AND DATA LOSS. NUTANIX AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF NUTANIX KNOWS OR SHOULD HAVE KNOWN OF SUCH PURPOSE), AND ANY WARRANTIES ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE, OR THAT THE SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE OR HARDWARE OR ANY OTHER NUTANIX PRODUCTS. NUTANIX AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION OR ANY RESULTS OF USE THEREOF WILL BE FREE OF DEFECTS, ERRORS OR VIRUSES, RELIABLE OR ABLE TO OPERATE ON AN UNINTERRUPTED BASIS OR IN A PARTICULAR ENVIRONMENT OR THAT ERRORS THEREIN, IF ANY, WILL BE CORRECTED. YOU FURTHER ACKNOWLEDGE THAT THE SOFTWARE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA OR INFORMATION PROVIDED BY THE NUTANIX SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

**LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, NUTANIX AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL DAMAGES, EVEN IF NUTANIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY LOST REVENUES, GOODWILL OR PROFITS, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE HARDWARE, SOFTWARE OR SERVICES, LOST DATA, WORK STOPPAGE, RE-RUN TIME, INACCURATE OUTPUT, COMPUTER FAILURE OR MALFUNCTION. YOU AGREE THAT YOU SHALL HAVE THE SOLE RESPONSIBILITY FOR PROTECTING YOUR DATA, BY PERIODIC BACKUP OR OTHERWISE. IN ANY CASE, NUTANIX'S SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE THE REPLACEMENT OF THE SOFTWARE FOUND TO BE DEFECTIVE, WITH THE EXCEPTION OF DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF NUTANIX TO THE EXTENT APPLICABLE LAW PROHIBITS THE LIMITATION OF DAMAGES IN SUCH CASES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OR LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATIONS MAY NOT APPLY TO YOU IN WHICH CASE NUTANIX'S LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Nutanix's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**Infringement.** Subject to the remainder of this section, Nutanix shall defend or settle, at its own expense, any third-party action against You to the extent based upon a claim that the Software infringes any copyright or trademark or misappropriates any trade secret, and will pay such damages or costs as are finally awarded against You attributable to such claim, provided that You (i) notify Nutanix promptly in writing of any such action, (ii) give Nutanix control of the defense and/or settlement of such action to the extent permitted by 28 USC 516, (iii) give Nutanix all reasonable information and assistance, and (iv) are not in material breach of this Agreement. Should the Software become, or in the opinion of Nutanix be likely to become, the subject of such an infringement claim, Nutanix may replace or modify, in whole or in part, the Software to make it non-infringing. Nutanix assumes no liability hereunder for: (a) any method or process in which the Software may be used; (b) its compliance with Your specifically requested specifications; (c) use of software other than a current unaltered release of the Software or use of any older version of the Software when the use of a newer release of the Software made available to You would have avoided the infringement; (d) the combination, operation or use of the Software with non-Nutanix products or services; or (e) use of the Software in a manner or for a purpose for which it was not intended. THIS SECTION SETS FORTH NUTANIX'S ENTIRE LIABILITY AND OBLIGATION AND YOUR SOLE REMEDY FOR ANY CLAIMS OR ACTIONS RELATED TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

**Confidentiality.** "Confidential Information" shall mean the Software and Documentation and all other information disclosed to You that Nutanix characterizes as confidential at the time of its disclosure either in writing or orally, except for information which You can demonstrate: (a) is previously rightfully known to You without restriction on disclosure; (b) is or becomes, from no act or failure to act on Your part, generally known in the relevant industry or public domain; (c) is disclosed to You by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by You without access to the Confidential Information. You shall use Your best efforts to preserve and protect the confidentiality of the Confidential Information at all times. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Nutanix. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Nutanix in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with Nutanix in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If You are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, You will (i) immediately notify Nutanix prior to such disclosure to allow Nutanix an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Nutanix in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, You shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements. The foregoing obligations shall survive any termination or expiration of this Agreement.



**Technical Information.** You agree that Nutanix may collect or process technical and related information arising from Your use of the Software which may include but may not be limited to internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services.

**Compliance with Laws; Export Control.** Each Party shall comply with all laws applicable to the actions contemplated by this Agreement. You acknowledge that the Software is of United States origin, and is subject to the U.S. Export Administration Regulations, and may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) You are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department lists of Specially Designated Nationals, Foreign Sanctions Evaders, Sectoral Sanctions Identifications, or Palestinian Legislative Council; or the U.S. Commerce Department Denied Persons List, Entity List, or Unverified List; or the U.S. State Department Nonproliferation Sanctions, or Debarred List; and (2) You will not permit the Software, directly, or indirectly, to be used for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of Software and Documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement. You agree that the Software may not be exported/re-exported to Cuba, Iran, North Korea, Sudan and Syria. Furthermore, You agree not to resell, transfer, or re-export products without prior authorization from Nutanix or the U.S. government to any military entity of: Albania, Armenia, Azerbaijan, Belarus, Cambodia, China (PRC), Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Macau, Moldova, Mongolian P.R., Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Vietnam.

**Governing Law.** To the extent permitted by applicable law, this Agreement is governed by and construed in accordance with the substantive Federal laws of the United States. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**Miscellaneous.** If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties' original intent, and the remaining portions remain in full force and effect. The controlling language of this Agreement is English. If You have received a translation into another language, it has been provided for Your convenience only. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. You may not assign, delegate any performance, or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. You agree not to copy, sell, give or assign the Software or any part thereof to a third party. You represent and warrant that the performance of any activities contemplated by this Agreement do not and shall not conflict with any other agreement or obligation to which You are a party or by which You are bound. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns. This Agreement, together with the terms of the GSA Schedule Contract, constitutes the entire and sole agreement between You and Nutanix with respect to the Software and Documentation and supersedes all prior and contemporaneous agreements relating to the Software and Documentation, whether oral or written (including any inconsistent terms contained in a purchase order). This Agreement may be amended only in writing signed by authorized representatives of both Parties and specifically referring to this provision. This Agreement will be interpreted without being construed for or against either Party. The words "includes" and "including" and the abbreviation "e.g." will be deemed to be followed by the words "without limitation".

**User Outside the U.S.** If You are using the Software or Documentation outside the U.S., then the following shall apply: (a) You confirm that this Agreement and all related documentation is and will be in the English language; (b) You are responsible for complying with any local laws in Your jurisdiction which might impact Your right to import, export or use the Software and Documentation, and You represent that You have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

## EXHIBIT A - Support Terms & Conditions

**1. SUPPORT.** Customer is not entitled to support unless Customer has ordered and paid for Support as provided in the Order. Nutanix will use reasonable efforts to provide support services as described in these Support Terms and Conditions ("Support") at the level Customer has purchased (e.g., Basic, Production or Mission Critical) for the term Customer has purchased, which commences upon Product shipment. Nutanix's Support contact information is at [www.nutanix.com/support](http://www.nutanix.com/support). Support is contacted primarily through Nutanix's web support portal (generally accessible on a 24x7x365 basis excepting periodic maintenance or network unavailability) and secondarily through telephone and email support. Nutanix's Support obligation is limited to using reasonable efforts to remedy a reported failure of the Products to substantially operate in accordance with Nutanix's official specifications (a "problem"). Support does not include Hardware or Software installation, training, consulting services or preventative maintenance.

**SOFTWARE SUBSCRIPTION.** Support may include a subscription to new releases of the Software that are commercially released by Nutanix during Customer's term of Support which may include bug fixes, patches releases, and major updates ("Releases"), but does not include enhancements or upgrades licensed by Nutanix for a separate fee at Nutanix's discretion. Any Releases may only be installed as an update to the Customer's original Software on the original Hardware. All Releases will be subject to the terms and conditions set forth in the GSA Schedule Contract of which these Support Terms and Conditions are a part, and the EULA or Click-wrap. Customer can download Releases from <http://support.nutanix.com>. Notwithstanding the foregoing, Nutanix has no obligation to deliver Release(s) to Customer. In addition, Nutanix does not guarantee that future Releases will be compatible with the Hardware Customer has purchased.

**HARDWARE SUPPORT.** If Nutanix determines that replacement parts are required for Support, and Hardware Support is included in the Support services purchased by Customer, then Nutanix will use reasonable efforts to deliver them to Customer, at no charge, by the target delivery time ("TDT"), which begins after Nutanix has diagnosed the problem. For critical parts, Nutanix's TDT is 4 hours for Platinum Plus Service, and next business day for Gold and Platinum Service if the problem is diagnosed by Nutanix before 3pm Pacific Standard Time (PST). For non-critical parts, Nutanix TDT is within a reasonable time after the problem is diagnosed by Nutanix. Nutanix actual delivery times may vary if Customer's location is remote and/or if common carriers encounter delays or require special transportation arrangements reaching Customer's site, or if customs clearances impose delays. Platinum Plus Service is not available in all locations. Replacement parts may be new or refurbished at Nutanix's option. Defective parts must be returned to Nutanix. If Customer has purchased Nutanix no-return-disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix property. Unless Customer requests otherwise, Nutanix or a Nutanix subcontractor will typically provide on-site installation of the replacement part with Customer's reasonable assistance.

**SOFTWARE SUPPORT.** Nutanix may provide Customer with Software Support as part of the Support Services package purchased by Customer. All problem classifications shall be determined by Nutanix in its sole and absolute discretion. Nutanix classifies Software problems as either: P1—Customer's production use is stopped or so severely impacted that Customer cannot reasonably continue use of the Products; P2—important Product

features are unavailable with no acceptable workaround, but Customer's production use is continuing; P3 — important Product features are unavailable but a workaround is available, or less significant Product features are unavailable with no reasonable workaround, but Customer's production use is continuing; P4 — all other problems. Customer must expeditiously provide Nutanix with notice of any problem. Once notice is received, Nutanix will use reasonable efforts to acknowledge Customer's problem report and commence Support efforts to resolve the problem(s). When it becomes necessary (and in Nutanix's sole discretion), Nutanix will provide on-site technical support in Nutanix's discretion, and if so provided in Nutanix's discretion, Nutanix will be responsible for travel and related expenses incurred in providing the on-site Support. If Nutanix determines that Customer's problem was not caused by Nutanix Products and if the onsite Support was requested by Customer, then Nutanix may invoice Customer Nutanix's then-current daily time and materials rate under the GSA Schedule pricelist.

**EXCLUSIONS.** Nutanix will have no Support obligations for any conditions attributable to: (i) negligence or misuse or abuse of the Products; (ii) use of the Products other than in accordance with Nutanix's official specifications; (iii) modifications, alterations or repairs to the Products made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Products specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product with any non-Nutanix apparatus, data or programs outside the typical, recommended or reasonably anticipated use of the Products within their specifications.

**CONDITIONS TO NUTANIX'S SUPPORT OBLIGATIONS.** Customer needs to do the following as a condition to Nutanix's provision of Support: (i) pay all applicable fees; (ii) designate from time to time a reasonable number of authorized persons trained by Nutanix who can contact Nutanix for Support, which persons are Customer's only personnel entitled to contact Nutanix for Support; (iii) register all Products with Nutanix, and provide notice to Nutanix of all sites and site moves; (iv) provide Nutanix access to Customer's site and/or network and personnel as Nutanix reasonably requests to assist Nutanix in performing the Support; (v) enable Nutanix's automated alert system on the Products which sends regular system status reports and alerts to Nutanix when certain critical system events occur in the Product at Customer's site; (vi) use the Products in a supported configuration and maintain the Software within the then-current prior two Releases; (vii) install recommended replacement parts in the Products as reasonably directed by Nutanix; (viii) refrain from arbitrarily changing Product settings or configurations reasonably recommended by Nutanix; (ix) ensure that proper licenses have been obtained for all Software and adhere to all licensing terms and conditions; and (x) make available to Nutanix any of Customer's systems data, information and other materials reasonably required by Nutanix for the Support ("Customer Materials"), the accuracy of which is Customer's responsibility. Subject to Customer's rights in the Customer Materials, Nutanix will exclusively own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or developed by Nutanix or Nutanix's personnel in connection with performing Support ("Nutanix Materials"), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein. Customer will have no other rights in the Nutanix Materials except as expressly agreed to in writing by Nutanix and Customer. Nothing in these Purchase Terms and Conditions will be deemed to restrict or limit Nutanix's right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party. Customer agrees that it may be necessary for Nutanix to collect, process and use Customer's data in order to perform Nutanix obligations to provide Support. Customer consents to these activities and to the transfer of the data to Nutanix affiliated companies and service providers located throughout the world who are subject to confidentiality agreements with Nutanix. Nutanix will not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Products returned to Nutanix for repair.

**REINSTATEMENT OF SUPPORT.** If Customer has not continuously purchased and complied with the terms and conditions of Support, Customer may request that Nutanix perform an inspection of the Products and any professional services Nutanix reasonably determines are required for the Products to be certified as substantially operating within their official Product specifications. After Nutanix's certification, Customer may reinstate Support if Nutanix then offers it in general commercial availability and upon payment to Nutanix of: (i) for any Products that have been off Support for more than ninety (90) days; (ii) the pro rata Support fees that would have been payable at Nutanix's then applicable annual rate of Support for the period the Products were not covered by Support; and (iii) the Support fees for the annual period commencing upon the reinstatement of Support.

**NON-TRANSFERABILITY.** If Customer sells or otherwise transfers any Hardware to any third party, Customer will either de-install and remove the Software from such Hardware prior to sale or transfer, or provide Nutanix with reasonable notice and an opportunity to remove or disable such Software prior to any sale or transfer of the Hardware. Subject to availability of resources, Nutanix will provide de-installation services to Customer at Nutanix's then current time and materials rates provided Customer has complied with these Purchase Terms and Conditions and entered into a separate agreement with Nutanix to receive such de-installation services. Subject to availability of resources, Nutanix will provide re-installation and re-certification services to a third party purchaser or transferee of Nutanix Hardware, in each case at Nutanix's then current time and materials rates provided the purchaser or transferee has: (i) met Nutanix credit requirements; (ii) obtained a Software license from Nutanix; (iii) entered into a separate agreement with Nutanix to receive re-installation and re-certification services; (iv) obtained re-certification of the Products as installed; and (v) paid any Support reinstatement fees and purchased at least a one (1) year term of annual Support from Nutanix commencing upon the date of Product transfer. Customer's remaining outstanding term of Support is not transferable. Notwithstanding the foregoing, Nutanix reserves the right to refuse to grant a Software license or provide Services to a proposed purchaser or transferee as determined in Nutanix's sole and absolute discretion.

**RELATIONSHIP OF THE PARTIES.** Nutanix is performing Support as an independent contractor, and not as an employee, agent, joint venturer or partner of Customer, and neither of the parties has the authority to bind the other by contract or otherwise. Nutanix acknowledges and agrees that Nutanix personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. Nutanix is solely responsible for all taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between Nutanix and Nutanix personnel and the performance of Support by Nutanix personnel.

**ENGLISH.** All Support will be provided in the English language unless agreed otherwise. The parties confirm that they have requested that the Purchase Terms and Conditions of which these Support Terms and Conditions are a part and all related documents be drafted in English at the express wishes of the parties. Les parties ont exigé que le présent contrat et les documents connexes soient rédigés en anglais selon la volonté expresse des parties.

**CAPITALIZED TERMS.** Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Support Terms and Conditions are a part, which may be found at [www.nutanix.com/support](http://www.nutanix.com/support).

## EXHIBIT B – LIMITED WARRANTY

**EQUIPMENT.** Nutanix warrants solely to Customer that the Hardware will be substantially free from material defects in material and workmanship for the one (1) year period from the date of shipment of the Products (the "Hardware Warranty Period"). Nutanix's entire liability, and Customer's sole and

exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to repair the defective Hardware within a reasonable period of time; (ii) to replace the defective Hardware; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the Product for a refund of the amount paid for the Product and the pre-paid and unused portion of any remaining term of Support for the Product. If Customer has purchased Nutanix's no-return-disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix's property. Nutanix will not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Nutanix for repair, whether under warranty or not. This Limited Warranty applies only to Nutanix-branded products. Third party products resold by Nutanix may have separate warranty terms, which can be found at [www.nutanix.com/support](http://www.nutanix.com/support).

**REPLACEMENT PARTS.** All replacement parts carry a warranty on the terms and conditions set forth immediately above of the following duration: (i) if the replacement part is installed with more than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be until the expiration of the Hardware Warranty Period; (ii) if the replacement part is installed during the Hardware Warranty Period but with fewer than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be ninety (90) days from the date of installation of the replacement part; and (iii) if the replacement part is installed after the expiration of the Hardware Warranty Period under the terms and conditions of Support, then the warranty on the replacement part shall be the earlier of ninety (90) days from the date of installation of the replacement part and the last day of Support. Replacement parts may be new or refurbished.

**SOFTWARE.** Nutanix warrants to Customer that the Software will substantially perform in accordance with Nutanix's official Product specifications for the ninety (90) day period from the date of shipment of the Products. Nutanix does not warrant that the operation of the Software will be uninterrupted or error free, or that all defects can be corrected. Nutanix's entire liability, and Customer's exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to remedy the defective Software within a reasonable period of time so as to cause it to operate as warranted; (ii) to replace the affected Software; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the affected Software for a refund of the amount paid by Customer for the affected Software and the pre-paid and unused portion of any remaining term of Support for the affected Software.

**SERVICES.** Nutanix will use reasonable efforts to provide Services in a workmanlike manner. Customer must notify Nutanix of any failure to so perform within ten (10) days after the date on which such failure first occurs. Nutanix's entire obligation, and Customer's exclusive remedy, under this warranty will be for Nutanix, at Nutanix option: (i) to use reasonable efforts to re-perform the deficient Services within a reasonable period of time; or (ii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, refund the portion of any Services fee that corresponds to the failure to perform.

**EXCLUSIONS.** Nutanix will have no obligation under these Limited Warranties to the extent that any problem with a Product results from or is otherwise attributable to: (i) negligence or misuse or abuse of the Product; (ii) use of the Product other than in accordance with Nutanix's official specifications; (iii) modifications, alterations or repairs to the Product made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Product specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product in combination with any non-Nutanix apparatus, data or programs outside Nutanix's typical, recommended or reasonably anticipated use of the Products within their official Product specifications. Customer shall be solely liable for all freight, storage, and repair costs associated with any return that, in Nutanix's sole discretion, is not eligible for return hereunder, and Nutanix may invoice Customer for any of the foregoing costs.

**WARRANTY DISCLAIMER.** EXCEPT PURSUANT TO THE LIMITED WARRANTIES EXPRESSLY DESCRIBED ABOVE, NUTANIX DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PRODUCTS OR SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF Limited Warranties Page 2 MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER. NUTANIX DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

**HAZARDOUS USE RESTRICTION.** THE PRODUCTS ARE NOT DESIGNED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAILSAFE PERFORMANCE, INCLUDING OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS, OR ANY OTHER SYSTEM WHOSE FAILURE COULD LEAD TO INJURY, DEATH, ENVIRONMENTAL DAMAGE, OR MASS DESTRUCTION. 8. CAPITALIZED TERMS. Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Limited Warranties are a part, which may be found at [www.nutanix.com/support](http://www.nutanix.com/support).

OPENGOV, INC.  
955 CHARTER STREET  
REDWOOD CITY, CA 94063

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

- 1. Scope.** This Rider and the attached **OpenGov, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
- 2. Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
  - Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
  - Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
  - Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.



**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**OPENGOV, INC.**

**OPENGOV, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**1. SOFTWARE SERVICES**

1.1 Subject to the terms and conditions of these OpenGov Terms and Conditions (the "Agreement"), OpenGov will use commercially reasonable efforts to perform the software services (the "Software Services") identified in the applicable Software Agreement entered into by OpenGov and Ordering Activity ("Software Agreement").

1.2 Ordering Activity understands that OpenGov's performance depends on Ordering Activity timely providing OpenGov with a copy of the Ordering Activity's chart of accounts in .csv or .xls format. In addition, Ordering Activity agrees to provide OpenGov with five or more years of general ledger data, also in .csv or .xls format, including budget data for the current year and actual expense and revenue data for past years. Any dates or time periods relevant to OpenGov's performance will be extended appropriately and equitably to reflect any delays caused by Ordering Activity's failure to timely deliver any such materials. OpenGov shall not be liable for any delays in performance under this Agreement resulting from Ordering Activity's failure to meet these obligations.

## **2. RESTRICTIONS AND RESPONSIBILITIES**

2.1 This is a contract for access to the Software Services and Ordering Activity agrees not to, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Software Services, documentation or data related to the Software Services, except to the extent such a restriction is limited by applicable law; modify, translate, or create derivative works based on the Software Services; or copy, rent, lease, distribute, assign, sell, or otherwise commercially exploit, transfer, or encumber rights to the Software Services; or remove any proprietary notices.

2.2 Ordering Activity will use the Software Services only in compliance with all applicable laws and regulations (including, but not limited to, any export restrictions).

2.3 Ordering Activity shall be responsible for obtaining and maintaining any equipment and other services needed to connect to, access or otherwise use the Software Services and Ordering Activity shall also be responsible for (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) for all uses of Ordering Activity user accounts with or without Ordering Activity's knowledge or consent.

**3. OWNERSHIP.** OpenGov retains all right, title, and interest in the Software Services and all intellectual property rights (including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature) therein.

## **4. RESERVED.**

**5. DATA LICENSE.** Ordering Activity grants OpenGov a non-exclusive, transferable, perpetual, worldwide, and royalty-free license to use any data or information submitted by Ordering Activity to OpenGov for the development of new software or the provision of the Software Services.

## **6. RESERVED.**

## **7. RESERVED.**

## **8. WARRANTY AND DISCLAIMER**

8.1 OpenGov represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Software Services shall be performed in a professional and workmanlike manner in accordance with generally prevailing industry standards.

8.2 Ordering Activity represents and warrants that (i) it has all right and authority necessary to enter into and perform this Agreement; (ii) it owns all right, title, and interest in and to all data provided to OpenGov for use in and in connection with this Agreement, or possesses the necessary authorization thereto; and (iii) OpenGov's use of such materials in connection with the Software Services will not violate the rights of any third party.

8.3 OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND OPENGOV DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

## **9. RESERVED.**

## **10. RESERVED.**

**OPEN TEXT INC.**  
**1301 S. MOPAC EXPRESSWAY, SUITE 150**  
**AUSTIN, TX 78746**

**OpenText**  
 End User License Agreement US

This End User License Agreement ("**EULA**") is between the Open Text Inc. ("**OT**") and the Government Ordering Activity ("**Licensee**"), and is effective on the last signature date ("**Effective Date**").

OT and Licensee agree as follows:

## 1.0 DEFINITIONS

"**Affiliate**" means any entity controlled by, controlling, or under common control with a party to this EULA, including an entity of the procuring federal agency. Control exists through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the voting interests of the subject entity. If an entity ceases to meet these criteria, it will cease to be an Affiliate under this EULA;

"**Claim**" means claims, suits, actions or proceedings brought against Licensee in a court of competent jurisdiction in a Covered Country by a third party which allege an infringement of the third party's patent, copyright, or trade secret rights of which OT is aware existing under the laws of the Covered Countries;

"**Covered Countries**" means Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Italy, New Zealand, Norway, Spain, Sweden, Switzerland, the Netherlands, the United Kingdom and the United States.

"**Documentation**" means user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Software, made generally available to OT customers by OT;

"**Licensee**" means a Government Ordering Activity or End User of the U.S. Government who purchases services and/or supplies through the issuance of a task order, delivery order and contract. A Licensee is not a government employee, or person acting on behalf of the Federal Government in his or her personal capacity.

"**Government Ordering Activity**" means here any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

"**License Documents**" means this EULA including any addenda, the License Model Schedule, all Transaction Documents (including pricing information), Documentation, the document entitled Third Party Notifications available at [www.opentext.com/agreements](http://www.opentext.com/agreements), and any other documents provided by OT setting out permitted uses of the Software;

"**License Fees**" means all non-refundable fees payable by Licensee to OT with respect to the granting of Software Licenses;

"**License Model**" means the description of the conditions, limitations and restrictions associated with the Software License which govern the use of the Software;

"**License Model Schedule**" for each individual Software License means the schedule entitled "License Model Schedule" attached hereto as Exhibit A.

"**Physical Media**" means the physical media or hardware containing or enabling Software, such as a compact disc; "**Reseller**" means an authorized OT reseller;

"**Software**" includes software products, Documentation, and Support Software licensed to Licensee under this EULA, including all copies made by Licensee; and may, where the meaning so implies, refer to all of the Software or portions thereof; "**Software License**" means a license for the Software granted under this EULA to the Licensee;

"**Support Software**" means all maintenance and support software, updates, upgrades, patches, fixes, modifications, , or new versions of the Software provided to Licensee pursuant to an OT maintenance and support program, together with all related Documentation provided to Licensee pursuant to such program;

"**Taxes**" means the sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate governments arising out of granting of licenses and delivery of Software under this EULA, except taxes imposed on OT's income;

"**Third Party Software**" means software products owned and licensed directly by third parties to the end user;

"**Transaction Document**" includes: a) a written government task or delivery order schedule signed by both parties which references this EULA, b) a quotation issued by OT and signed by the Licensee, c) an invoice issued by OT, or d) any other document that references this EULA and is agreed to by OT in writing. If and to the extent of any inconsistency between two or more Transaction Documents, the priority of the Transaction Documents will be interpreted in the order listed above. All Transaction Documents are governed by this EULA.

## 2.0 OWNERSHIP OF THE SOFTWARE

**2.1 Ownership.** None of the Software is being sold. All ownership, intellectual property, and other rights and interests in the Software remain solely with Open Text Corporation, its Affiliates or its licensors. The source code of the Software is a trade secret of Open Text Corporation, its Affiliates or its licensors, and is their confidential information.

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**3.1 Grant of License.** Except as otherwise stated in the License Documents and subject to Licensee's payment of the License Fees, OT grants to Licensee a worldwide, nonexclusive, perpetual (unless stated to be a time limited term), internal business use license



(unless otherwise stated in the License Model Schedule) to download, install and execute the Software identified in the applicable Transaction Document subject to the License Models, restrictions, quantities, conditions, and limitations stated in the License Documents. OT reserves all rights not expressly granted to Licensee in a written document signed by both parties.

**3.2 Applicable License Models.** The License Model and any restrictions for use of the Software will be stated in the Transaction Document.

**3.3 Allocation of Licenses.** Unless prohibited under the applicable License Document, the Licensee may allocate Software Licenses to an entity of the procuring federal agency, provided: (a) the Licensee remains responsible for the Affiliate's compliance with the License Documents; and (b) the Licensee is liable for any breach of the License Documents by an Affiliate.

#### 4.0 AUTHORIZED REPRODUCTIONS

**4.1 Software and Documentation.** Subject to the applicable License Model for the Software licensed hereunder, OT agrees that Licensee will have the rights to 1) use or copy for use Software licensed with computer(s) for which it was acquired, including use at the applicable Government installation to which the computer(s) may be transferred; 2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative; 3) reproduced for safekeeping (archives) or backup purposes; 4) disclose to and reproduce for use by support service contractors, subject to the restrictions set forth in the contract, and 5) use or copy for use with a replacement computer. Licensee may reproduce copies of the Software necessary for it to use the Software as licensed. Each copy of the Software made by Licensee must contain the same copyright and other notices that appear on the original copy. Licensee may not modify the Documentation. Documentation may: (a) only be used to support Licensee's use of the Software; (b) not be republished or redistributed to any unauthorized third party; and (c) not be distributed or used to conduct training for which Licensee, or any other party, receives a fee. Licensee will not copy any system schema reference document related to the Software.

#### 5.0 RESTRICTIONS

**5.1 General Restrictions.** Except as provided in the License Documents, Licensee will not and will not permit any other party to: (a) assign, transfer, give, distribute, reproduce, transmit, sell, lease, license, sublicense, publicly display or perform, redistribute or encumber the Software by any means, to any unauthorized party; (b) rent, loan or use the Software for service bureau or timesharing purposes, or in any other way allow third parties to access, use, and/or exploit the Software; (c) use the Software, in whole or in part, to create a competitive offering; (d) charge a fee to any party for access to or use of the Software; (e) use the Software in a manner inconsistent with the License Documents.

**5.2 Further Restrictions.** Licensee will not disclose to any unauthorized persons results of any benchmark or other performance, evaluation, or test run on or related to the Software. Licensee acknowledges that the Software is not fault-tolerant and not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance and consequently will not use the Software for (w) the on-line control of aircraft, air traffic, aircraft navigation, or aircraft communications; (x) in the design, construction, operation or maintenance of any nuclear facility; (y) medical or surgical applications; or (z) any other application in which failure could cause personal injury or death. Except as expressly permitted under applicable law and granted herein, Licensee will not modify, adapt, translate, reverse engineer, decompile, disassemble, decrypt, port, emulate the functionality, reverse compile, reverse assemble, or otherwise reduce or attempt to discover any source code or underlying structures, ideas, or algorithms of the Software or any confidential information or trade secret.

**5.3 Derivative Works.** Licensee is prohibited from creating any change, translation, adaptation, arrangement, addition, modification, extension, upgrade, update, improvement, (including patentable improvements), new version, or other derivative work based on, incorporating, or using, the original Software. Notwithstanding, if any of the Software is provided to the Licensee in source code format (or any other format that can be modified), the Licensee may modify such portion of the Software for the sole purpose of using the Software in accordance with this EULA ("Licensee Software"). As between Licensee and OT, Licensee shall own all software prepared by Licensee using Licensee Software, except such portions of same which consist of Software which portions shall be excluded from the definition of "Licensee Software", shall remain solely owned by OT and/or OT's licensors, and shall be used by Licensee in accordance with the terms of this EULA for the sole purpose of Licensee conducting Licensee's internal business operations and not for any other purpose (including redistribution).

**5.4 Interfacing and Interactive Software.** Licensee may not permit any software products not licensed by OT to interface or interact with the Software, unless accomplished through the use of application program interfaces provided by OT.

#### 6.0 ORDERING SOFTWARE LICENSES

**6.1 Direct Orders.** Any supplies or services to be furnished under this EULA shall be ordered by issuance of delivery orders or task orders that shall be submitted directly to OT.

**6.2 Orders through an OT Reseller.** Software Licenses ordered through a Reseller are governed by the license grant set out in this EULA and the License Model description set out in the License Model Schedule. The License Model will be stated in an order document between Licensee and Reseller. If Reseller does not notify Licensee of the correct License Model, then the License Model for which OT has been paid License Fees will apply to the correct License Model.

**6.3 Risk of Loss and Shipping Terms.** The Software is deemed delivered on the earlier of (a) when it is made available by OT for electronic download, or (b) when OT delivers the Software on Physical Media. Title to the Physical Media and all risk of loss for the Physical Media will pass to Licensee when delivered by OT from OT's shipping facility or made available to Licensee for electronic download.

**6.4 Invoicing And Payment.** OT may invoice Licensee for License Fees. All License Fees due to OT by Licensee are due and payable in accordance with the terms and conditions of contract GS-35F-0480J.

**6.5 Over Usage.** OT may invoice Licensee for fees and payable by Licensee due to use of Software or access to the Software in excess of the number or type of Software Licenses negotiated and granted by OT and purchased by Licensee under the government contract.

#### 7.0 OT Support and Maintenance.

**7.1 OT Support and Maintenance Program.** All Support Software provided to Licensee under an OT maintenance or support program is governed by this EULA. The provision of maintenance and support services by OT will be governed by the then-current version of the applicable OT Software Maintenance Program Handbook (available upon request or at [www.opentext.com/agreements](http://www.opentext.com/agreements)).

## **8.0 Audits and Noncompliance.**

**8.1 Audit.** During the term of this EULA, Licensee will maintain electronic and other records sufficient for OT to confirm that Licensee has complied with this EULA. Licensee will promptly and accurately complete and return (no less than 30 days) any self-audit questionnaires, along with a certification by an authorized representative of Licensee confirming that Licensee's responses to the questionnaire accurately and fully reflect Licensee's usage of the Software. Furthermore, subject to government security requirements, OT may once per year audit Licensee's records to ensure Licensee has complied with this EULA. Licensee shall cooperate with OT's audit team accurately respond in a reasonable timeframe to, database queries, location information, system reports, and other reports requested by OT and provide a certification by an authorized representative of Licensee confirming that information provided by Licensee accurately reflects Licensee's usage of the Software.

**8.2 Conduct.** OT will coordinate with the Licensee's authorized representative and/or Contracting Officer the date and time to conduct such audit. Audits will be conducted during regular business hours and will not interfere unreasonably with Licensee's business. OT will provide Licensee with 15 days prior notice of each audit. OT will comply with all applicable data protection regulations.

**8.3 Noncompliance.** If Licensee is not in compliance with the Software Licenses, Licensee will be deemed to have acquired additional Software Licenses. Discrepancies found in an audit may result in a charge by OT or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order. This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at 522.212-4(d); no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process. Any audit requested by OT will be performed at OT's expense, without reimbursement by the Government.

## **9.0 LIMITED WARRANTIES**

**9.1 Limited Software Warranty.** OT warrants to Licensee that Software: (a) will be free of all known viruses at the time of first delivery; and (b) will perform substantially in accordance with its accompanying Documentation for 60 days from the date of first delivery. OT's entire liability, and Licensee's sole remedy, for each breach by OT of the warranty in: (i) clause (a) is limited to requiring OT to deliver a replacement copy of the Software to Licensee free of known viruses; and (ii) clause (b) is limited to requiring OT to correct, repair or work around the portion of the Software giving rise to such breach within a commercially reasonable time. In the event OT is unable to fulfill or comply with the requirements of this entire paragraph 9.1, OT will refund all License Fees attributable to the portion of the Software giving rise to the breach.

**9.2 Warranty Exclusions.** The warranties do not apply to any breach caused by: (a) any unauthorized change to the Software, except where the changes were made by OT through Support Software; (b) Licensee's failure to provide a suitable installation or operating environment for the Software; (c) use of the Software on or caused by software, firmware, computer systems, data, technology or a hardware platform not approved by OT in writing; (d) any telecommunications medium such as internet connections, used by Licensee; (e) failure of Licensee or user to comply with the Documentation; or (f) failure of Licensee to report a warranty claim within the warranty period. OT does not warrant that the Software is error-free or will operate without interruption.

**9.3. WARRANTY DISCLAIMER.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION, OT AND OT'S LICENSORS MAKE NO REPRESENTATIONS AND DISCLAIM ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE ADEQUACY OF THE SOFTWARE TO PRODUCE A PARTICULAR RESULT.

**9.4 Inability to Exclude Warranties.** If a jurisdiction applicable to this EULA restricts the exclusion of certain implied warranties, limitations on how long an implied warranty may last, or the exclusion or limitation of incidental, consequential, or special damages: (a) each warranty which cannot be excluded is limited in time to 60 days from the date of first delivery of the Software; and (b) OT's total liability to Licensee for breach of all such warranties are limited to the amount stated in the Limitation of Liability section and as expressly available under federal law.

## **10.0 OT INFRINGEMENT INDEMNITY**

### **10.1 Infringement Claims.**

Any clause of this EULA requiring the OT or licensor to defend or indemnify Licensee is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

OT shall indemnify the Licensee and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this EULA, provided OT is reasonably notified of such claims and proceedings.

**10.2 Licensee Obligations.** Licensee shall notify OT in writing within 10 days of Licensee becoming aware of a Claim; (b) Licensee not making an admission against OT's interests unless made pursuant to a judicial request or order; (c) Licensee not agreeing to any settlement of any Claim without the prior written consent of OT; and (d) Licensee, at the request of OT, providing all reasonable assistance to OT in connection with the defense, litigation, and settlement by OT of the Claim; and (e) OT having sole control over the selection and retainer of legal counsel, and over the litigation or the settlement of each Claim. OT will indemnify Licensee from any judgment finally awarded, for which all avenues of appeal have been exhausted, or any final settlement in connection with any Claims, provided all the conditions of this section are satisfied.

**10.3 Licensee's Continued Use.** If the Software becomes the subject of a Claim, OT will, in its absolute discretion, either (a) obtain a license for Licensee to continue using the Software, (b) replace or modify the Software without unreasonable degradation in functionality or (c) terminate the Software License to the infringing portion of the Software and refund the unamortized portion of the License Fees received by OT and attributable to the infringing portion of the Software, based on a 3 year straight line amortization.

If OT or licensor believes the ordering activity to be in breach of the EULA it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

## 11.0 LIMITATION OF LIABILITY

**11.1 EXCLUSION OF DAMAGES.** NOTWITHSTANDING ANY BREACH BY OT (INCLUDING FUNDAMENTAL BREACH) OR TERMINATION OF THIS EULA, OT IS NOT LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY, OR PUNITIVE DAMAGES; OR (B) ANY LOST SALES, LOST REVENUE, LOST PROFITS, LOST OR CORRUPTED DATA, OR REPROCUREMENT AMOUNT.

**11.2 LIMITATION OF LIABILITY.** OT'S AGGREGATE LIABILITY TO LICENSEE WILL NOT EXCEED THE TOTAL AMOUNT OF LICENSE FEES PAID TO OT UNDER THE RELEVANT TRANSACTION DOCUMENT. THE PARTIES WOULD NOT HAVE ENTERED INTO THIS EULA WITHOUT THIS SECTION. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from OT's negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under an applicable FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

**11.3 DISCLAIMER.** THE LIMITATIONS IN THIS SECTION APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, EQUITY, AT LAW, STRICT PRODUCT LIABILITY, OR OTHERWISE; (C) EVEN IF OT IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (D) EVEN IF LICENSEE'S REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE. IF THE APPLICATION OF THIS SECTION IS LIMITED BY LAW OT'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

## 12.0 TERMINATION

### 12.1

Termination for Default by either party will be handled in accordance with FAR Subpart 12.302 and 12.4 FAR and Part 49, where applicable, and any breach is handled in accordance with The Contract Disputes Act.

**12.2 Effect of Termination or Expiration.** Upon any termination of this EULA, or license granted pursuant to this EULA, or upon expiration of a term license: (a) all Software Licenses will immediately terminate; (b) Licensee will immediately cease all use of the Software; and (c) Licensee must either deliver to OT or destroy all copies of Software, Documentation, and OT confidential information in Licensee's possession or control. Within 15 days after termination, an authorized representative of Licensee must certify in writing that all copies have been delivered to OT or destroyed. Any terms in this EULA which by their nature extend beyond termination or expiration of this EULA will remain in effect until fulfilled.

## 13.0 MISCELLANEOUS PROVISIONS

**13.1 Confidentiality.** Information exchanged under this EULA will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this EULA and may only be shared with employees, agents, or contractors with a need to know such information. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure during the period the information remains confidential or a trade secret. These obligations do not cover information that (a) was known or becomes known to the receiving party without obligation of confidentiality; (b) is independently developed by the receiving party or (c) is required to be disclosed by law or a governmental agency. OT recognize that federal agencies are subject to the Freedom of Information Act (FOIA) (5 USC 552), which requires that information that does not fall under certain exceptions must be released when requested. OT acknowledge and agree to release information that courts of competent jurisdiction may require to be released in accordance with the Freedom of Information Act (FOIA) (5 USC 552), despite being characterized as "confidential" by OT.

**13.2 Automated Verification.** The Software may contain or require a license key to prevent unauthorized installation or to enforce limits of the Software License, and may contain devices or functionality to monitor Licensee's compliance with this EULA.

**13.3 Developer Tools.** OT is not responsible or liable for Licensee's development or use of additional software code or software products ("Licensee Software") using software developer tools licensed by OT.

**13.4 Independent Contractors.** OT and Licensee are independent contractors. Neither party has any authority to bind the other in any manner.

**13.5 Waiver, Amendment, Assignment.** Any amendment of this EULA must be in writing and signed by both parties. OT may not assign, transfer, or sublicense any portion of its interests, rights, or obligations under this EULA by written agreement, merger, consolidation, change of control, operation of law, or otherwise, without the prior written consent of the Contracting Officer. Neither party will be deemed to have waived any of its rights under this EULA by lapse of time or by any statement or representation other than by a written waiver by a duly authorized representative. No waiver of a breach of this EULA will constitute a waiver of any prior or subsequent breach of this EULA. An assignment in contravention of this section will be null and void. Except to the extent identified in this subsection, this EULA will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

OT or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the credit card), OT may not assign its rights to receive payment under this contract.

**13.6 Governing Law.** This EULA is governed by the federal laws of the United States excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods. The Uniform Computer Information Transactions Act, or any version, adopted by any state, does not apply to this EULA.

**13.7 Force Majeure.** OT shall be excused from delay if the occurrence for nonperformance is beyond the reasonable control of OT such in the cause of a force majeure such as Acts of God, or the public enemy, acts of the ordering activity in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers.

**13.8 Severability.** If any provision of this EULA is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the provision will be severed from this EULA and all remaining provisions will continue in full force.

**13.9 Export Laws.** The Software, including Documentation, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee will comply strictly with all regulations and has the responsibility to obtain any licenses required to export, re-export, or import Software or Documentation.

**13.10** Omitted

**13.11 Attribution Notices.** Licensee will not remove, modify, obscure, resize, or relocate any ownership, attribution, or branding notices from the Software. Licensee is not liable for the disclosure, use, or reproduction of such Software that was delivered with omitted markings.

**13.12 Resale of Third Party Software.** The use of any Third Party Software resold by OT to the Licensee will be governed by a license agreement between the Third Party Software owner and the Licensee. OT does not provide any warranties related to the Third Party Software. OT has no liability or obligation to the Licensee related to the Third Party Software.

**13.13 Entire License Agreement.** The executed License Documents, the underlying GSA Schedule Contract, the Schedule Pricelist and any applicable purchase, task or delivery Orders, and Statement of Works including all exhibits and attachments, if any, set forth the entire agreement between the parties with respect to this subject matter, and supersede all other related oral and unexecuted written agreements and communications between the parties. Neither party has relied upon such other agreements or communications. Any purchase order terms which purport to amend or modify terms of the License Documents unless expressly executed by bilateral agreement, or which conflict with the License Documents are void.

**13.14 Third Party Rights.** This EULA does not confer a benefit on, and is not enforceable by, any person or entity who is not a party to this EULA.

**13.15 Legal Review and Interpretation.** Both parties have had an opportunity for legal review of the License Documents. The parties agree that the License Documents result from negotiation between the parties. The License Documents will not be construed in favor of or against either party by reason of authorship. The headings used in this EULA are for convenience only. The term section refers to all subsections below a section heading (i.e. 3.0) and the term subsection refers to sequentially numbered subsections following a section. The parties confirm that this Agreement and all related documentation is and will be in the English language.

**13.16 Notices.** Any notice under this EULA that must be given by a party in writing is deemed effective when sent either: (a) via certified or registered mail, postage prepaid, or (b) via express mail or nationally recognized courier service to the other party's address specified in this EULA or on the most recent Transaction Document. Notices to OT will also be sent to OT's general counsel at 275 Frank Tompa Drive, Waterloo, Ontario Canada, N2L 0A1.

OROCK TECHNOLOGIES, INC.  
11921 FREEDOM DR  
SUITE 1180  
RESTON, VA 20190

ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

OROCK TECHNOLOGIES, INC.

OROCK TECHNOLOGIES, INC. END USER LICENSE AGREEMENT

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This End User License Agreement (this "Agreement") is between ORock Technologies, Inc., a Delaware corporation ("ORock"), and the Ordering Activity under GSA Schedule Contracts ("Customer" or "Ordering Activity"). This Agreement sets forth the terms and conditions that govern sales or purchase orders ("Orders") placed by Customer for Services under this Agreement. All capitalized terms used herein shall have the meaning set forth in Appendix TERM OF AGREEMENT

This Agreement is valid for the Order(s) which this Agreement accompanies, unless terminated sooner as provided herein. Additionally, this Agreement will automatically terminate when the Service Periods for all Orders have ended. The agreement will remain valid for any extensions or modifications to the original order.

#### RIGHTS GRANTED

2.1. For the duration of the Services Period and subject to Customer's payment obligations and other obligations set forth in this Agreement, and except as otherwise set forth in this Agreement or the Order(s), Customer has the non-exclusive, non-assignable, royalty free, worldwide limited right to access and use the Services selected in the Order(s), including anything developed by ORock and delivered to Customer as part of the Services subject to the terms of this Agreement, the Order(s), and the other Schedules referenced herein. Customer is responsible for Users' compliance with this Agreement and the Order, as well as all User actions or inactions when using or accessing the Services.

2.2. Customer does not acquire under this Agreement any right or license to use the Services, including the ORock Software and ORock Infrastructure, in excess of the scope and/or duration of the Services stated in the Order(s) and the Service Descriptions. Upon the conclusion of the Services Period relating to the Services ordered, Customer's right to access and use the Services will immediately terminate.

2.3. To enable ORock to provide Customer and Users with the Services, Customer grants ORock the right to use, process and transmit, as applicable, and in accordance with this Agreement and the Order(s), Customer-Controlled Infrastructure, Customer Hardware, Customer Content and Customer Applications for the duration of the Services Period plus any additional post-termination period during which ORock provides Customer with access to retrieve an export file of Customer Content and Customer Applications. If Customer Applications include third party Software, Customer acknowledges that ORock may allow providers of the third-party Software to access the ORock Infrastructure, including Customer-Controlled Infrastructure, Customer Hardware, Customer Content and Customer Applications, as required for license compliance and/or the interoperation of such third-party Software with the Services.

2.4. Customer acknowledges that ORock has no delivery obligation for ORock Software and will not ship copies of such programs to Customer as part of the Services.

2.5. Certain Services may contain or require the use of Separately Licensed Third-Party Technology. Customer is responsible for complying with the Separate Terms specified by ORock that govern Customer's use of Separately Licensed Third-Party Technology. If an Order includes Separately Licensed Third-Party Technology that requires Separate Terms, such Separate Terms will be set forth in the Order. ORock may provide certain notices to Customer in the Program Documentation, readme or notice files in connection with such Separately Licensed Third-Party Technology, and such notices will not bind the Ordering Activity to any Third-Party terms unless the terms are provided for review and agreed to in writing by all parties. The third-party owner, author or provider of such Separately Licensed Third-Party Technology retains all ownership and Intellectual Property rights in and to such Separately Licensed Third-Party Technology.

2.6. As part of certain Services, ORock may provide Customer with access to Third Party Content within the ORock Infrastructure. The type and scope of any Third-Party Content is defined in the Order(s). The Third-Party owner, author or provider of such Third-Party Content retains all ownership and Intellectual Property rights in and to that content, and such Third-Party Content may have additional terms applicable to such content as specified by such third-party owner, author or provider.

#### OWNERSHIP AND RESTRICTIONS

3.1. Customer retains all ownership and Intellectual Property rights in and to Customer Content, Customer Hardware, and Customer Applications, except as expressly provided herein. ORock or its licensors retain all ownership and Intellectual Property rights to the ORock Infrastructure, Services, including ORock Software and Ancillary Programs, Separately Licensed Third-Party Technology, and to anything developed or delivered by or on behalf of ORock under this Agreement. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost.

3.2. Customer may not, or cause or permit others to:



remove or modify any program markings or any notice of ORock's or its licensors' proprietary rights; make the programs or materials resulting from the Services (excluding Customer Content and Customer Applications) available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Services Customer has acquired); modify, make derivative works of, disassemble, decompile, or reverse engineer any part of the ORock Infrastructure or the Services (the foregoing prohibition includes, but is not limited to, review of data structures or similar materials produced by programs), or access or use the ORock Infrastructure or Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to ORock; perform or disclose any benchmark or performance tests of the Services, including the ORock Software; perform or disclose any of the following security testing of the ORock Infrastructure or the Services without ORock's prior written consent: the ORock Assessment, network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing

3.3. The rights granted to Customer under this Agreement are also conditioned on the following:

except as expressly provided herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and Customer makes every reasonable effort to prevent unauthorized third parties from accessing the Services.

## THE SERVICES

4.1. The Services are subject to and governed by the Service Descriptions applicable to the Services subscribed and described in executed Order(s). At ORock's discretion and at ORock's expense, customer agrees to have a qualified third party conduct an ORock Assessment (audit) for compliance with the Service Descriptions, of the Customer's intended use of the Services, including, but not limited to, any applicable Separately Licensed Third-Party Technology which is licensed by Customer or any Third-Party Software. Such ORock Assessment will be made pursuant to the terms set forth on Service Descriptions provided on the quote and accepted order. Customer acknowledges that use of the Services in a manner not consistent with the Service Descriptions on the Order may adversely affect Services performance and/or may result in additional fees in accordance with the GSA Pricelist. If the Services permit Customer to exceed the ordered quantity (e.g., limits on counts for Users, sessions, storage, compute, data transport, etc.), then Customer is responsible for promptly purchasing additional quantity to account for Customer's excess usage and will be invoiced by ORock accordingly. Any such assessment will not happen more than once in a 12-month period and will be subject to applicable Government Security requirements.

4.2. ORock may make non-material changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) from time to time during the Services Period, including to reflect changes in technology, industry practices, governmental requirements, changes in applicable standards, patterns of system use, security, privacy, and availability of Third-Party Content. The Service Descriptions are subject to change at ORock's discretion; however, ORock changes to the Service Descriptions will not result in a material reduction in the level of performance or availability of the applicable Services provided to Customer for the duration of the Services Period.

4.3. The Order(s) will specify the Data Center Location in which the applicable Customer Hardware, Customer-Controlled Infrastructure, including, but not limited to any Customer Content, Separately Licensed Third-Party Technology which is licensed by Customer, and Customer Applications will reside on the ORock Infrastructure. As described in the order, Service Descriptions and to the extent applicable to the Services that Customer has ordered, ORock will provide production, test, quality assurance, and backup systems within the Customer Environment. ORock and its Affiliates may perform certain aspects of Services, such as service administration and support, as well as other Services (including Professional Services and disaster recovery), from locations and/or through use of subcontractors, worldwide. ORock will remain responsible for work performed by its Affiliates and/or subcontractors.

4.4. This Agreement may also be referenced for any purchase that increases the quantity of the original Services ordered, for any Services options offered by ORock for the original Services ordered and for any additional Services. Any additional Services ordered during the Services Period will be co-terminus with the Services on the original Order unless otherwise provided on the Order.

4.5. In the event that the Customer desires to utilize ORock's Federal Authorization Application Services ("FAAS"), Customer and ORock will enter into a separate Professional Services Agreement in the form attached hereto as Schedule A, which will define the services to be performed in one or more statements of work. ORock may also perform certain Services in accordance with the terms of other professional services agreements to be mutually agreed upon between Customer and ORock.

## USE OF THE SERVICES

5.1. Customer is responsible for identifying and authenticating all Users, for approving access by such Users to the Services, Separately Licensed Third-Party Technology and Customer Applications, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. Customer is also responsible for controlling against unauthorized access to Customer-Controlled Infrastructure, except to the extent such unauthorized access is caused directly by ORock's breach of its obligations under this Agreement. Customer shall ensure that Customer-Controlled Infrastructure, Customer Hardware, Customer Content and Customer Applications are free from malware, including without limitation, viruses, trojan horses and worms, that could affect the Services, ORock Infrastructure, ORock Software or any ORock Customers. By associating Customer's and Users' usernames, passwords and accounts with ORock, Customer accepts responsibility for the timely and proper termination of User records in Customer's local (intranet) identity infrastructure or on Customer's local computers. Customer is responsible for any actions taken by their Users in the CustomerControlled Infrastructure. ORock is not responsible for any harm caused by Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not confidentially maintained or were not terminated on a timely basis in Customer's local identity management infrastructure or Customer's local computers. Customer is responsible for all activities that occur under Customer's and Users' usernames, passwords or accounts or as a result of Customer's or Users' access to the Services, and Customer agrees to notify ORock immediately of any unauthorized use of the Services, Customer-Controlled Infrastructure, or Customer Applications.

5.2. Customer agrees not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Customer Content, Customer Applications and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of Intellectual Property or other proprietary rights, or (f) otherwise violate applicable Laws. In addition to any other rights afforded to ORock under this Agreement, ORock reserves the right, but has no obligation, to take remedial action if any material violates the foregoing restrictions, including the temporary removal or disablement of access to such material. ORock shall have no liability to Customer if ORock takes such action; however, permanent removal or disablement of access to such material requires the Ordering Activity's written consent or must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). Customer shall have sole responsibility for the obtaining appropriate consent for use, confidentiality, accuracy, quality, integrity, availability, legality, reliability, appropriateness and ownership, of all of Customer Content and Customer Applications.

5.3. Customer is required to accept all Patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services and the ORock Infrastructure, including for the ORock Software, as such Patches are generally released by ORock. Except for emergency or security-related maintenance activities, ORock will coordinate with its customers regarding the scheduling of application of Patches, where possible, based on ORock's next available standard maintenance window.

5.4. Reserved.

## **FEES AND TAXES**

6.1. All fees payable to ORock in accordance with the GSA Pricelist are due net 30 from the invoice receipt date which will not be issued until access is provided to Customer. The contract price excludes all state and local taxes levied or measured by the contract or sales price of the services or completed supplies furnished under this agreement. ORock shall state separately on its invoices that taxes are excluded from the fees and the Ordering Activity agrees to either pay the amount of the taxes to ORock or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

6.2. Customer understands that Customer may receive multiple invoices for the Services it ordered. Invoices will be submitted to Customer pursuant to ORock's invoicing policy.

6.3. Customer agrees and acknowledges that it has not relied on the future availability of any services, programs or updates in entering into the payment obligations in the Order(s); however, the preceding does not relieve ORock of its obligation during the Services Period to deliver Services that Customer has ordered per the terms of this Agreement.

## **SERVICES PERIOD; END OF SERVICES**

7.1. Services provided under this Agreement shall be provided for the Services Period defined in the Order(s), unless earlier suspended or terminated in accordance with this Agreement or the Order.

7.2. Upon the end of the Services, Customer no longer has rights to access or use the Services, including the associated ORock Software and ORock Infrastructure; however, at Customer's request, and for a period of up to ninety (90) days after the end of the applicable Services or such later date as mutually agreed between the parties, ORock will make available to Customer, Customer Content and Customer Applications as existing in the ORock Infrastructure on the date of termination. Customer will continue to pay for the Services during such ninety (90) day period at the then current GSA pricelist fees being charged to the Customer. At the end of such ninety (90) day period, and except as may be required by Law, ORock will delete or otherwise render inaccessible by Customer any of the Customer-Controlled Infrastructure, Customer Hardware, Customer Content and Customer Applications that remain in the ORock Infrastructure.

7.3. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, ORock shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

7.4. If this Agreement is terminated by Customer for any other reason, Customer will pay to ORock, on the date of termination, the total amount due for all Services ordered and performed under the Agreement up to the date of termination.

7.5. Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive including, but not limited to, Sections 3, 6, 7, 8, 11, 12, 15, 16, 18, 19, 20 and 21.

7.6. As part of the Services, ORock shall develop and upon Customer's approval, implement and perform all functions and services necessary to accomplish the successful transition to Customer as described in a transition plan ("Transition Plan") attached to or incorporated within the applicable Order (the "Transition Services"). ORock shall perform the Transition Services in accordance with the Transition Plan without causing a disruption to Customer's business. The Transition Plan shall include a Transition acceptance test for each Service that is transitioned that will ensure a complete and satisfactory transition of Services. ORock shall perform a posttransition review within thirty (30) days of the transition completion date to ensure stabilization of the transitioned environment. Any separate fees for the Transition Services shall be as set forth in the applicable Order and/or GSA pricelist.

7.7. During the period ORock is providing Transition Services, ORock shall maintain a "critical path analysis" for the transition project that will indicate the impact on the transition project time schedule and transition milestones based upon any occurrences of acts, omissions or breaches by ORock, Customer or third parties. ORock's critical path analysis shall be provided to and reviewed with Customer on at least a weekly basis and shall be presented to the management of Customer at each meeting during the transition project.



7.8. Certain Orders may require the transfer or management of equipment, facilities or third-party contracts to ORock. All such transfers or management responsibilities will be identified in the Order and shall contain additional terms and conditions with respect to such assets, as applicable.

## NONDISCLOSURE

8.1. By this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). The parties each agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential information shall be limited to Customer Content, Customer Applications residing in the ORock Infrastructure, the specifications or other details of the ORock Infrastructure made available to Customer, all information clearly identified as confidential at the time of disclosure and all information that by its nature or the circumstances of its disclosure a reasonable person would conclude is confidential and/or proprietary. Other than Customer's use of the Cloud Services, Customer shall not provide any Personal Data (except business card information of Customer representatives), personally identifiable information, personal health information or other similar information to ORock.

8.2. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party, without the use of Confidential Information, as evidenced by written documentation.

8.3. The parties each agree not to disclose each other's Confidential Information to any third party other than as set forth in the following sentence for a period of five (5) years from the termination of this Agreement; however, Customer's Confidential Information that resides within the Customer-Controlled Infrastructure shall not be available to ORock in unencrypted form, and ORock shall not itself provide any such Customer Content to a third party, except as directed by Customer as part of Customer's use of the Services. Each party may disclose Confidential Information only in connection with the Services and then only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. ORock will protect the confidentiality of Customer Content or Customer Applications residing in the ORock Infrastructure in accordance with the ORock security practices applicable to the Order(s).

8.4. Nothing shall prevent either party from disclosing any information, including Customer Content or Confidential Information under this Agreement as required by Law; provided, however, in the event of the foregoing, the disclosing party shall provide advance written notification to the nondisclosing party.

8.5 Notwithstanding the foregoing, ORock recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

## DATA PROTECTION AND SECURITY

9.1. In performing the Services, ORock will comply with the *ORock Services Privacy Policy*, which is attached hereto as Schedule F. and applicable to the Ordering Activity's purchase of Cloud Services hereunder

9.2. ORock shall be responsible for maintaining the Services and the ORock Base Infrastructure in accordance with the following:

a) The Cloud Services and the ORock Base Infrastructure have each been Validated as set forth in the ORock Assessment.

i. ORock will not materially reduce the overall level of controls identified in the ORock Assessment during the Services Period; ii. ORock will provide the Customer access to the ORock Assessment; and iii. Validation of each of the Cloud Services and the ORock Base Infrastructure demonstrates the Cloud Services and the ORock Base Infrastructure to be consistent with the NIST Framework for Improving Critical Infrastructure Cybersecurity.

9.3. Customer is responsible for the security of Customer-Controlled Infrastructure, and the Customer Applications. As a condition to using the Customer-Controlled Infrastructure in connection with the Services or ORock Base Infrastructure, Customer must satisfy, as determined in ORock's sole discretion, the minimum requirements set forth in the Procedures Manual. Customer is responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer's configuration and use of the Customer-Controlled Infrastructure, Customer Content and Customer Applications, including, but not limited to, any viruses, Trojan horses, worms or other programming routines contained in Customer Content or Customer Applications that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data.

9.4. ORock's Data Processing Terms for ORock Services (the "Data Processing Terms"), which is available at Schedule B and incorporated herein by reference, describes the parties' respective roles for the processing and control of Customer Content that Customer provides to ORock as part of the Services. ORock will act as a data processor and will act on Customer's instruction concerning the treatment of Customer Data residing in the ORock Infrastructure, including the Customer-Controlled Infrastructure, as specified in this Agreement, the Data Processing Terms and the applicable Order. Customer agrees to provide any notices and obtain any consents related to Customer's use of the Services and ORock's provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Customer Content.

## 9.5. COMPLIANCE WITH LAWS.

All Services hereunder shall be performed by ORock in compliance with all Laws as they relate to delivery of the Services or ORock's business or operations, ("ORock Laws"). Without limitation to the foregoing, ORock shall reasonably cooperate with and assist Customer in complying with all Laws, including without limitation export Laws and import Laws of the United States and other countries, as applicable to Customer in connection with its receipt of the Services. Customer is responsible for complying with all Laws in connection with their use of the Cloud Services. Customer will conduct appropriate assessments, when combined with the ORock Assessment, will ensure that all Laws are met by Customer's use of the Services.

The Services are designed to allow Customer to configure the Customer-Controlled Infrastructure, when combined with the ORock Base Infrastructure, to comply with Laws related to privacy and data security, including, but not limited to Gramm-Leach-Bliley Act of 1999 ("GLBA"), the Federal Information Security Management Act of 2002 ("FISMA"), and Massachusetts 201 CMR 17.00, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (collectively, "Privacy and Security Laws"). The Services are designed such that the Customer Content will be encrypted and ORock will not have access to the encryption keys; therefore, ORock will not have access to Customer Content and will not have the ability to take action relating to the Services necessary to implement the standards and requirements of HIPAA and regulations issued thereunder, any other Laws applicable to the exchange of health information by electronic means, GLBA, FISMA, and any other applicable Privacy and Security Laws regarding the privacy of information pertaining to individuals (collectively, Privacy and Security Compliance").

Except as set forth herein, Customer shall be responsible for all such Privacy and Security Compliance.

If Customer is an educational agency or institution to which regulations under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA") apply, ORock acknowledges that ORock may be a "school official" with "legitimate educational interests" in Customer Content, as those terms have been defined under FERPA and its implementing regulations, and ORock agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Customer understands that ORock may possess limited or no contact information for Customer's students and students' parents. Consequently, Customer will be responsible for obtaining any parental consent for any User's use of the Services that may be required by applicable Law and to convey notification on behalf of ORock to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student's parent) of any judicial order or lawfully-issued subpoena requiring the disclosure of Customer

Content in ORock's possession as may be required under applicable Law. If Customer is a "covered entity" or a "business associate" and includes "protected health information" (as each of those terms are defined in 45 CFR § 160.103) in Customer Content, Customer's Agreement includes execution of the HIPAA Business Associate Agreement ("BAA"), the full text of which identifies the Services to which it applies.

Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of ORock's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify the legal department of ORock at [legalcompliance@orocktech.com](mailto:legalcompliance@orocktech.com).

Federal Acquisition Regulation flowdowns, as applicable. See Schedule C.

If ORock becomes aware of any unlawful access to any Customer Content stored on ORock Infrastructure, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Content (each a "Security Incident"), ORock will (1) promptly notify Customer of the Security Incident, but in any event within seventy two (72) hours; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident. Notification(s) of Security Incidents will be delivered to one or more of

Customer's administrators by any means ORock selects, including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information on each applicable Services portal. ORock's obligation to report or respond to a Security Incident under this section is not an acknowledgement by ORock of any fault or liability with respect to the Security Incident.

ORock shall, upon Customer's direction or governmental order, permit applicable government authorities to audit Customer Content and the Services and ORock Infrastructure, to the extent either directly relates to Customer Content. Customer hereby agrees and consents to such access and audits. In lieu of any audit or assessment by Customer of the ORock Infrastructure, ORock will provide Customer and any regulator of Customer who so requires, access to the ORock Assessment, subject to ORock's reasonable security processes and requirements which may include coming to ORock's premises for review.

By purchasing the Services, Customer agrees to the Data Processing Terms set forth as Schedule B.

As set forth above, the Services are designed to allow Customer to configure the Customer-Controlled Infrastructure and Customer Applications, when combined with the ORock Base Infrastructure, to keep all of Customer Content that is Nonpublic Personal Information (as defined in the GLBA) and the Interagency Guidelines Establishing Information Security Standards adopted by the federal regulators of depository institutions (the "Security Standards") confidential

and will allow such maintenance and use of such information in accordance with applicable Laws, rules, and regulations, including but not limited to the GLBA. ORock acknowledges the importance of maintaining the security and integrity of Nonpublic Personal Information and agrees to take all steps reasonably necessary to provide Customer with the means to configure the Customer-Controlled Infrastructure to prevent the unauthorized disclosure or use of the Nonpublic Personal Information and to prevent the Nonpublic Personal Information from entering the public domain. ORock hereby represents and warrants that it is familiar with the Security Standards and agrees to provide Customer with the means to configure the Customer-Controlled Infrastructure to implement and maintain through the Services Period appropriate security measures designed to meet the objectives of the Security Standards, which include (i) ensuring the security and confidentiality of customers' Nonpublic Personal Information; (ii) protecting against anticipated threats and hazards to the security and integrity of such information; (iii) protecting against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customers; and (iv) ensuring the proper disposal of customers' Nonpublic Personal Information

## WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

10.1. ORock warrants that it will perform Services in all material respects as described in the Service Description. If the Services provided to Customer were not performed as warranted, Customer must promptly provide written notice to ORock that describes the deficiency in the Services (including, as applicable, the service request number notifying ORock of the deficiency in the Services).

10.2. In the event that Customer places Customer Hardware in any of the Customer-Controlled Infrastructure, the warranties contained in this Agreement shall be invalid, the Data and Security Provisions set forth in Section 9 will be inapplicable, the Service Level Agreement, or SLAs, set forth in Schedule D will be inapplicable, and the Support Agreement set forth in Schedule E will be inapplicable, and ORock will not provide any indemnification related to the Customer Hardware or ORock Infrastructure.

10.3. ORock does not guarantee that (a) the Services will be performed error-free or uninterrupted, or that ORock will correct all Services errors, (b) the Services will operate in combination with Customer Content or Customer Applications, or with any other hardware, software, systems or data not provided by ORock, (c) the Services will meet Customer's Requirements, specifications or expectations and (d) the functionality or security of Customer-Controlled Infrastructure. Customer acknowledges that ORock does not control the transfer of data over communications facilities, including the internet, and that the Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. ORock is not responsible for any delays, delivery failures, or other damage resulting from such problems. ORock is not responsible for any issues related to the

performance, operation or security of the Services that arise from Customer Content, Customer Applications or Third-Party Content. ORock does not make any representation or warranty regarding the reliability, accuracy, completeness, correctness, or usefulness of Third-Party Content or Separately Licensed Third-Party Technology, and disclaims all liabilities arising from or related to Third Party Content and Separately Licensed Third-Party Technology.

10.4. For any breach of the Services warranty, Customer's exclusive remedy and ORock's entire liability shall be the correction of the deficient Services that caused the breach of warranty, or, if ORock cannot substantially correct the deficiency in a commercially reasonable manner, Customer may end the deficient Services and ORock will refund to Customer the fees for the terminated Services that Customer pre-paid to ORock for the period following the effective date of termination.

10.5. To the extent not prohibited by Law, these warranties are exclusive and there are no other express or implied warranties or conditions, including, but not limited, for software, hardware, systems, networks or environments or for merchantability, satisfactory quality, non-infringement, quiet enjoyment, fitness for a particular purpose or any warranties arising out of any course of dealing or usage of trade.

10.6. Reserved.

## LIMITATION OF LIABILITY

Neither ORock nor its Affiliates will be liable for any indirect, incidental, special, punitive, or consequential damages, or any loss of revenue or profits, data, or data use, even if a party has been advised of the possibility of such damages. Further, neither ORock nor any of its Affiliates or licensors will be responsible for any compensation, reimbursement, or damages arising in connection with: (a) Customer's inability to use the Services, including as a result of any (i) termination or suspension of this Agreement or Customer's use of or access to the Services in accordance with the FAR and Contract Disputes Act, (ii) [reserved], or, (iii) without limiting any obligations under the SLA, any unanticipated or unscheduled downtime of all or a portion of the Services for any reason, including as a result of power outages, system failures or other interruptions; (b) the cost of procurement of substitute goods or services; or (c) Customer Controlled Infrastructure. ORock's maximum liability for all damages arising out of or related to this agreement and the Order(s), whether in contract or tort, or otherwise, shall in no event exceed, in the aggregate, the amount of the Contract Price paid. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from O'Rock's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## INDEMNIFICATION

12.1. Indemnification by ORock. Unless prohibited by applicable Law, ORock shall indemnify, defend and pay for any third party damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) (collectively, "Losses") awarded by a court of competent jurisdiction or agreed to in a settlement arising from or related to a third party's claim that the Services, ORock Software or ORock Base Infrastructure infringes, misappropriates or otherwise violates the third party's US patents or copyrights (collectively "Intellectual Property Rights"). The foregoing indemnification is contingent upon Customer (i) notifying ORock promptly in writing, not later than 30 days after Customer receives notice of the claim (or sooner if required by applicable Law); (ii) giving ORock control of the defense and any settlement negotiations; and (iii) giving ORock the information, authority and assistance ORock needs to defend against or settle the claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

12.2. Indemnification Exclusions. Notwithstanding anything to the contrary in this Agreement, ORock shall not indemnify, defend or hold Customer harmless from or against Losses, to the extent the Losses arise from or relate to (i) Customer configuration of Customer-Controlled Infrastructure; (ii) Customer's alterations or unauthorized use of the Services, ORock Software or ORock Base Infrastructure; (iii) Customer using a version of the Services, ORock Software or ORock Base Infrastructure which has been superseded, if the Losses could have been avoided by using an unaltered current version which was made available to Customer, (iv) Customer continuing to use the applicable Services, ORock Software or ORock Infrastructure after the end of the license, or (v) Customer Hardware, Customer Content, or Customer Applications. ORock will not indemnify Customer for any portion of an infringement claim that is based upon the combination of the Services, ORock Software or ORock Infrastructure with any products or services not provided by ORock, including without limitation the Customer-Controlled Infrastructure, Customer Applications, Separately Licensed Third-Party Technology, and Customer Hardware. ORock will not indemnify Customer to the extent that an infringement claim is based on Customer Content,

Third Party Content or any other material from a third-party portal or other external source that is accessible to Customer within or from the Services. ORock will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services, ORock Software or ORock Infrastructure as delivered to Customer and used in accordance with the terms of this Agreement would not otherwise infringe any third-party Intellectual Property rights. ORock will not indemnify Customer for any Intellectual Property infringement claim(s) known to Customer at the time Customer's rights to Services, ORock Software or ORock Infrastructure are obtained.

12.3. Infringement Claims. If ORock believes or it is determined that the Services, ORock Software or ORock Infrastructure or any part thereof may have violated a third party's Intellectual Property Rights, ORock may choose to either modify the Services, ORock Software or ORock Infrastructure to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, ORock may end the license for, and require Customer to cease use of, in whole or in part, the Services, ORock Software and/or ORock Infrastructure and refund any unused, prepaid fees Customer may have paid to ORock for such Services, ORock Software and/or ORock Infrastructure. If such action materially affects ORock's ability to meet its obligations under the relevant Order, then ORock may, at its option and upon 60 days prior written notice, terminate or modify the Order.

12.4. Reserved. Customer Controlled Infrastructure, Customer Content, Customer Hardware or Customer Applications.

12.5. This Section 12 provides Customer's exclusive remedy for any claims or damages related to ORock's alleged infringement, misappropriation or other violation of a third-party Intellectual Property right.

### THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES

13.1. The Services may enable Customer to link to, transmit Customer Content to, or otherwise access, other web sites, content, products, services, and information of third parties. Customer acknowledges and agrees that ORock does not control and is not responsible for such web sites or any such content, products, services and information accessible from or provided through the Services, and Customer bears all risks associated with access to and use of such websites and Third-Party Content, products, services and information.

13.2. Any Third-Party Content made accessible by ORock in or through the ORock infrastructure or Services is provided on an “as-is” and “as available” basis without any warranty or any kind, and ORock hereby disclaims all warranties, whether express or implied, relating to Third Party Content. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and Customer acknowledges that ORock is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, ORock reserves the right to take remedial action if any such content violates applicable restrictions under this Agreement, including the removal of, or disablement of access to, such content.

13.3. Customer acknowledges that: (i) the nature, type, quality and availability of Third-Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with third parties (each, a “Third Party Service”), depend on the continuing availability of such third parties’ respective application programming interfaces (APIs) for use with the Services. ORock may update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third-Party Content, Third Party Services or APIs. If any third-party ceases to make its Third-Party Content or APIs available on reasonable terms for the Services, as determined by ORock in its sole discretion, ORock may cease providing access to the affected Third-Party Content or Third-Party Services without any liability to Customer. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Services Period does not affect Customer’s obligations under this Agreement or the applicable Order, and Customer will not be entitled to any refund, credit or other compensation due to any such changes.

### SERVICES TOOLS AND ANCILLARY PROGRAMS

14.1. ORock may use Tools, scripts, software, and utilities (collectively, the “Tools”) to monitor and administer the Services and to help resolve Customer’s service requests. The Tools will not collect or store any of Customer Content or Customer Applications residing in the ORock Infrastructure, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Customer Content and Customer Applications) may also be used to assist in managing ORock’s product and service portfolio, to help ORock address deficiencies in its product and service offerings, and for license and Services management. Customer hereby grants ORock the right to use Customer Content and related metadata for the purposes identified above, the purposes identified in Section 15 below and for any related purpose. For purposes of this paragraph, ORock will use Customer Content and related metadata in an aggregated form.

14.2. As part of the Services, ORock may provide Customer with on-line access to download certain Ancillary Programs for use with the Services. If ORock does not specify Separate Terms for such Ancillary Programs, Customer shall have a non-transferable, non-exclusive, non-assignable, limited right to use such Ancillary Programs solely to facilitate Customer’s access to, operation of, and/or use of the Services, subject to the terms of this Agreement and the Order(s). Customer’s right to use such Ancillary Programs will terminate upon the earlier of ORock’s notice (which may be through posting on the portal), the end of the Services associated with the Ancillary Programs, or the date on which the license to use the Ancillary Programs ends under the Separate Terms specified for such programs.

### SERVICE ANALYSES

ORock may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the ORock Infrastructure in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as “Service Analyses”). ORock may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer Content or Confidential Information in a form that could serve to identify Customer or any individual. ORock retains all Intellectual Property rights in Service Analyses.

### EXPORT

Export Laws and regulations of the United States and any other relevant local export Laws and regulations apply to the Services. Customer agrees that such export Laws govern Customer’s use of the Services (including technical data) and any Services deliverables provided under this Agreement, and Customer agrees to comply with all such export sanctions, Laws and regulations including the International Traffic in Arms Regulations, and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users and “deemed export” and “deemed re-export” regulations. Customer agrees that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these Laws, or will be used for any purpose prohibited by these Laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

### FORCE MAJEURE

Excusable delays shall be governed by FAR 52.212-4(f).

### GOVERNING LAW AND JURISDICTION.

This Agreement is governed by the substantive and procedural of the Federal Laws of the United States of America. The Uniform Computer Information Transactions Act does not apply to this Agreement or to Orders placed under it.

### NOTICE

19.1. Any notice required under this Agreement shall be provided to the other party in writing. If Customer has a dispute with ORock or if Customer wishes to provide a notice under the Indemnification Section of this Agreement, or if Customer becomes subject to insolvency or other similar legal



proceedings, Customer will promptly send written notice to: ORock Technologies, Inc., 11921 Freedom Dr., Suite 1180, Reston, VA 20190; Attention: Contract Administrator.

19.2. To request the termination of Services in accordance with this Agreement, Customer must submit a service request to ORock at the address specified in the Order(s).

19.3. ORock may give notices applicable to ORock's Services customer base by means of a general notice on the ORock portal for the Services and notices specific to Customer by electronic mail to Customer's e-mail address on record in ORock's account information or by written communication sent by first class mail or pre-paid post to Customer's address on record in ORock's account information. Customer agrees that it is solely responsible for maintaining accurate and up-to-date contact information on record with ORock.

## **ASSIGNMENT**

Customer or ORock may not assign, directly or by operation of Law, this Agreement or give or transfer the Services (including the ORock Software) or an interest in them to another individual or entity without the prior written approval of the other party. Any attempted assignment in violation of the foregoing shall be void. The foregoing shall not be construed to limit the rights Customer may otherwise have with respect to Separately Licensed Third-Party Technology licensed under open source or similar license terms.

## **OTHER**

21.1. ORock may modify this Agreement and any such modification to this agreement shall be presented to Customer for review and will not be effective unless and until both parties sign a written agreement updating these terms.

21.2. 21.2 ORock is an independent contractor and the parties agree that no partnership, joint venture, or agency relationship exists between ORock and Customer. Each party will be responsible for paying our own employees, including employment related taxes and insurance ORock shall remain liable for the actions and services provided by ORock's business partners, including any third-party firms retained by Customer to provide consulting services or applications that interact with the Services.

21.3. If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.

21.4. Except for actions for nonpayment or breach of ORock's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than six (6) years after the cause of action has accrued

21.5. Customer shall obtain at Customer's sole expense any rights and consents from third parties necessary for Customer Content, Customer Applications, and Third-Party Content, as well as other vendor's products provided by Customer that Customer uses with the Services, including such rights and consents as necessary for ORock to perform the Services under this Agreement.

21.6. Customer agrees to provide ORock with all information, access and full good faith cooperation reasonably necessary to enable ORock to provide the Services and Customer will perform the actions identified in the Procedures Manual.

21.7. Customer remains solely responsible for Customer's regulatory compliance in connection with Customer's use of the Services. Customer is responsible for making ORock aware of any technical requirements that result from Customer's regulatory obligations prior to entering into an Order governed by this Agreement. ORock will cooperate with Customer's efforts to determine whether use of the standard ORock Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by ORock or changes to the Services.

21.8. ORock may audit Customer's use of the Services not more than once in a 12-month period (e.g., through use of software tools) to assess whether Customer's use of the Services is in accordance with the Order(s). Customer agrees to cooperate with ORock's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Customer's normal business operations and shall be subject to Government Security requirements. Customer agrees to pay within 30 days of receipt of invoice any fees applicable to Customer's or Users' use of the Services in excess of Customer's rights). Customer agrees that ORock shall not be responsible for any of Customer's reasonable costs incurred in cooperating with the audit.

21.9. The purchase of Services, Professional Services, or other service offerings, programs or products are all separate offers and separate from any other Order. Customer understands that Customer may purchase Services, Professional Services, or other service offerings, programs or products independently of any other Order. Customer's obligation to pay under any Order is not contingent on performance of any other service offerings or delivery of programs or products.

21.10. Customer agrees that this Agreement and the information which is incorporated into this Agreement by written reference, together with the applicable Order, the underlying GSA Schedule Contract, and Schedule Pricelist, is the complete Agreement for the Services ordered by Customer and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

21.11. In the event of any inconsistencies between the terms of an Order and the Agreement, the Order shall take precedence. No third-party beneficiary relationships are created by this Agreement. The failure by ORock to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by ORock must be in writing to be effective.

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**APPENDIX 1****AGREEMENT DEFINITIONS**

**"Affiliate"** means, with respect to any Person (i) any Person directly or indirectly controlling, controlled by, or under common control with such Person (ii) any officer, director, manager, member or trustee of such Person, or (iii) any Person who is an officer, director, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. For purposes of this definition, the terms "controlling," "controlled by," or "under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through the ownership of voting securities, by contract or otherwise, or the power to elect at least 50% of the directors, managers, or persons exercising similar authority with respect to such Person or entities.

**"Ancillary Program"** means any Software agent or tool owned or licensed by ORock that ORock makes available to Customer for use or download as part of the Services for purposes of facilitating Customer's access to, operation of, and/or use with, the ORock Infrastructure. The term "Ancillary Program" does not include Separately Licensed Third-Party Technology.

**"APIs"** has the meaning set forth in Section 13.3.

**"BAA"** has the meaning set forth in Section 9.5(c).

**"Confidential Information"** has the meaning set forth in Section 8.1.

**"Cloud Services"** means, collectively all ORock Cloud Services as specified on customer quote and Order. The term "Cloud Services" does not include Professional Services.

**"Customer Applications"** means all Software, including, but not limited to, Third Party Software that Customer or Users provide, load onto, or create using, any Services. Services under this Agreement, including ORock Software, ORock Base Infrastructure, ORock Intellectual Property, are not included in the definition of "Customer Applications."

**"Customer Content"** means all Customer Data and any additional data and information provided by third parties.

**"Customer-Controlled Infrastructure"** means the ORock Infrastructure that is provided to Customer as a part of Autonomous Cloud and/or other Cloud Services that allows Customer, as a feature of the Services, to configure or otherwise implement changes to the ORock Infrastructure for Customer's purposes only, as set forth in the Procedures Manual.

**"Customer Data"** means all data and information (other than Software), whether held by Customer or Customer's Affiliates, including all of Customer's and its Affiliates' Confidential Information, whether in written or electronic form, submitted to ORock by Customer or any of Customer's Affiliates, or obtained, developed or produced by ORock in connection with the Services or otherwise reside in, or run on or through, or are used on the ORock Infrastructure, including, without limitation, information relating to Customer's, or any of Customer's Affiliate's, underwriting information, process and methods, Customer Data, financial data, suppliers, employees, technology, operations, facilities, consumer markets, text, files, images, graphics, illustrations, audio, video, photographs, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter and other proprietary information. Customer Data includes, any data derived from data created as a result of the Services, and any data that is produced as a result of calculations using, in whole or in part, Customer Data.

**"Customer Hardware"** means any Infrastructure provided by Customer to be placed in an ORock facility as part of the Customer-Controlled Infrastructure that is not otherwise approved in writing by ORock and in advance of installation.

**"Data Center Location"** refers to the physical location (s) of the ORock Infrastructure ordered by Customer. The Data Center Location applicable to the Services is set forth in the Order(s).

**"Data Processing Terms"** has the meaning set forth in Section 9.4.

**"Environment"** means the ORock Base Infrastructure and the Customer-Controlled Infrastructure that the Customer has ordered pursuant to the terms of an Order.

**"FAAS"** has the meaning set forth in Section 4.5.

**"FAR"** means the Federal Acquisition Regulations.

**"FedRamp"** means the Federal Risk and Authorization Management Program.

**"FERPA"** has the meaning set forth in Section 9.5(c).

**"FISMA"** has the meaning set forth in Section 9.5(b).

**"Framework for Improving Critical Infrastructure Cybersecurity"** means the Framework for Improving Critical Infrastructure Cybersecurity Version 1.0 issued by NIST pursuant to Executive Order 13636, as such Framework may be amended during the Services Period.

**"GLBA"** means Title V of the Gramm-Leach-Bliley Act of 1999 and the various regulations promulgated thereunder by the federal and state regulators of financial institutions.

“**HIPAA**” has the meaning set forth in Section 9.5(b).

“**Infrastructure**” means the core physical or hardware-based resources and components, including all information technology infrastructure devices, equipment and technologies, that comprise a data center. Infrastructure includes, as applicable, servers, computers, routers, switches, firewalls, biometric security systems, storage area network (SAN), flash storage, backup/tape storage, data center management software and related software. Infrastructure also includes non-computing resources, such as: power and cooling devices, air conditioners or generators, physical server racks and chassis, cables, and internet networking connection devices and entry points.

“**Intellectual Property**” means any and all Intellectual Property rights existing under any law or regulations, including without limitation patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law (together with all of the goodwill associated therewith), unfair competition law, publicity rights law, or privacy rights law, other proprietary rights, and applications, renewals, extensions and restorations of any of the foregoing, now or hereafter in force and effect worldwide. For purposes of this definition, rights under patent law shall include rights under any and all patent applications and patents (including letters patent and inventor’s certificates) anywhere in the world, including, without limitation, any provisionals, substitutions, extensions, supplementary patent certificates, reissues, renewals, divisions, continuations in part (or in whole), continued prosecution applications, requests for continued examination, and other similar filings or stages thereof provided for under the Laws of the United States.

“**Laws**” means all applicable Laws (including common law), statutes, codes, rules or regulations, reporting requirements, ordinances, order, decree, judgment, consent decree, settlement agreement, or other pronouncement having the effect of law of the United States, any foreign country, or any domestic or foreign state, county, city or other political subdivision, including those promulgated, interpreted or enforced by any governmental or regulatory authority, or the NYSE or other self-regulatory authority, including, without limitation, HIPAA, GLBA, any other applicable Laws or regulations regarding the privacy of individuals’ information, the Foreign Corrupt Practices Act of 1977 (“FCPA”), immigration Laws, and import and export Laws.

“**Losses**” has the meaning set forth in Section 12.1.

“**NIST**” means National Institute of Standards and Technology.

“**NIST 800-53**” means NIST Special Publication 800-53 Revision 4.

“**Order**” or “**Order(s)**” means the order or multiple orders for Services as set forth in a quote and executed by the applicable parties.

“**ORock Assessment**” means the assessment for certain Services described in the Service Descriptions set forth in the statement of work and/or Order.

“**ORock Base Infrastructure**” means the ORock Infrastructure that is not Customer-Controlled Infrastructure. For all Services purchased under FedRAMP, there is no Customer-Controlled Infrastructure.

“**ORock Infrastructure**” means the Infrastructure that ORock uses to provide the Services to Customer. ORock Software, Third Party Content, Customer-Controlled Infrastructure, Customer Content and Customer Applications may be hosted in the ORock Infrastructure.

“**ORock Laws**” has the meaning set forth in Section 9.6(a).

“**ORock Software**” refers to the Software owned or licensed by ORock, and to which ORock grants Customer access as part of the Services, including Program Documentation, and any Software updates provided as part of the Services. The term “ORock Software” does not include Separately Licensed Third-Party Technology.

“**Patches**” has the meaning set forth in Section 5.3.

“**Person**” means any individual, Company (whether general or limited), limited liability company, corporation, trust, estate, association, nominee, or other entity.

“**Personal Data**” means, unless otherwise defined under and international, federal or state Privacy or Data Security Law, any data about an individual maintained by ORock, including (1) any data that can be used to distinguish, identify, or trace an individual, directly or indirectly, by reference to that data such as, but not limited to: (i) name; (ii) identification number (including a social security number); (iii) date and place of birth; (iv) the name of the individual’s parent or other family members; (v) biometric records; (vi) location data the individual or the individual’s family; (vii) online identifier, including persistent identifiers that can be used to recognize a user over time and across different websites or online services; (viii) any other data, alone or combined with other information, that is linked or linkable to an individual, such as but not limited to medical, financial, educations, and employment data; or (ix) any data specific to the physical, physiological, genetic, mental, economic, culture or social identity of the individual. The term “Personal Data” includes (i) data:

created or received by a health care provider, health plan, employer or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual and (ii) provided by an individual to a financial institution, resulting from any financial transaction or financial service with an individual or otherwise obtained by a financial institution.

“**Privacy and Security Compliance**” has the meaning set forth in Section 9.5(b).

“**Privacy and Security Laws**” has the meaning set forth in Section 9.5(b).

“**Procedures Manual**” means the documentation provided to customers related to the operation of the Cloud Services.

“**Professional Services**” means, collectively, the consulting and other professional Services which Customer has ordered. Professional Services will be subject to a separate agreement between ORock and Customer. The term “Professional Services” does not include Cloud Services.



**"Program Documentation"** refers to the program user manuals for the ORock Services and ORock Software for applicable Services, as well as any help windows and readme files for such ORock Software that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the ORock Services and ORock Software.

**"Security Incident"** has the meaning set forth in Section 9.6.

**"Security Standards"** has the meaning set forth in Section 9.9.

**"Separate Terms"** refers to separate license terms that are specified in the Order, readme or notice files, or otherwise specified by ORock and that apply to Separately Licensed Third-Party Technology.

**"Separately Licensed Third-Party Technology"** refers to third party technology that is licensed under Separate Terms and not under the terms of this Agreement, and which may include, without limitation, open source Software. Customer Hardware may be Separately Licensed Third-Party Technology.

**"Services"** means, collectively, the Cloud Services implementation, training, support and other Services related to delivery of the Services that Customer has ordered and that ORock is obligated to provide pursuant to this Agreement.

**"Service Analyses"** has the meaning set forth in Section 15.

**"Service Descriptions"** means the descriptions that are applicable to the Services under the Order(s) and other descriptions referenced or incorporated in such descriptions as set forth in a statement of work and/or Order.

**"Service Level Agreement"** or "SLA" means the Service Level Agreement set forth on Schedule D.

**"Support Agreement"** means the Support Agreement attached hereto as Schedule E.

**"Services Period"** refers to the period for which Customer ordered Services as specified in the Order(s).

**"Software"** means any applications, operating systems, tools, utility programs, communications software, computer software languages, interfaces and any other computer programs (i.e., any set of statements or instructions, whether or not in a machine readable medium, to be used directly or indirectly in a computer in order to bring about a certain task or result), and documentation and supporting materials relating thereto, in whatever form or media, together with all corrections, improvements, modifications, updates, updates and new releases thereof.

**"Spillage"** NIST Special Publication 800-53 Revision 4, Security and Privacy Controls for Federal Information Systems and Organizations defines "Spillage" as: Information Spillage refers to instances where either classified or sensitive information is inadvertently placed on information systems that are not authorized to process such information. Such information spills often occur when information that is initially thought to be of lower sensitivity is transmitted to an information system and then is subsequently determined to be of higher sensitivity. At that point, corrective action is required. The nature of the organizational response is generally based upon the degree of sensitivity of the spilled information (e.g., security category or classification level), the security capabilities of the information system, the specific nature of contaminated storage media, and the access authorizations (e.g., security clearances) of individuals with authorized access to the contaminated system.

**"Third Party Content"** means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of ORock and made available to Customer through, within, or in conjunction with Customer's use of, the Services. Examples of Third-Party Content include data feeds, rss feeds from blog posts, and data libraries and dictionaries. Third Party Content does not include Separately Licensed Third-Party Technology.

**"Third Party Services"** has the meaning set forth in Section 13.3.

**"Tools"** has the meaning set forth in Section 14.1.

**"Users"** means those employees, contractors, and end users, as applicable, authorized by Customer or on Customer's behalf to use the Services in accordance with this Agreement and the Order(s).

**"Validated"** means that ORock has engaged an independent third party to assess the effectiveness of controls to the applicable NIST 800-53 controls listed in the ORock Assessment.

## SCHEDULE A

### FORM OF PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement is made as of the date last signed below between **ORock Technologies, Inc.**, a Delaware corporation with its principal place of business at 11921 Freedom Dr., Suite 1180, Reston, VA 20190 ("**ORock**"), and the Ordering Activity under GSA Schedule contracts ("**Customer**" or "**Ordering Activity**").

## Professional Services.

OROCK shall provide consulting, integration, implementation, design, development, architecture reviews and other work under the terms and conditions of this Agreement (the “**Services**”), as specified in one or more statements of work that OROCK and Customer may enter into from time to time (each, an “**SOW**”).

## Payment.

Payment. In consideration of the Services rendered under this Agreement, Customer shall pay OROCK as set forth in each SOW. All payments hereunder are due net30 days from the receipt date of the invoice, Overdue payments are subject to a late interest charge governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. OROCK shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Reserved.

## 3. Ownership, Intellectual Property Rights and License.

Work Product. “**Work Product**” means the deliverable materials, including documentation and customized software, delivered by OROCK to Customer under a SOW, excluding any of Customer’s Confidential Information that may be included in such deliverables.

Ownership of Work Product and Other Intellectual Property. Unless otherwise specified in the SOW, OROCK is the exclusive owner of all software (including the Work Product and revisions, modifications and enhancements thereto) and any other specifications, documentation, ideas, know-how, techniques, processes, inventions or other Intellectual Property that OROCK or its subcontractors may develop, conceive or deliver under this Agreement, including all patents, copyrights and other Intellectual Property rights thereto.

License for Work Product. OROCK hereby grants, and Customer hereby accepts, a perpetual (unless terminated as set forth in Section 8(C)), non-exclusive, non-transferable, royalty-free license to use and modify the Work Product solely for Customer’s internal business purposes. Customer may make a reasonable number of copies of the Work Product for backup, testing, disaster recovery or archival purposes only, so long as Customer also reproduces on such copies any copyright, trademark or other proprietary markings and notices contained on the Work Product and does not remove any such marks from the original.

### Restrictions on License for Work Product.

Restrictions on Access, Copying and Sublicensing. Customer shall not cause or permit (a) access (except to its employees, agents and consultants with a “need to know” who are bound in writing by non-disclosure obligations suitable to protect OROCK’s interests in the Work Product but no less restrictive than Customer’s obligations herein), (b) copying (except as set forth in Section 3(C) above), or (c) sublicensing or other dissemination of the Work Product, in whole or in part, to any third party without OROCK’s prior written consent.

Third Party and Other Proprietary Software. If the Work Product contains or is bundled with third party software or other proprietary OROCK Software, then (a) such software is governed by OROCK’s standard license agreement for such software or other applicable license agreement under which such software is provided to Customer, and (b) Customer may use such third-party software or other proprietary OROCK Software solely for the purpose such software is included with the Work Product.

## 4. Warranty.

Services Warranty. OROCK warrants that the Services it provides hereunder will be of a professional quality conforming to generally accepted industry standards and practices. If Customer discovers a deficiency in the Services, then Customer shall, within 30 days after completion of the deficient services, submit to OROCK a written report describing the deficiency in reasonable detail, and OROCK shall re-perform the deficient Services. If OROCK is unable to re-perform the Services, then, upon Customer’s request, OROCK shall refund any payments that Customer has made for such Services.

WARRANTY DISCLAIMER. OTHER THAN THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 4, OROCK DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER’S SOLE REMEDY FOR BREACH OF SUCH EXPRESS LIMITED WARRANTIES IS RE-PERFORMANCE OR REFUND AS SET FORTH IN THIS SECTION 4.

## 5. Additional Obligations.

Insurance. OROCK shall maintain, at its own expense, sufficient insurance to cover its performance of Services hereunder, including but not limited to workers’ compensation insurance when required by law.

OROCK Personnel. OROCK shall ensure that its employees and contractors performing the Services are reasonably qualified and experienced. OROCK shall use its best efforts to replace any OROCK employee or contractor that Customer reasonably requests to be replaced. OROCK conducts background investigations of all its employees.

## 6. Limitation of Liability.

EXCEPT FOR SECTION 7, THE LIABILITY OF EACH PARTY AND ITS LICENSORS, SUPPLIERS AND SUBCONTRACTORS IS LIMITED IN ANY EVENT TO ACTUAL DIRECT DAMAGES TO THE EXTENT CAUSED SOLELY BY SUCH PARTY’S ACTS OR OMISSIONS, UP TO A MAXIMUM LIABILITY EQUAL TO THE AMOUNT OF THE CONTRACT PRICE. IN NO EVENT WILL EITHER PARTY OR ITS LICENSORS, SUPPLIERS OR SUBCONTRACTORS BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, LOST BUSINESS PROFITS, OR LOSS, DAMAGE OR DESTRUCTION OF DATA, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. OROCK EXPRESSLY

DISCLAIMS ALL LIABILITY ASSOCIATED WITH ANY THIRD-PARTY OPEN SOURCE CODE INCLUDED IN THE WORK PRODUCT. NO LIMITATION AS TO DAMAGES FOR PERSONAL INJURY, DEATH, or FRAUD IS HEREBY INTENDED. Neither party shall bring any action, whether in contract or tort, including negligence, arising out of or in connection with this Agreement, more than six (6) years after the cause of action has accrued.

## 7. Confidentiality.

**Confidential Information.** As a result of the relationship entered into by the parties under this Agreement, the parties acknowledge that they may from time to time require or gain access to information that is confidential or proprietary to one another. All information disclosed by a party hereunder that (1) is in writing and marked with an appropriately restrictive legend indicating the confidential or proprietary nature of the information, (2) is disclosed orally and reduced to a writing marked with an appropriately restrictive legend promptly after the oral disclosure, or (3) by its nature or under the circumstances of its disclosure should reasonably be understood to be confidential is referred to herein as "Confidential Information." Customer agrees that it will not provide any personally identifiable information to OROCK.

**Obligations.** The receiving party (1) shall hold all Confidential Information in confidence; (2) shall use the Confidential Information only for the purpose of performing its obligations under this Agreement; (3) shall reproduce the Confidential Information only to the extent necessary for such purpose; (4) shall restrict disclosure of the Confidential Information to its employees, consultants, agents and representatives with a need to know and who are bound to protect the confidentiality of such Confidential Information (and shall advise such employees, agents and representatives of the obligations assumed herein); and (5) shall not disclose or cause to be disclosed the Confidential Information to any third party without prior written approval of the disclosing party, except as allowed under (4) above.

**Exceptions.** The foregoing restrictions do not apply to Confidential Information that (1) is or becomes a part of the public domain through no wrongful act or omission of the receiving party; (2) was in the receiving party's lawful possession before the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (3) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (4) is independently developed by the receiving party without reference to or in reliance on the Confidential Information; or (5) the disclosing party agrees in writing. OROCK recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor. is free of such restrictions.

Reserved.

## 8. Termination.

**Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, OROCK shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

**Survival.** Except as otherwise specified in Section 8(C) below, Sections 3, 4, 6, 7, 8(B), 8(C) and 9 survive any termination of this Agreement.

**Effect of Termination for Breach.** If Customer materially breaches Section 3 above, then, OROCK may bring the matter to the Contracting Officer. upon OROCK's request Customer shall, at OROCK's option, either return to OROCK, or destroy and certify in writing to OROCK that it has destroyed, the original and all copies, in whole or in part, in any form, of the Work Product and any other Confidential Information disclosed by OROCK hereunder.

## 9. General.

**Export Laws.** The Work Product may subject to certain export control Laws and regulations that may restrict exports, re-exports and disclosures to foreign persons of cryptographic items. Performance of this Agreement is expressly made subject to any export Laws, regulations, orders or other restrictions imposed by any country or governmental entity on the Work Product or information relating thereto. Notwithstanding any other provision of this Agreement to the contrary, Customer shall not directly or indirectly import, export or re-export any Work Product or information pertaining thereto to any country or foreign person to which such import, export or re-export is restricted or prohibited unless Customer first secures, if applicable, an appropriate export license or other governmental approval. Customer unconditionally accepts full responsibility for compliance with these requirements.

**Governing Law.** The validity, construction and performance of this Agreement shall be governed by the Laws of the United States of America. The Uniform Computer Information Transactions Act does not apply to this Agreement or to Orders placed under it.

**Entire Agreement; Modification.** This Agreement and each SOW, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitute the entire understanding between Customer and OROCK with respect to the subject matter hereof, and OROCK makes no representations to Customer except as expressly set forth herein or in the SOW. In the event of a conflict between this Agreement and a SOW, the SOW governs. Terms and conditions set forth in any purchase order or other document provided by Customer to OROCK that differ from, conflict with, or are not included in this Agreement or SOW are not part of any agreement between OROCK and Customer unless specifically accepted by OROCK in writing. This Agreement shall not be deemed or construed to be modified, amended or waived, in whole or in part, except by written agreement of the parties hereto. The failure of either party, in any one or more instances, to enforce any of the terms of this Agreement shall not be construed as a waiver of future enforcement of that or any other term.

**Assignability.** Neither party may assign this Agreement, or any of its rights or obligations hereunder, without the other party's written consent, which consent shall not be unreasonably withheld.

**Severability.** If any provision of this Agreement is for any reason held illegal or unenforceable, then such provision shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect or impair the validity or enforceability of the remaining provisions of this Agreement.

**Notice.** All notices given by either party to the other party under this Agreement shall be in writing and personally delivered or sent by guaranteed overnight courier, by registered or certified mail, return receipt requested, to the other party's General Counsel, at its address set forth above.

Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

Counterparts. The parties may execute this Agreement in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

Language. This Agreement has been drawn up in and shall be construed in accordance with the English language.

Independent Contractors. The relationship between Customer and OROCK is solely that of independent contractors and not that of an agency, partnership, or joint venture. Neither party has the authority to represent or bind the other.

## SCHEDULE B

### DATA PROCESSING TERMS

The Data Processing Terms (DPT) include the terms in this section. Capitalized terms not set forth herein have the meanings ascribed to them in the Service Agreement.

The Data Processing Terms also include the "Standard Contractual Clauses," pursuant to the European Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of Personal Data to processors established in third countries under the EU Data Protection Directive. The Standard Contractual Clauses are enclosed as an attachment to the Data Processing Terms. In addition,

Execution of the Service Agreement includes execution of Standard Contractual Clauses, which is countersigned by OROCK Technologies, Inc. ("ORock");

The terms in Customer's Cloud Services Agreement ("Service Agreement"), including the DPT, constitute a data processing agreement under which OROCK is the data processor; and

The DPT control over any inconsistent or conflicting provision in Customer's Service Agreement and, for each subscription, will remain in full force and effect until all the related Customer Data is deleted from OROCK's systems in accordance with the DPT.

Customer may opt out of the "Standard Contractual Clauses" or the Data Processing Terms in their entirety. To opt out, Customer must send the following information to OROCK in a written notice (under terms of the Customer's Service Agreement):

the full legal name of the Customer and any Affiliate that is opting out;

if Customer has multiple Service Agreements, the Service Agreement to which the opt out applies;

if opting out of the entire DPT, a statement that Customer (or Affiliate) opts out of the entirety of the Data Processing Terms; and

if opting out of only the Standard Contractual Clauses, a statement that Customer (or Affiliate) opts out of the Standard Contractual Clauses only.

In countries where regulatory approval is required for use of the Standard Contractual Clauses, the Standard Contractual Clauses cannot be relied upon under European Commission 2010/87/EU (of February 2010) to legitimize export of data from the country, unless Customer has the required regulatory approval.

**In the DPT, the term "Cloud Services" applies to all OROCK cloud services. "Customer Data" includes only Customer Data that is provided through use of those Cloud Services.**

### Location of Customer Data at Rest

OROCK operates a global network of data centers and management/support facilities, and processing may take place in any jurisdiction where data importer or its sub-processors operate such facilities. OROCK does not control or limit the regions from which Customer or Customer's end users may access or move Customer Data.

### Privacy

**Customer Data Deletion or Return.** No more than 90 days after expiration or termination of Customer's use of an Online Service, OROCK will disable the account and delete Customer Data from the account.

**Transfer of Customer Data.** Unless Customer has opted out of the Standard Contractual Clauses, all transfers of Customer Data out of the European Union, European Economic Area, and Switzerland shall be governed by the Standard Contractual Clauses. OROCK will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland.

**OROCK Personnel.** OROCK personnel will not process Customer Data without authorization from Customer. OROCK personnel are obligated to maintain the security and secrecy of any Customer Data as provided in the DPT and this obligation continues even after their engagement ends.

**Subcontractor Transfer.** OROCK may hire subcontractors to provide certain limited or ancillary services on its behalf. OROCK shall remain liable for the actions and services provided by such Subcontractors at all times. Any subcontractors to whom OROCK transfers Customer Data, even those used for storage purposes, will have entered into written agreements with OROCK that are no less protective than the DPT. Customer has previously consented to OROCK's transfer of Customer Data to subcontractors as described in the DPT. Except as set forth in the DPT, or as Customer may otherwise authorize, OROCK will not transfer to any third party (not even for storage purposes) Personal Data Customer provides to OROCK through the use of the Cloud Services. OROCK maintains a list of OROCK Affiliates and Third Party Subprocessors authorized to access and/or process Customer Data in the Cloud Services as well as the limited or ancillary services they provide. At least 3 months before authorizing any new subcontractor to access Customer Data, OROCK will update the list and provide Customer with a mechanism to obtain notice of that update. If Customer does not approve of a new subcontractor,

then Customer may terminate the affected Online Service without penalty by providing, before the end of the notice period, written notice of termination that includes an explanation of the grounds for non-approval. If the affected Online Service is part of a suite (or similar single purchase of services), then any termination will apply to the entire suite. After termination, ORock will remove payment obligations for the terminated Cloud Services from subsequent Customer invoices.

**Security**

**General Practices.** ORock has implemented and will maintain and follow for the Cloud Services the following security measures, which, in conjunction with the security commitments in the Service Agreement, are ORock’s only responsibility with respect to the security of Customer Data.

Domain	Practices
Organization of Information Security	<p><b>Security Ownership.</b> ORock has appointed one or more security officers responsible for coordinating and monitoring the security rules and procedures.</p> <p><b>Security Roles and Responsibilities.</b> ORock personnel with access to Customer Data are subject to confidentiality obligations.</p> <p><b>Risk Management Program.</b> ORock performs a risk assessment before initially processing the Customer Data or launching the Cloud Services service.</p> <p>ORock retains its security documents pursuant to its retention requirements after they are no longer in effect.</p>
Asset Management	<p><b>Asset Inventory.</b> ORock maintains an inventory of all media on which Customer Data is stored. Access to the inventories of such media is restricted to ORock personnel authorized in writing to have such access.</p> <p><b>Asset Handling</b> ORock does not classify Customer Data. ORock imposes restrictions on printing Customer Data and has procedures for disposing of printed materials that contain Customer Data.</p> <p>ORock personnel must obtain ORock authorization prior to storing Customer Data on portable devices, remotely accessing Customer Data, or processing Customer Data outside ORock’s facilities.</p>
Human Resources Security	<p><b>Security Training.</b> ORock informs and trains its personnel about relevant security procedures and their respective roles. ORock also informs and trains its personnel of</p>

Domain	Practices
	<p>possible consequences of breaching the security rules and procedures. ORock will only use anonymous data in training.</p>
Physical and Environmental Security	<p><b>Physical Access to Facilities.</b> ORock limits access to facilities where information systems that process Customer Data are located to identified authorized individuals only.</p> <p><b>Physical Access to Components.</b> Unless otherwise disclosed by customers, ORock maintains only limited records of the authorized senders/recipients, date and time, and that media is loaded to the Cloud Services.</p> <p><b>Protection from Disruptions.</b> ORock uses a variety of industry standard systems to protect against loss of data due to power supply failure or line interference.</p> <p><b>Component Disposal.</b> ORock uses industry standard processes to delete Customer Data when it is no longer needed.</p>

<p>Communications and Operations Management</p>	<p><b>Operational Policy.</b> ORock maintains security documents describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Customer Data.</p> <p><b>Data Recovery Procedures</b>                  On an ongoing basis, but in no case less frequently than once a week (unless no Customer Data has been updated during that period), ORock maintains single or multiple copies of Customer Data from which Customer Data can be recovered based on the particular Cloud Services.                  ORock stores copies of Customer Data and data recovery procedures in a different place from where the primary computer equipment processing the Customer Data is located.                  ORock has specific procedures in place governing access to copies of Customer Data.                  ORock reviews data recovery procedures at least every six months.                  ORock logs data restoration efforts, including the person responsible, the description of the restored data and where applicable, the person responsible and which data (if any) had to be input manually in the data recovery process.</p> <p><b>Malicious Software.</b> ORock has anti-malware controls to help avoid malicious software gaining unauthorized access to Customer Data, including malicious software originating from public networks.</p> <p><b>Data Beyond Boundaries</b>                  ORock encrypts, or enables Customer to encrypt, Customer Data that is transmitted over public networks.                  ORock restricts access to Customer Data in media leaving its facilities.</p> <p><b>Event Logging.</b> ORock logs, and enables Customer to log, access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity.</p>
<p>Access Control</p>	<p><b>Access Policy.</b> ORock maintains a record of security privileges of individuals having access to Customer Data. <b>Access Authorization</b>                  ORock maintains and updates a record of personnel authorized to access ORock systems that contain Customer Data.                  ORock deactivates authentication credentials that have not been used for a period not to exceed six months.                  ORock identifies those personnel who may grant, alter or cancel authorized access to data and resources.                  ORock ensures that where more than one individual has access to systems containing Customer Data, the individuals have separate identifiers, log-ins and authentication credentials.</p>
<p>Domain</p>	<p>Practices</p>



	<p><b>Least Privilege</b>                  Technical support personnel are only permitted to have access to Customer Data when needed. ORock restricts access to Customer Data to only those individuals who require such access to perform their job function. <b>Integrity and Confidentiality</b>                  ORock instructs ORock personnel to disable administrative sessions when leaving premises ORock controls or when computers are otherwise left unattended.                  ORock stores passwords in a way that makes them unintelligible while they are in force.</p> <p><b>Authentication</b>                  ORock uses industry standard practices to identify and authenticate users who attempt to access information systems.                  Where authentication mechanisms are based on passwords, ORock requires that the passwords are renewed regularly.                  Where authentication mechanisms are based on passwords, ORock requires the password to be at least twelve characters long.                  ORock ensures that de-activated or expired identifiers are not granted to other individuals.                  ORock monitors, or enables Customer to monitor, repeated attempts to gain access to the information system using an invalid password.                  ORock maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed.                  ORock uses industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, and during storage.                  ORock may but is not required unless set forth in the Cloud Services, use customer data to enable additional authentication of Users that extends beyond current industry standard practices.</p> <p><b>Network Design.</b> ORock has controls to avoid individuals assuming access rights they have not been assigned to gain access to Customer Data they are not authorized to access.</p>
<p>Information Security Incident Management</p>	<p><b>Incident Response Process</b>                  ORock maintains a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the party reporting the breach, and to whom the breach was reported, and the procedure for recovering data.                  For each security breach that is a Security Incident, notification by ORock shall be made without unreasonable delay and, in any event, within 5 business days. A                  "Security Incident" is defined as any unlawful access to any Customer Data stored on ORock's equipment or in ORock's facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data.                  ORock tracks, or enables Customers to track, disclosures of Customer Data, including what data has been disclosed, to whom, and at what time.</p> <p><b>Service Monitoring.</b> ORock security personnel verify logs at least every six months to propose remediation efforts if necessary.</p>
<p>Business Continuity Management</p>	<p>ORock maintains emergency and contingency plans for the facilities in which ORock information systems that process Customer Data are located.                  ORock's redundant storage and its procedures for recovering data are designed to attempt to reconstruct Customer Data in its original or last-replicated state from before the time it was lost or destroyed.</p>

**Cloud Services Information Security Policy**

Cloud Services and the ORock Base Infrastructure follow a written data security policy ("Information Security Policy") that has been Validated against NIST Special Publication 800-53.



Subject to non-disclosure obligations, ORock will make each Information Security Policy available for review by Customer, along with other information reasonably requested by Customer in writing regarding ORock security practices and policies, all subject to ORock's policies and procedures, which include onsite review.

Customer is solely responsible for reviewing each Information Security Policy and making an independent determination as to whether it meets Customer's requirements.

If the Standard Contractual Clauses apply, then this section is in addition to Clause 5 paragraph f and Clause 12 paragraph 2 of the Standard Contractual Clauses.

**ORock Audits of Cloud Services**

For each Cloud Service, ORock will conduct audits of the security of the computers, computing environment and physical data centers that it uses in processing Customer Data (including Personal Data), as follows:

Where a standard or framework provides for audits, an audit of such control standard or framework will be initiated at least annually for the Cloud Services.

Each audit will be performed according to the standards and rules of the regulatory or accreditation body for applicable controls standard or frameworks.

Each audit will be performed by qualified, independent, third party security auditors at ORock's selection and expense.

Each audit will occur not more than once in a 12-month period and will be subject to applicable Government security requirements.

Each audit will result in the generation of an audit report ("ORock Audit Report"), which will be ORock's Confidential Information. The ORock Audit Report will clearly disclose any material findings by the auditor. ORock will promptly remediate material findings raised in any ORock Audit Report to the satisfaction of the auditor.

If Customer requests, ORock will provide Customer with access to each ORock Audit Report so that Customer can verify ORock's compliance with the security obligations under the DPT. The ORock Audit Report will be subject to ORock's policies and procedures, including strict non-disclosure and onsite review requirements.

If the Standard Contractual Clauses apply, then (1) Customer agrees to exercise its audit right by instructing ORock to execute the audit as described in this section of the DPT, and (2) if Customer desires to change this instruction, then Customer has the right to do so as set forth in the Standard Contractual Clauses, which shall be requested in writing.

If the Standard Contractual Clauses apply, then nothing in this section of the DPT varies or modifies the Standard Contractual Clauses or affects any supervisory authority's or data subject's rights under the Standard Contractual Clauses.

**SCHEDULE C  
FAR FLOWDOWNS**

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**SCHEDULE D SERVICE LEVEL AGREEMENT**

This ORock Technologies, Inc. (“ORock”, “us” or “we”) Service Level Agreement (“SLA”) is a policy governing the use of ORock’s cloud products and other product offerings under the terms of the Agreement. This SLA applies separately to each account using ORock’s cloud products and other product offerings Unless otherwise provided herein, this SLA is subject to the terms of the Agreement and capitalized terms will have the meaning specified therein. The terms of this SLA may be altered in accordance with the Agreement.

**Service Commitment**

ORock will use commercially reasonable efforts to make each of ORock cloud service available with a Monthly Uptime Percentage (as defined below), in each case during any monthly billing cycle (the “Service Commitment”). In the event ORock cloud services do not meet the Service Commitment, you will be eligible to receive a Service Credit as described below.

**Definitions**

“Monthly Uptime Percentage” is calculated by dividing the difference between the total number of minutes in the monthly measurement period and any Unavailability in the measurement period, by the total number of minutes in the measurement period, the product of which is then multiplied by 100 to achieve a percentage. Monthly Uptime Percentage is calculated for each ORock cloud Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any SLA Exclusion (defined below).

“Unavailable” and “Unavailability” mean:

For ORock Private Autonomous Infrastructure, ORock Elastic Cloud and ORock On-Premise to Cloud, when all your running instances have no external connectivity and when all your attached volumes perform zero read write IO with pending IO in the queue.

“Unavailable” and “Unavailability” expressly exclude outage periods consisting of the following:

- A failure or degradation of performance or malfunction resulting from scripts, data, applications, equipment, infrastructure, software, penetration testing, performance testing, or monitoring agents directed or provided or performed by you;
- Planned outages, scheduled and announced maintenance or maintenance windows, or outages initiated by ORock at the request or direction of Customer for maintenance, activation of configurations, backups or other purposes that require the service to be temporarily taken offline;
- Unavailability of management, auxiliary or administration services, including administration tools, reporting services, utilities, third party software components not within the sole control of ORock, or other services supporting core transaction processing;
- Outages occurring as a result of any actions or omissions taken by ORock at the request or direction of you;
- Outages resulting from your equipment, third party equipment or software components not within the sole control of ORock;
- Events resulting from an interruption or shut down of the services due to circumstances reasonably believed by ORock to be a significant threat to the normal operation of the services, the operating infrastructure, the facility from which the services are provided, access to, or the integrity of your data;
- Outages due to system administration, commands, or file transfers performed by Customer User or representatives;
- Outages due to denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of God, acts of civil disobedience, acts of war, terrorism, hostility, acts against parties (including carriers and ORock’s other vendors), and other force majeure events;
- Inability to access the services or outages caused by your conduct, including negligence or breach of your material obligations under the Agreement, or by other circumstances outside of ORock’s control;
- Lack of availability or untimely response time of you to respond to incidents that require your participation for source identification and/or resolution, including meeting your responsibilities for any services;
- Outages caused by failures or fluctuations in electrical, connectivity, internet network or telecommunications equipment or lines due to your conduct or any circumstances outside of ORock’s control.

A “Service Credit” is a dollar credit, calculated as set forth below, that we may credit back to an eligible account.

**Service Commitments and Service Credits**

Service Credits are calculated as a percentage of the total charges paid by you (excluding professional services or other one-time fees) for ORock Cloud Services, during the affected monthly billing cycle in which the Unavailability occurred in accordance with the schedule below.

<b>Service Commitment: Monthly Uptime Percentage – Single Node Instantiation - (99.9%)</b>	<b>Service Credit Percentage</b>	<b>Service Commitment: Monthly Uptime Percentage – Multi-Node Instantiation - (99.99%)</b>	<b>Service Credit Percentage</b>
Less than 99.9% but equal to or greater than 99.0%	10%	Less than 99.99% but equal to or greater than 99.9%	10%
Less than 99.0%	20%	Less than 99.9%	20%

We will apply any Service Credits only against future ORock Cloud Services payments otherwise due from you. Service Credits will not entitle you to any refund or other payment from ORock. Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Agreement, your sole and exclusive remedy for any unavailability, non-performance, or other failure by us to provide ORock Cloud Services is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.

**Service Credit Request and Payment Procedures**

To receive a Service Credit, you must submit a written claim to the ORock NOC manager at nocoperations@orocktech.com. To be eligible, the Service Credit request must be received by us by the end of the billing cycle in which the incident occurred. The following information must be included in the written Service Credit request:

- The words “SLA Service Credit Request” in the subject line;**
- The dates and times of each Unavailability incident that you are claiming;**

**The affected ORock cloud Service instance and Data Center Location; and  
Your request logs that document the errors and corroborate your claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).**

If the Monthly Uptime Percentage of such request is confirmed by us and is less than the Service Commitment, then we will issue the Service Credit to you within one billing cycle following the month in which your request is confirmed by us. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.

**SLA Exclusions**

The service level commitment does not apply to any unavailability, suspension or termination of ORock Cloud Services performance issues: (i) that result from a suspension described in the Agreement; (ii) caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems that do not directly emanate from ORock Cloud Services; (iii) that result from any actions or inactions of you or any third party within the sole control of ORock; (iv) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); (v) that result from failures of individual instances or volumes not attributable to Unavailability; (vi) that result from any maintenance or other outage as provided for pursuant to the Agreement; or (vii) arising from our suspension and termination of your right to use ORock Cloud Services in accordance with the Agreement (collectively, the "SLA Exclusions"). If availability is impacted by factors other than those used in our Monthly Uptime Percentage calculation, then we may issue a Service Credit considering such factors at our sole discretion.

**SCHEDULE E  
SUPPORT AGREEMENT**

<b>Hours of Service Desk Support:</b> Phone: 1-833-376-7625 eMail: nocoperations@orocktech.com	7 days a week	24 Hours a day, 365 days a year
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<b>Priority-(Severity)</b>	<b>Target Response</b>	<b>Target Resolution</b>
1 - (Critical)	30 mins	1 Hour
2 - (High)	60 mins	2 Hours
3 - (Medium)	4 Hours	24 Hours
4 - (Low)	72 Hours	7 Days

<b>Priority (Severity)</b>	<b>Description</b>
1 - (Critical)	<p>An incident which involves service not available or a serious malfunction of the service with impact on ORock's direct delivery to single or multiple Customers</p> <p>Total loss of service to all Users and no work-around available</p> <p>Loss of functionality resulting in Customer Users/workgroups being unable to access the Services</p> <p>Unavailability of one or more Services</p>
2 - (High)	<p>An incident which involves service not available with impact on ORock's single or multiple Customers or a serious mal-function of the service with potential impact on ORock's direct delivery to Customers</p> <p>Loss of functionality which severely impedes all or some material Services</p> <p>Customer's Users/workgroups being unable to continue with normal business processing</p> <p>Partial loss of availability of one or more Services</p>
3 - (Medium)	<p>An incident that involves degradation or risk to quality of service with impact on one or more Customers</p> <p>Issue not impeding Customers' Users/workgroups from being able to continue with normal business processing</p> <p>Potential to cause more serious issue if not investigated and addressed</p>
4 - (Low)	<p>An issue for which the final resolution is outside the control of ORock or does not substantially affect the Services. ORock will consider resolving the issue in a future release.</p> <p>General Service related questions and requests for information.</p>

**SCHEDULE F**

**PRIVACY POLICY**

**PLEASE READ THIS DOCUMENT CAREFULLY**

## Introduction

ORock, Technologies Inc. respects your privacy and is committed to protecting it. This privacy policy applies to <https://orocktech.com> ("Website") and to all products and services offered by ORock (collectively, "ORock", "ORock Platform", "We", "Us" or "Our"). This Privacy Policy describes ORock's policies and procedures on the collection, use and disclosure of your personal data when you use the ORock Platform. It also describes the choices available to you regarding the use of, your access to, and how to update and correct your personal data. We will not use or share your confidential information with anyone except as described in this Privacy Policy. This Privacy Policy does not apply to information we collect from other sources. This website is not intended for children and we do not knowingly collect data relating to children. Information which you do not designate as confidential may be publicly available and disclosed.

It is important that you read this Privacy Policy together with any other privacy notice or fair processing notice we may provide on specific occasions when we are collecting or processing personal data about you so that you are fully aware of how and why we are using your data. Our website and related services are hereinafter collectively referred to as our "services". We respect your privacy and are committed to maintaining and using any information we collect through your use of our services responsibly.

ORock is data processor for the processing of personal data in relation to ORock accounts and in relation to the use of our website. This Privacy Policy only concerns the processing for which ORock is data processor.

Please read this Privacy Policy carefully prior to accessing or using our services. If you do not agree with our policies and practices, your choice is not to use our Website. By accessing or using this Website, you agree to this Privacy Policy.

If you have any questions, please contact us at: [privacy@orocktech.com](mailto:privacy@orocktech.com).

## The Information We May Collect

Our primary purpose in collecting information from or about you is to provide you with a safe, smooth, efficient, and customized experience. Depending on the way you use our services, we collect information about you that we deem necessary for providing services and features that optimize, secure, and ease your user experience with ORock.

*Personal Information or Personal Data ("PII"):* ORock may collect and process information that could be directly or indirectly associated with you; information such as your full name, company name where applicable, user name and password, phone number, email address, billing or mailing address, credit/debit card information and other information that you share with ORock. You can choose not to provide us with certain information, but that may result in you being unable to use certain features of our services because such information may be required for you to register for an account; purchase products or services; participate in a contest, promotion, or survey; ask a question; or initiate other transactions on our website.

*Payment Information:* For the purposes of billing ORock accounts, we may request your credit card and certain contact information, such as a billing address. We retain credit card information internally for all payment processing related to our services. The payment information is necessary for you to use our services and failure to provide such information may result in you not being able to use our services.

*Third Party Payment Processors:* Payments processed via the ORock Platform by third party payment processors are subject to the terms of use and privacy policies of those payment gateways and are not accessible or controlled by ORock. For payments processed via third party payment processors, we may receive information related to your payment card type and last four digits, postal code, country of origin, and payment expiration date. For additional information, we recommend that you review the third-party payment processor's Privacy Policy.

*Mobile Application:* ORock offers a mobile application and may, depending on your privacy settings, collect certain information about you and your devices when you access our services through your mobile or other Internet connected devices. ORock does not ask for or purposefully track any precise location-based information. We use mobile analytics software to allow us to better understand the functionality of our services on your mobile or other Internet connected devices, which may record data relating to usage, performance, and download and will be treated like Demographic and Usage Data (discussed below).

*Information from Third Party Platforms:* You may allow our services to interact with one or more third party social networks or platforms (such as Facebook), which will provide data about you to us ("Platform(s)"). The information you allow ORock to access varies by Platform, and it is affected by the privacy settings you and those that you are connected with establish while using such Platforms. Platforms are operated, controlled, and maintained by third parties that are not operated, controlled, or maintained by ORock. We recommend that you read the terms of use or service and privacy policies of those Platforms to understand how they collect and treat your data and what data they might share with us or other third parties.

### *Demographic and Usage Data: Cookies and Similar Technologies*

ORock may collect information through the use of cookies, HTML5 local storage, and other similar technologies.

## Cookies

"Cookies" are alphanumeric identifiers in the form of text files that are inserted and stored by your web browser on your hard drive. ORock may set and access cookies on your computer or wireless device to track and store preferential information about you. We may gather anonymous information about Users through cookie technology on an individual and aggregate level. Such information is used within ORock internally and is only shared with third party advertisers, if any, on an aggregated or non-personally identifiable basis.

You may opt out of receiving cookies from our website by following the instructions in your web browser. Note, however, that deleting cookies or directing your browser to refuse them may limit your ability to use certain portions of our website that require cookies to function. ORock gathers certain information automatically and stores it in log files. This information may include Internet protocol (IP) addresses, browser type, operating system, and other usage information about the use of our website, including a history of the pages you view.

**Non-Personal Information: Web Beacons, Action Tags and Log Files**

**Web Beacons:** Web Beacons, also known as pixel tags and clear GIFs, ("Web Beacons"), are electronic images that allow a website to access cookies and help track marketing campaigns and general usage patterns of visitors to those websites. Web Beacons can recognize certain types of information, such as cookie numbers, time and date of a page view and a description of the page where the Web Beacons are placed. No PII about you is shared with third parties through the use of Web Beacons on our website. However, through Web Beacons, we may collect general information that will not personally identify you, such as: Internet browser, operating system, IP address, date of visit, time of visit and path taken through the website. In addition, we may also use web beacons in HTML-based emails sent to users to track which emails are opened by recipients.

**Action Tags:** ORock uses action tags. An action tag is a small piece of code that is placed on a webpage or in an email in order to track the pages viewed or the messages opened, the date and time when someone visited our website, the website from which the visitor came, the type of browser used, and the domain name and address of the user's Internet Service Provider. Action tags allow us to better understand how Users and visitors use the ORock Platform or browse through our pages, so that we can improve access to and navigation through the site, add or modify pages, according to our user's patterns. Action tags cannot be removed or deleted by our users, because they are part of the programming of a webpage.

**Log Files:** Log file information is automatically reported by your browser each time you access a web page. When you use the ORock Platform, our servers automatically record certain information that your web browser sends out whenever you visit any website. These server logs may include information such as your web request, IP address, browser type, referring/exit pages, operating system, date/time stamp, the files viewed on our site (e.g., HTML pages, graphics, etc.) and URLs, number of clicks, domain names, landing pages, pages viewed, and other similar information.

**Behavioral Targeting**

ORock partners with a third party to either display advertising on our website or to manage our advertising on other sites. ORock's third party partner may use cookies or similar technologies in order to provide you advertising based upon your browsing activities and interests. If you wish to opt out of interest-based advertising click here - [Unsubscribe](#). Please note you will continue to receive generic ads.

**Do Not Track Signals**

ORock does not track or use Do Not Track signals.

Note: ORock may also collect other Non-Personal Information as visitors browse our website, such as the web traffic, what pages are visited, from where visitors come, and other demographic information, such as age, gender, and search habits. We may compile this Non-Personal Information to enable statistical analysis of our services that would be used internally or with external assistance to make improvements to our website and services.

**How We Use the Information We Collect & Disclosure of your PII**

All organizations need a legal reason to use your personal information. If they do not have one, they cannot use such information. There are legal grounds that enable data processing, and we will use your PII in accordance with applicable data protection legislation, this Privacy Policy and the General Data Protection Regulation (2016/679/EU) ("GDPR"). Below are the most relevant grounds you should be aware of with respect to ORock's legal bases for using or disclosing your PII:

ORock may disclose any of your information, which in some cases includes PII, in the following situations:

With your consent. We may transmit your PII to a third party when you give us express permission to do so. For example, this may occur when we complete a transaction on your behalf or at your request.

To enter into or to fulfil a contract. We may use your PII to provide you with access to your account or other products you have signed up for.

For a legitimate interest. We may use your PII where it would help achieve ORock's business objectives or to facilitate a benefit to you or someone else. Where we want to rely on legitimate interests as a legal basis, we will carry out a balancing test between our legitimate interests and your privacy rights.

With our authorized service providers. ORock may share your PII with our authorized service providers that perform certain services and process PII on our behalf. These services may include providing customer service and marketing assistance, performing business and sales analysis, supporting our website functionality, and supporting contests, sweepstakes, surveys and other features offered through our website. These service providers may have access to PII needed to perform their functions but are not permitted to share or use such information for any other purposes.

Payment providers and your bank. For the purpose of administrating payments within our services, we may disclose your PII to third party payment providers and your bank.

With our business partners. When you make purchases, reservations or engage in promotions offered through our website, we may share PII with the businesses with which we partner to offer you those products, services, promotions, contests and/or sweepstakes.

In connection with a substantial corporate transaction, such as the sale of our business; a divestiture, merger, consolidation, or asset sale; or in the event of bankruptcy. If another company acquires ORock, that company will take on all responsibility for the information we collect, including PII, and it will assume all rights and obligations with respect to that information. Should this happen, the acquiring company may implement its own policies with respect to your information.

If we are required to disclose information by law. ORock may be obligated to disclose a User's personal information, if directed by a court of law or other governmental entity. Without limiting the foregoing, we reserve the right to disclose such information where we have a good faith basis to believe that such action is necessary to: (a) comply with applicable laws, regulations, court orders, government and law enforcement agencies' requests; (b) protect and defend ORock's or third party's rights and property, or safety of ORock, our users, our employees, or others; (c) prevent, detect, investigate and take measures against criminal activity, fraud and misuse or unauthorized use of our services and/or to enforce our Terms of Use or other agreements or policies; and/or (d) protect your personal safety or property or that of the public. In the event that your information is disclosed, we will comply with the law and make commercially reasonable efforts to notify you.



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## Data Retention

We will save your PII until six months after you erase your user account, or otherwise exercise your right to erase your PII, unless otherwise required by law.

## Access to Your Information and other rights

You are at any time, and free of charge, entitled to receive a copy of the PII that we hold about you and information about the processing thereof. Please note that in order to be able to answer your request; ORock will need to be able to determine your identity.

If you believe that any PII we are holding is incorrect or incomplete, please send an email with your specific request to [privacy@orocktech.com](mailto:privacy@orocktech.com). We will work with you to make any corrections deemed necessary. We may not accommodate a request to change information if we believe the change would violate any law or legal requirement or cause the information to be incorrect.

You have the right to request that ORock restricts the processing of your PII under certain conditions, for example, if you contest the accuracy of the PII, the processing may be restricted for a period enabling ORock to verify the accuracy of the PII or if ORock no longer needs the PII for the purposes of the processing but you require the PII for the establishment, exercise or defense of legal claims.

You have the right to have your PII deleted without undue delay and ORock is obliged to delete your PII without undue delay if, for example the PII is no longer necessary in relation to the purpose for which it was collected or otherwise processed. Please note that ORock is not obliged to delete the PII if ORock can show that the processing is necessary, for example, for the establishment, exercise or defense of a legal claim.

If you provide your email address to ORock, you will always have the opportunity to opt out of receiving email newsletters and promotions through the unsubscribe link in the email communications or by logging into and changing the preferences for your user account. We may send you other types of transactional and relationship e-mail communications, such as service announcements, administrative notices, and surveys, without offering you the opportunity to opt out of receiving them. Please note that changing information in your account, or otherwise opting out of receipt of promotional email communications will only affect future activities or communications from us. If we have already provided your information to a third party (such as a credit card processing partner) before you changed your preferences or updated your information, you may have to change your preferences directly with that third party.

You have the right to object, on grounds relating to your particular situation, at any time to ORock's processing of your PII if the processing is based on, for example, legitimate interests. If you object to such processing, ORock will no longer be entitled to process your PII based on such legal basis, unless ORock can demonstrate compelling legitimate grounds for the processing which overrides your interests, rights and freedom or if it is conducted for the establishment, exercise or defense of a legal claim.

You have, under certain conditions, the right to receive the PII concerning you and which you have provided to ORock, in a structured, commonly used and machine-readable format and have the right to transmit such PII to another data controller without ORock trying to prevent this, where ORock's processing of your PII is based a contract or consent and the processing is carried out by automated means. In such case you have the right to request that the PII shall be transmitted from ORock directly to another data controller, where technically feasible.

You also have the right to withdraw your consent, if applicable. If you withdraw your consent, please note that this does not affect the lawfulness of the processing based on your consent before its withdrawal and that ORock may, under certain circumstances, have another legal ground for the processing and therefore may be entitled to continue the processing.

If you would like to exercise your rights, you may contact us on the contact details provided at the bottom of this Privacy Policy.

If you are unhappy with our processing of your PII you may lodge a complaint with a competent supervisory authority, for example in the country of your habitual residence, place of work or of an alleged infringement of the General Data Protection or other applicable data privacy laws.

## Our Policy Concerning Children

Our Website is not intended for children under 13 years of age. Our website and services are offered and available only to you if are 18 years or older, or if you are between 13 and 18 years old and have obtained the consent of a parent or legal guardian prior to accessing the website, registering an account, or using the services. If you do not meet this eligibility requirement, you may not use our website or services. ORock does not knowingly collect or store any personal information from or about children under the age of 13. If we learn we have collected or received personal information from a child under 13 without verification of parental consent, we will delete that information in conformity with the Children's Online Private Protection Rule ("COPPA"). If you believe that ORock might have any information from or about a child under the age of 13 may submit a request to [privacy@orocktech.com](mailto:privacy@orocktech.com) and request that such information be removed.

## Securing Your Information

ORock takes a range of security measures designed to protect your PII and keep it confidential (unless it is non-confidential by nature) and free from any unauthorized alteration. For example, only authorized employees are permitted to access personal information, and they may do so only for permitted business functions. In addition, we use encryption in the transmission of financial information between your system and ours, and we use firewalls to help prevent unauthorized persons from gaining access to your personal information.

Where we have given you (or where you have chosen) a password for access to certain parts of our website, you are responsible for keeping this password confidential. As the safety and security of your information also depends on the precautions you take, we ask you not to share your password with anyone.

## Third Parties and Other Information Collectors



Except as otherwise expressly included in this Privacy Policy, this document only addresses the use and disclosure of information we collect from you. To the extent that you disclose your information to other parties through our website, different rules may apply to their use, collection, and disclosure of the personal information you disclose to them. Since we do not control the information use, collection, or disclosure policies of third parties, you are subject to their privacy policies.

Our website may include links to third party websites. Once you have used these links to leave our website, you should note that we do not have any control over third party websites. We are not responsible for the content of such websites or the protection and privacy of any information which you provide while visiting such sites. Third-party websites are not governed by this Privacy Policy. You should exercise caution and look at the privacy policies applicable to the websites in question.

#### **Users Outside of the United States**

The services are hosted in the United States and are governed by the laws of the United States. If you are using the services outside the United States, please be aware that your information will be transferred to, stored, and processed in the United States where ORock's servers and databases are located. By using the Sites, you consent to the transfer of information to countries outside your country of residence.

#### **Transfer of personal information to countries outside the EU/EES**

ORock is established in New York, USA. Your PII is therefore transferred outside the European Union ("EU") and European Economic Area ("EEA"). Such transfer is necessary for the performance of the contract between you and ORock (article 49.1 (b) of the GDPR).

Your PII is also transferred to and processed by third party payment providers. Such transfers are necessary for performance of the contract between you and ORock (article 49.1 (b) of the GDPR).

Some of the third parties identified above may also be located outside the EU/EEA, in which case we will take all necessary steps required under applicable law in order for such transfer of information across borders to be compliant with applicable law. In cases where there is no adequacy decision by the Commission, this may for example include the use of EU model clauses (under Article 46.2 of the GDPR) or ensuring that the recipient is certified under the US-EU Privacy Shield Framework (under Article 45 of the GDPR). You may receive a copy of the relevant safeguards by contacting ORock using the contact details set forth below in this Privacy Policy.

#### **No Rights of Third Parties**

This Privacy Policy does not create rights enforceable by third parties or require disclosure of any personal information relating to users of the website.

#### **Changes to the Privacy Policy**

We may review and update this Privacy Policy from time to time in our sole discretion and will notify you of such changes. It is our policy to post any changes we make to our Privacy Policy on this page with a notice that the Privacy Policy has been updated on the Website home page. If we make material changes to how we treat our users' personal information, we will notify you by email to the primary email address specified in your account and/or through a notice on the Website home page. The date the privacy policy was last revised is identified at the top of the page. You are responsible for ensuring we have an up-to-date active and deliverable email address for you, and for periodically visiting our Website and this privacy policy to check for any changes.

Your continued use of the services after receipt of notification of changes to this Privacy Policy is deemed to be acceptance of those changes.

#### **Contact Us**

Please note that we have appointed a Privacy Representative who is responsible for overseeing questions in relation to this Privacy Policy. If you have any questions about this Privacy Policy, including any requests to exercise your legal rights, please contact the Privacy Representative at [privacy@orocktech.com](mailto:privacy@orocktech.com). You may also write to C/O Privacy Representative, ORock Technologies, Inc; 11921 Freedom Drive, Suite 1180 Reston, Virginia 20190 or call 571-386-0201.

**PALO ALTO NETWORKS, INC.**  
3300 OLCOTT STREET  
SANTA CLARA, CA 95054

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Palo Alto Networks, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**PALO ALTO NETWORKS**

**PALO ALTO NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS**

**PALO ALTO NETWORKS MAINTENANCE AND SUPPORT SERVICES ARE NOT GOVERNED BY THIS EULA, AND ARE GOVERNED BY A SEPARATE GLOBAL SUPPORT SERVICES TERMS AND CONDITIONS ("EUSA") DETAILED IN EXHIBIT A.**

**LICENSE GRANT AND RESTRICTIONS.**

**Software License Grant.** Subject to the terms and conditions of this EULA, Palo Alto Networks grants to End User a nonexclusive license to: (i) use the Software solely as part of the Hardware with which the Software is delivered, or (ii) in accordance with the published specifications. The Software is

solely for End User's internal business purposes unless otherwise agreed to with Palo Alto Networks in a separate written agreement. All other rights in the Software are expressly reserved by Palo Alto Networks.

**Subscription Services Limited Right to Use.** Palo Alto Networks grants to End User the limited right to use the Subscription Services solely in connection with the Hardware and/or Software and solely for End User's internal business purposes.

**License Restrictions.** End User shall maintain the Products in strict confidence and shall not: (a) except in accordance with Palo Alto Networks license transfer procedure (<https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html>), sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Products, or make the functionality of the Products available to any other party (excluding contractors or other third party providing IT services to Customer) through any means (unless otherwise permitted in writing by Palo Alto Networks as expressly agreed to in a separate Managed Security Services Provider agreement), including, without limitation, by uploading the Software or Subscription Services to a network or file-sharing service or through any hosting, application services provider, service bureau or other type of services; (b) modify, translate or create derivative works based on the Software or Subscription Services, in whole or in part, or permit or authorize a third party to do so; (c) disassemble, decompile, reverse compile, reverse engineer or otherwise attempt to derive the source code of the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by applicable law in the jurisdiction of use notwithstanding this prohibition; (d) disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that End User runs (or has run on its behalf by a third party) on the Products; (e) duplicate the Software except for making a reasonable number of archival or backup copies, provided that End User reproduces on or in such copies the copyright, trademark and other proprietary notices or markings that appear on the original copy of the Software (if any) as delivered to End User.

**Affiliates.** If End User purchases the Product for use by any End User Affiliate (defined below), End User shall: (a) provide each such End User Affiliate with a copy of this EULA; (b) ensure that each such End User Affiliate complies with the terms and conditions therein; and (c) be responsible for any breach of these terms and conditions by any such End User Affiliate. For purposes of this EULA, "Affiliate" means any entity that Controls, is Controlled by, or is under common Control with End User or Palo Alto Networks, as applicable, where "Control" means ownership, directly or indirectly, of 50% or more of the voting interest of End User or Palo Alto Networks, as applicable.

#### **OWNERSHIP.**

The Software and Subscription Services are licensed, not sold. Palo Alto Networks retain all right, title, interest and ownership of the Software and Subscription Services, including copyrights, patents, trade secret rights, trademarks and any other intellectual property rights therein. End User shall not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Software and Subscription Services or related documentation as delivered to End User. To the extent you provide any suggestions or comments related to the Products to Palo Alto Networks or its authorized third party agent, Palo Alto Networks shall have the right to retain and use any such suggestions or comments in current or future products or services, without your approval or further compensation to you.

#### **RESERVED.**

#### **WARRANTY, EXCLUSIONS AND DISCLAIMERS.**

**Warranty.** Palo Alto Networks warrants that, under normal authorized use (a) the Hardware shall be free from defects in material and workmanship for one (1) year from the date of shipment; and (b) the Software will substantially conform to Palo Alto Networks' published specifications for three (3) months from the date of shipment. As End User's sole and exclusive remedy a nd

Palo Alto Networks' and its suppliers' liability for breach of warranty, Palo Alto Networks shall, at its option and expense, repair or replace the Hardware or correct the Software, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are returned to Palo Alto Networks and replaced become the property of Palo Alto Networks. Palo Alto Networks shall not be responsible for End User's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Palo Alto Networks for repair or upon termination, whether under warranty or not.

**Exclusions.** The warranty set forth above shall not apply if the failure of the Product results from or is otherwise attributable to: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks -authorized third party; (ii) accident, negligence, abuse or misuse of a Product; (iii) use of the Product other than in accordance with Palo Alto Networks' specifications; (iv) improper installation or site preparation or any failure by End User to comply with environmental and storage requirements for the Product specified by Palo Alto Networks, including, without limitation, temperature or humidity ranges; or (v) causes external to the Product such as, but not limited to, failure of electrical systems, fire or water damage.

**4.3 Disclaimers. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED AND AS OTHERWISE PROHIBITED BY APPLICABLE LAW, THE HARDWARE, SOFTWARE AND SUBSCRIPTION SERVICES ARE PROVIDED "AS IS". PALO ALTO NETWORKS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. PALO ALTO NETWORKS DOES NOT WARRANT THAT (I) THE PRODUCT WILL MEET END USER'S REQUIREMENTS, (II) USE THEREOF SHALL BE UNINTERRUPTED OR ERROR-FREE, OR (III) THE HARDWARE, SOFTWARE OR SUBSCRIPTION SERVICES WILL PROTECT AGAINST ALL POSSIBLE THREATS WHETHER KNOWN OR UNKNOWN.**

#### **RESERVED.**

#### **RESERVED.**

#### **END USER DATA.**

Palo Alto Networks utilizes industry standard practices and policies to maintain administrative, physical and technical safeguards for the protection and security of End User Data (defined below). End User is hereby notified and acknowledges that Palo Alto Networks Products may include interaction and communication with facilities hosted outside of the country where End User purchased or utilizes the Products. End User is further notified and acknowledges that some Subscription Services may allow End User, in its sole discretion, to send data to Palo Alto Networks, where such data may contain personally-identifiable, sensitive, and/or confidential data and information (collectively, "End User Data"). End User represents and warrants that End User's use of the Subscription Services and related submission of End User Data complies with all applicable laws, including those related to data privacy, data security, international communication and the exportation of technical, personal or sensitive data. Palo Alto Networks is not a data processor or data collector, and the inclusion of such personally identifying or sensitive data in End User Data is solely incidental to the provision of the Subscription Services. Submission of End User Data to Palo Alto Networks shall be at End User's sole discretion and at its own risk, and Palo Alto Networks assumes no responsibility for receipt of such End User Data. End User Data sent to Palo Alto Networks may be stored by Palo Alto Networks. End User further acknowledges that Palo Alto Networks may anonymize such End User Data to use for statistical purposes and share samples of such anonymized End User Data with other third party security-related researchers, vendors and customers.

#### **GENERAL.**

**Reserved.**

**Reserved.**

**Reserved.**

**Reserved.**

**Reserved. .**

**Reserved.**

**U.S. Government End Users.** This section applies to United States Government End Users only and does not apply to any other End Users. The Software and its documentation are “commercial computer software” and “commercial computer software documentation,” respectively; as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government’s rights in the Software and its documentation shall be as specified in this EULA.

**Open Source Software.** The Products may contain or be provided with components subject to the terms and conditions of open source software licenses (“Open Source Software”). A list of Open Source Software can be found at <https://www.paloaltonetworks.com/company/third-party-software.html>, for informational purposes only.

**Reserved.**

**Authorization Codes, Grace Periods and Registration.** Your Product may require an authorization code for activation for support of Your Product or to access Subscription Services. The authorization codes will be issued at the time of order fulfillment and sent to You via email. The service period will commence in accordance with the grace period policy at <https://www.paloaltonetworks.com/support/support-policies/grace-period.html>, for informational purposes only. You are hereby notified that, upon applicable grace period expiration, if any, Palo Alto Networks reserves the right to register Your Product and activate support services (if purchased) on Your behalf without further notification to You.

**WildFire Related Microsoft Licenses.** End User acknowledges that certain WildFire offerings require licenses for certain Microsoft software, including Windows and Office, as described further in the relevant Wildfire documentation. Where Microsoft software is provided with certain WildFire offerings, Palo Alto Networks has procured or otherwise provided the necessary Microsoft licenses for the WildFire offering. Customer is hereby notified and acknowledges that Microsoft updates and upgrades (software assurance) are not provided with the WildFire product and must be obtained by Customer directly from Microsoft in order for Customer to utilize later versions of Microsoft products beyond the versions initially provided with the WildFire offerings.

**Reserved.**

Exhibit 1 to Attachment A

**GLOBAL CUSTOMER SUPPORT SERVICES TERMS AND CONDITIONS**

**SUPPORT PLANS AND SERVICES OFFERED**

<b>Support Offerings</b>	<b>4 Hour Premium Support</b>	<b>Premium Support</b>	<b>Standard Support</b>
Office Hours Availability	See <a href="https://support.paloaltonetworks.com">https://support.paloaltonetworks.com</a>		
After Hours Availability	Yes - 24x7x365	Yes - 24x7x365	No
<b>Hardware Support</b>			
4 Hour Replacement Service (available only for products located within a specified range of a Palo Alto Networks Service Location)	Yes	No	No
Advance Replacement Service: Next Business Day Ship	No	Yes	No
Return and Repair	No	No	Yes
<b>Call Response Times</b>			
<b>Severity 1 – Critical</b> Product is down, critically effects customer production environment. No workaround yet available.	< 1 hour	< 1 hour	< 1 hour 7am – 6pm PST
<b>Severity 2 – High</b> Product is impaired, customer production up, but impacted. No workaround yet.	2 Business Hours	2 Business Hours	2 Business Hours
<b>Severity 3 – Medium</b> A Product function has failed, customer production not affected. Support is aware of the issue and a workaround is available.	4 Business Hours	4 Business Hours	4 Business Hours
<b>Severity 4 -- Low</b> Non-critical issue. Does not impact customer business. Feature, information, documentation, how-to and enhancement requests from the customer.	8 Business Hours	8 Business Hours	8 Business Hours
<b>Contacting Support</b>			
Palo Alto Networks, Inc 4401 Great America Parkway Santa Clara, CA 95054	Toll Free US – 1.866.898.9087 Outside the US +1.408.738.7799 Website: <a href="https://support.paloaltonetworks.com">support.paloaltonetworks.com</a>		

**DEFINITIONS**

**"Business Hours"** means Mondays through Fridays, 7:00 am – 6:00 pm PST, excluding U.S. and California holidays.

**"Hardware"** means the appliance and server agent products listed on Palo Alto Networks' then-current published product price list.



**“Major Releases”** means significant modifications or improvements to the Software that: (i) are designated by a change in the 1st digit of the version release number (e.g., v5.0 to v6.0); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

**“Minor Releases”** means minor modifications or improvements to the Software, cumulative bug fixes from Maintenance Releases since the last Minor Release and new bug fixes, as applicable, that: (i) are designated by a change in the 2nd set of digits of the version release number (e.g., v5.00 to v5.01); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

**“Maintenance Releases”** means bug fixes to the Software that: (i) are designated by a change in the 3rd set of digits of the version release number (e.g., v5.00.01 to v5.00.02); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

**“Palo Alto Networks Standard Support,” “Palo Alto Networks Premium Support,” and “Palo Alto Networks 4 Hour Premium Support”** refer to software and hardware support programs offered by Palo Alto Networks, as further detailed in Section 3 below.

**“Palo Alto Networks Support Plans”** means Palo Alto Networks Standard Support, Palo Alto Networks Premium Support, Palo Alto Networks 4 Hour Premium Support, and any other support plan for the Products described in this Agreement or on the Palo Alto Networks Support Web Site.

**“Palo Alto Networks Support Web Site”** means the web site currently located at <https://support.paloaltonetworks.com>, or any successor site thereto, as specified by Palo Alto Networks.

**“Products”** means, collectively, Hardware and Software.

**“Software”** means the software products listed on Palo Alto Networks’ then-current published product price list, including any software embedded in Hardware.

#### **DESCRIPTION OF SUPPORT PLANS**

Each Product under a Palo Alto Networks Support Plan must be registered by Customer in the Palo Alto Networks Support Web Site in order to access the features available on such site. In consideration of Customer’s purchase of a Palo Alto Networks Support Plan, Palo Alto Networks will use commercially reasonable efforts to provide the applicable services, as set forth in the table entitled “Support Plans and Services Offered” above, which are more fully described as follows: a) **Technical Support**

Telephone support available during the times specified for the Palo Alto Networks Support Plan purchased by Customer.

Support cases created via the Web will be classified as non-critical and will have a response time based on the severity classification as set forth in the table entitled “Support Plans and Services Offered” above. b) **Secure Web Access**

Access to the Palo Alto Networks Support Web Site to acquire the latest software fixes, feature releases, software release notes, signature updates, FAQs, case management and technical documentation.

Palo Alto Networks will use commercially reasonable efforts to ensure that the Palo Alto Networks Support Web Site is available 24x7.

Palo Alto Networks reserves the right to modify the support plans offered. Please refer to the Palo Alto Networks Support Web Site for the most current support plan descriptions.

#### **SUPPORT OPTIONS**

Customer shall choose from three support plans: (i) Palo Alto Networks Standard Support, (ii) Palo Alto Networks Premium Support, or (iii) Palo Alto Networks 4 Hour Premium Support.

Based upon the Customer’s selection and payment of the applicable fees per the purchase, Palo Alto Networks shall have the following obligations:

##### **a) Palo Alto Networks Standard Support**

Maintain and support the list of releases as defined as the current support releases on the Palo Alto Networks Support Web Site.

Make available all supported Maintenance Releases, Minor Releases and Major Releases. iii. Verify and correct identified defects in the Software for the currently supported Maintenance Releases. iv. Provide access to Palo Alto Networks online support through the Palo Alto Networks Support Web Site including, but not limited to, knowledge base/FAQ, case management and software downloads.

Provide technical telephone support Monday through Friday, excluding Palo Alto Networks’ designated holidays, in accordance to the times listed on Palo Alto Networks Support Web Site.

Provide a return and repair service for Hardware defects.

Customer may access Palo Alto Networks technical call center numbers and website address as listed in the table entitled “Support Plans and Services Offered” above.

##### **b) Palo Alto Networks Premium Support**

Includes all of the support services described under Palo Alto Networks Standard Support plus the following:

After hours technical telephone support on a 7x24 (seven days per week, 24 hours per day) basis for Severity 1, critical issues.

Provide a next business day ship advance replacement for Hardware defects.

##### **c) Palo Alto Networks 4 Hour Premium Support**

This support option is available only for Products located within a specified range of a Palo Alto Networks Service Location. Includes all of the support services described under Palo Alto Networks Premium Support plus commercially reasonable efforts by Palo Alto Networks to deliver the replacement hardware to the Customer within four hours.

#### **5. RMA POLICY AND PROCESS**

In those situations when it is necessary for Customer to return a Product to Palo Alto Networks, Customer must request Palo Alto Networks to issue a Return Material Authorization (RMA) Number prior to shipment. Each RMA Number will be uniquely identified and records will be maintained to record significant information regarding the processing of the Product.

**Return and Repair:** Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or email or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with Customer to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Customer shall repackage the Product in the original packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Agreement), note the RMA Number on the shipping label and ship the Product to the specified Palo Alto Networks location. Products will be repaired or replaced within 10 business days from receipt of the defective Product by Palo Alto Networks. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the repaired or replacement Product to Customer.

**Advance Replacement:** Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with the Customer to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Palo Alto Networks will ship a replacement Product to Customer by the next business day and a prepaid return airbill will be included with the shipping documents affixed to the exterior of the shipping carton. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the replacement Product to Customer. Upon receipt of a replacement Product, Customer shall return the defective Product to Palo Alto Networks in the replacement Product’s packaging (shipping



damage that occurs as a result of insufficient packaging is not covered under this Agreement), the airbill affixed to the exterior of the shipping carton and the designated courier service contacted for pickup. If Palo Alto Networks does not receive the returned Product within 10 business days after the date of Customer's receipt of the replacement Product, Customer will be charged current list price of the replacement Product.

**4 Hour RMA Replacement:** Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone. Palo Alto Networks Support will work with the Customer to confirm the Hardware problem and issue an RMA Number to be used by Palo Alto Networks for administrative purposes. Palo Alto Networks will use its commercially reasonable efforts to have a replacement Product delivered to Customer within four hours of the time the Customer receives an RMA number. Customer must have an authorized representative available to accept delivery of the replacement Product. If Palo Alto Networks (or its subcontractor) is unable to complete delivery because Customer does not have an authorized representative available, Palo Alto Networks reserves the right to charge Customer for costs incurred in making a subsequent delivery.

#### **6. CUSTOMER OBLIGATIONS**

During the term of this Agreement, Customer shall:

Operate at the then-current Maintenance Release; and

Use reasonable efforts to isolate, collect all error and log files to enable Palo Alto Networks to fulfill its obligations herein.

#### **LIMITATIONS**

The following services are expressly excluded from the Palo Alto Network Support Plans:

Repair or replacement of Product required as a result of causes other than normal use, including without limitation: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks -authorized personnel; (ii) accident, fault or negligence of Customer; (iii) user error or misuse of the Product; or (iv) causes external to the Product such as, but not limited to, failure of electrical systems or fire or water damage or hardware failure, operation system software failure or any other damage and failure not caused by Palo Alto Networks.

Maintenance or technical services for any third party software or hardware, whether or not such third party software or hardware is provided by Palo Alto Networks.

#### **RESERVED.**

#### **NO WARRANTY**

Nothing in this Agreement shall be construed as expanding or adding to the warranty set forth in the EULA. PALO ALTO NETWORKS MAKES, AND CUSTOMER RECEIVES, NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS AGREEMENT OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND PALO ALTO NETWORKS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

#### **RESERVED.**

#### **RESERVED.**

PERMUTA TECHNOLOGIES, INC.  
6225 BRANDON AVE  
SPRINGFIELD, VA 22150

ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PERMUTA TECHNOLOGIES, INC.

PERMUTA TECHNOLOGIES, INC. END USER LICENSE AGREEMENT

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**General Terms.**

**Ordering.** Ordering Activity must issue a purchase order for a Subscription to access Products. Ordering Activity may use Products as expressly permitted in the applicable Government Contract. Permuta reserves all other rights. Ordering Activity must acquire and assign the appropriate subscription licenses (SL) required for its use of each Product. Unless otherwise specified, each user that accesses Products must be assigned a User SL. Ordering Activity has no right to use Products after the SL term for that Product ends.

**Fees and Payment Terms.** The fees and payment terms applicable to the Products are set forth in the GSA Schedule Pricelist.

**Product Term Updates.** When Ordering Activity purchases a new subscription to Products, the then-current Terms will apply and will not change during Ordering Activity's subscription for that Product.

**Modifications.** Notwithstanding any terms to the contrary, Ordering Activity acknowledges and agrees that Permuta may modify the features of the Products from time-to-time at Permuta's sole discretion, so long as they do not result in a degradation of what the Ordering Activity has contracted for.

**License Reassignment.** Except as permitted in this paragraph, Ordering Activity may not reassign a Subscription on a short-term basis (i.e., within 90 days of the last assignment). Ordering Activity may reassign a Subscription on a short-term basis to cover a user's absence. Reassignment of a Subscription for any other purpose must be permanent. When Ordering Activity reassigns a Subscription from one user to another, Ordering Activity must block access and remove any related software from the former user's devices.

**Multiplexing.** Hardware or software that Ordering Activity uses to pool connections; reroute information; or reduce the number of devices or users that directly access or use the Products (sometimes referred to as "multiplexing" or "pooling") does not reduce the number of licenses of any type (including Subscriptions) that Ordering Activity needs.

**Permuta-Provided Data.** Permuta may use or provide Permuta-Provided Data in connection with Ordering Activity's access to Products. Ordering Activity acknowledges that Permuta-Provided Data has commercial value. All rights in Permuta-Provided Data shall be owned by Permuta unless explicitly stated otherwise in written form by an authorized Permuta representative. All rights not expressly granted to Ordering Activity, are reserved to Permuta.

**Commercial Items.** The Products are a "commercial items," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212. Ordering Activity acquires the Products with only the rights set forth in these Terms. Ordering Activity acknowledges and agrees that Permuta sells the Products as commercial items only and will engage as a subcontractor for the Products subject only to the required U.S. Government flowdown clauses listed at 48 CFR 52.244-6, "Subcontracts for Commercial Items", plus other terms necessary in meeting performance obligations under the specific Government Contract under which Ordering Activity purchases the Products.

**DefenseReady Hosted Services.**

**Eligibility.** Only the U.S. DoD may purchase subscriptions for DefenseReady Hosted Services ("Hosted Services").

**Security Policy.** Permuta will use commercially reasonable efforts to operate Hosted Service as required by Ordering Activities seeking to secure and maintain an Authority to Operate from a DoD Authorizing Official in accordance with DODI 8510.01, Risk Management Framework for DoD Information Technology (IT) (RMF Policy). Permuta will employ the common NIST SP 800-53 Security Controls as required of an external IT service used by Ordering Activity to process, store, and transmit information types with a maximum Security Categorization of {(confidentiality, moderate), (integrity, moderate), (availability, moderate)} in accordance with FIPS Publication 199, Standards for Security Categorization of Federal Information and Information Systems. On a confidential need-to-know basis, Permuta will make the Hosted Service System Security Plan available to Ordering Activities, along with other information reasonably requested by Ordering Activities regarding Permuta's security practices and policies (collectively, the "Security Policy"); provided, however, that Permuta may redact information from the Security Policy if such information would compromise the security of Permuta's information technology environment or the confidentiality of any third-party's confidential information. Ordering Activity is solely responsible for reviewing the Security Policy, making an independent determination as to whether the Security Policy meets Ordering Activity's requirements, and for ensuring that Ordering Activity's personnel and consultants follow the guidelines they are provided regarding data security.

**Location of Data Processing.** Except as described elsewhere in these Terms, Ordering Activity Data that Permuta processes on Ordering Activity's behalf will be transferred to, and stored in and processed in facilities located only in United States, duly authorized by a qualified U.S. Government entity, and maintained by Permuta or its affiliates or subcontractors. Ordering Activity appoints Permuta to perform any such transfer of Ordering Activity Data to any such facility and to store and process Ordering Activity Data in order to provide the Hosted Service.

**Data Retention.** Permuta will retain Ordering Activity Data stored on the Hosted Service in a limited function account for ninety (90) days (the "Wind Down Period") after expiration or termination of the applicable Subscription. Ordering Activity is responsible for extracting all of its Ordering Activity Data during the Wind Down Period. After the Wind Down Period, Permuta will disable Ordering Activity's account and delete all Ordering Activity Data without further notice to Ordering Activity. Permuta has no liability for the deletion of Ordering Activity Data in accordance with this Section 2.4.

**DefenseReady / FederalReady Software**

Ordering Activity's intended use of Products may require certain Software Products to be installed. Ordering Activity must uninstall the Software when Ordering Activity's right to use it ends.

The Use Rights in effect when Ordering Activity orders a Subscription for Software Products will apply to Ordering Activity's use of the version of the Software Product that is current at the time. For future versions and new Software Products, the Use Rights in effect when those versions and Software Products are first released will apply if both parties have agreed to them in writing. Changes Permuta makes to the Use Rights for a

particular version will not apply unless Ordering Activity chooses to have those changes apply.

Subscription licenses are not required for access by bona-fide external users. Bona-fide external users are users that are not an employee, contractor, or agent of the Ordering Activity or its Affiliates; effectively end Ordering Activities (i.e., Ordering Activities of the Ordering Activity) that access instances of the Software.

External users MAY NOT access instances of Software using the DefenseReady client application and graphical user interface.

#### **Ordering Activity Obligations**

**End Users.** Ordering Activity shall ensure it and its End Users comply with these Terms. Ordering Activity shall be responsible for the actions and omissions of its End Users and any other person or entity to which Ordering Activity allows access to the Products.

**Responsibility for Accounts.** Ordering Activity is responsible for maintaining the confidentiality of any Security Credentials (as defined below) associated with Ordering Activity's account and use of the Hosted Service. Ordering Activity must promptly notify Permuta Ordering Activity support about any possible misuse of Ordering Activity's accounts or authentication credentials, or any security incident related to the Hosted Service.

**Authority to Operate.** Ordering Activity must comply with all laws and regulations applicable to its use of Hosted Service, to include attaining a determination regarding the Trustworthiness of the Hosted Service by a DoD Authorizing Official in accordance with DODI 8510.01, Risk Management Framework for DoD Information Technology (IT) (RMF Policy). Ordering Activity is responsible for implementing and maintaining Security Controls identified in the Security Policy as Ordering Activity's responsibility. Ordering Activity is responsible for responding to any request from a third party regarding Ordering Activity's use of Hosted Service.

**Obligations Regarding Ordering Activity Data.** Ordering Activity is solely responsible for the content of all Ordering Activity Data. Ordering Activity will secure and maintain all rights in Ordering Activity Data necessary for Permuta to provide the Hosted Service to Ordering Activity without violating the rights of any third party, or any applicable laws or otherwise obligating Permuta to Ordering Activity or to any third party. Permuta does not and will not assume any obligations with respect to Ordering Activity Data or to Ordering Activity's use of the Hosted Service other than as expressly set forth in these Terms or as required by applicable law. Ordering Activity is solely responsible for determining whether the Hosted Service are appropriate for the storage and processing of the Ordering Activity Data. If Ordering Activity provides (directly or indirectly) Permuta with access to any personal information, Ordering Activity will obtain all required consents from third parties under applicable privacy and data protection laws before providing such personal information to Permuta.

#### **Acceptable Use Policy and Restrictions.**

Neither Ordering Activity, nor those that access Products through Ordering Activity, may use Products:

in a way prohibited by law, regulation, governmental order or decree;

to violate the rights of others;

to try to gain unauthorized access to or disrupt any service, device, data, account or network;

to spam or distribute malware;

in a way that could harm the Products or impair anyone else's use of it; or in any application or situation where failure of the Product could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.

Except as expressly authorized by these Terms, Ordering Activity may not: (a) modify, disclose, alter, translate or create derivative works of the Products (or any components thereof); (b) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the Products (or any components thereof); (c) disassemble, decompile or reverse engineer the Products; (d) use the Products to store or transmit any viruses, software routines or other code designed to permit unauthorized access, to disable, erase or otherwise harm software, hardware or data, or to perform any other harmful actions; (e) copy, frame or mirror any part or content of the Products; (f) build a competitive product or service, or copy any features or functions of the Products; (g) interfere with or disrupt the integrity or performance of the Products; (h) attempt to gain unauthorized access to the Products or their related systems or networks; (i) disclose to any third party any performance information, benchmarking or analysis relating to the Products; (j) use the Products in violation of any laws, (k) allow the transfer, transmission, export or re-export of the Products or any portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency; (l) remove, alter or obscure any proprietary notices in or on the Products including copyright notices; (m) disclose or make available passwords, user IDs or other credentials and login information (collectively, "**Security Credentials**") that Permuta has provided to Ordering Activity or the End Users or that are generated in connection with Ordering Activity's or End Users' use of the Product, other than to Ordering Activity or the End Users; (n) work around any technical limitations of the Products or download or otherwise remove copies of software or source code from the Product except as explicitly authorized; or (o) cause or permit any End User or any other third party to do any of the foregoing. Ordering Activity will use its best efforts to prevent unauthorized access to, and use of, the Security Credentials and the Products, and will immediately notify Permuta in writing of any unauthorized use of the Products that comes to Ordering Activity's attention, including by End Users.

Reserved

**Right to Verify Compliance.** Ordering Activity must keep records relating to all use and distribution of Products by Ordering Activity and its Affiliates. **Subject to applicable Government security requirements**, Permuta has the right, at its expense, to verify compliance with these Terms. Ordering Activity must promptly provide any information reasonably requested by the independent auditors retained by Permuta in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Ordering Activity hosts, sublicenses, or distributes to third

parties. Ordering Activity agrees to complete Permuta's self-audit process, which Permuta may request as an alternative to a third-party audit.

**Verification Process.** Permuta will notify Ordering Activity at least 30 days in advance of its intent to verify Ordering Activity's compliance with the license terms for the Products Ordering Activity and its Affiliates use. Permuta will engage an independent auditor, which will be subject to a confidentiality obligation and **to applicable Government security requirements**. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours in accordance with the applicable Ordering Activity's security policies and in a manner that does not unreasonably interfere with Ordering Activity's operations.

**Remedies for Non-compliance.** If verification or self-audit reveals any unlicensed use of Products, then Permuta will invoice Ordering Activity for the additional licenses. Notwithstanding the foregoing, nothing in this section prevents the Ordering Activity from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), as applicable. After an audit, Permuta will not subject Ordering Activity to another verification for at least one year. By exercising the rights and procedures described above, Permuta does not waive its rights to enforce these Terms or to protect its intellectual property by any other permissible means.

#### **Intellectual Property Rights**

**Grants.** Subject to these Terms and solely for Ordering Activity's internal purposes, Permuta grants to Ordering Activity a limited, non-transferable, and non-exclusive right and license, to, and permit its End Users to use the Software Products in the quantities ordered during a valid Subscription Term and (b) use the Hosted Services during a valid Subscription Term. Limits on storage volume, data throughput, page view capacity, consumption and concurrent user volumes may apply.

**License to Ordering Activity Data.** To the extent necessary to provide the Hosted Services and support Ordering Activity's intended use of the Hosted Services, Ordering Activity hereby grants to Permuta the right to (a) collect, process, copy, transmit, display, format and otherwise handle any Ordering Activity Data, and (b) host and store the Ordering Activity Data on Permuta's servers or Permuta's agent's servers.

**Ownership and Reservation of Rights.** As between the parties and subject to the express grants set forth in these Terms, (a) Ordering Activity owns all right, title and interest in and to the Ordering Activity Data, and (b) Permuta owns all right, title and interest in and to the Hosted Services (and any and all modifications to or derivative works of the Hosted Services), the Usage Data (as defined below), the Feedback and any and all Intellectual Property Rights embodied in or related to the Products, the Usage Data and/or the Feedback. Permuta reserves all rights not expressly granted to Ordering Activity in these Terms, and except as expressly set forth in these Terms, no licenses are granted by Permuta to Ordering Activity under these Terms, whether by implication, estoppel or otherwise.

**Reserved.**

## **Ordering Activity Support & Customer Support Program**

### **Support Program Administration**

**Eligibility.** Ordering Activity must have an active Subscription to receive Ordering Activity Support.

**Term:** The Term of the Customer Support Plan Coincides with the Coverage Period of the associated Software Maintenance

**Customer Support Coordinator.** Permuta will designate two contacts to serve as the primary and secondary account managers to manage Permuta's responsibilities associated with the Customer Support Plan.

**Enrollment Administrators.** Ordering Activity shall designate two contacts to serve as the primary and secondary enrollment administrators ("**Enrollment Administrator**") to manage Ordering Activity's responsibilities associated with its Support Plan.

**Approved Requesters.** Ordering Activity shall designate approved requesters ("**Approved Requesters**") in accordance with the terms of the selected Support Plan. Approved Requesters are presumed to have the authorization authority to request Support Tasks.

**Modifications.** Permuta may make commercially reasonable changes to the Ordering Activity Support program from time to time, without amendment to these Terms.

### **Support Plans**

Included with each Subscription at no additional cost is automatic enrollment in the "Standard" Ordering Activity Support Plan. Ordering Activity may select an alternative Support Plan prior to commencement of the Subscription Term.

The following Support Plans are available:

**Standard** – The Standard Plan is included with SW Maintenance at no additional cost. This Support Plan may be suitable for organizations with 1) mature deployments of Products or 2) limited support budgets. and/or organizations that 3) are not significantly impacted in the event of a service disruption.

**Silver** – The Silver Plan is designed for organizations that 1) require periodic maintenance of a customer-specific solution minimally extending of one or two out-of-the-box DefenseReady capabilities and/or organizations that 2) are critically impacted in the event of a service Agreement.

**Gold** - The Gold Plan is designed for organizations that 1) require periodic maintenance of one or more customer-specific solutions moderately extending one or more of out-of-the-box DefenseReady capabilities; 2) require periodic maintenance of one minimally complex customer-specific capability produced by Permuta; 3) require access to cyber security support; and/or organizations that 4) are catastrophically impacted in the event of a service disruption.

**Platinum** – The Platinum Plan is designed for organizations that 1) require periodic maintenance of one or more customer-specific solutions extensively extending one or more of out-of-the-box DefenseReady capabilities; 2) require periodic maintenance of one or more moderately complex customer-specific capabilities produced by Permuta; 3) require one or more managed projects in order to implement new capabilities or make major enhancements to existing capabilities; 4) require extensive access to cyber security support; and/or organizations that 5) are catastrophically impacted in the event of a service disruption.

**OnBoard** – The OnBoard Plan is designed for new customers intending to use Products operationally within a 12-month time.

**Pilot** – The Pilot Plan is designed for potential customers intending to conduct an operational pilot of Products for qualification, evaluation, and/or comparative purposes.

If Permuta provides a Fix in connection with Ordering Activity Support, each Fix is licensed under the same terms as the Product to which it applies.

### **Support Task Request Process**

**Support Tasks.** Ordering Activity may only access Ordering Activity Support by requesting a Support Task through Ordering Activity's Approved Requesters. The Support Task is administered by the Account Manager(s), in cooperation with the Enrollment Administrator(s) and Approved Requesters. At no additional cost, Permuta may provide tools, resources, and software to facilitate the Support Task request process.

**Types.** The types of Support Tasks available to the Ordering Activity under these Terms are:

**Advisory Support** - Advisory support is available for short-term advice and guidance from one of Permuta's Subject Matter Experts (SME) for problems not covered with problem resolution support as well as requests for consultative assistance for design, development, deployment and operation issues

**Sustainment Support** – Sustainment support includes sustainment planning services, off-site integration test environments, update rollout testing, and periodic over the phone support for applying updates and performing major upgrades.

**Problem Resolution Support (PRS)** - Problem resolution support is available for assistance with resolving problems with specific symptoms encountered while using the Products, where there is a reasonable expectation that the problem is caused by the Products. Problem

Resolution Support is limited to off-site troubleshooting assistance, problem identification, and solution recommendation. If Permuta determines a Product Fix is required to resolve a problem, Permuta will initiate a product fix in accordance with Permuta's established ProductFix procedures at no cost to the.

**Rapid On-Site Support (ROSS)** – Rapid onsite support is available to resolve Severity Level A (Critical) and 1 (Catastrophic) problems which cannot otherwise be resolved within 48 hours using other commercially reasonable means. Permuta's ability to provide rapid onsite support is subject to Permuta's resource availability, and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Provided it is in accordance with FTR/JTR, as applicable, and Ordering Activity approves the travel expenses prior to travel, Permuta will redeem Support Credits to account for travel time at a rate of one Support Credit for each required non-business hour of travel not otherwise accounted for in the support.

**Configuration Support** – Configuration support is available for Ordering Activities requiring minor configuration changes on a short-term basis.

**Training Support** – Training support is available to support curriculum development and to conduct training.

**Cyber Security Support** – Subject to availability of Permuta resources, cyber security support may be available to support Ordering Activity's cyber security needs in relation to its intended use of Products.

**Scheduled On-Site Support** – Scheduled on-site Ordering Activity support is available for Ordering Activities subject to Permuta's resource availability and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Permuta may redeem

Support Credits to account for travel time at a rate of one half Support Credit for each required non-business hour of travel not otherwise accounted for in the support day.

**Solution Development Support** – Solution development support is available for Ordering Activities requiring or engaged in a complex custom solution development effort following commercial best practices.

**On-Boarding Support** - On-boarding support is available for new implementations and integration services of a new Ordering Activity.

**Support Credits**

General. As part of the Ordering Activity’s Support Plan, Permuta will issue Support Credits redeemable for Support Tasks. Credits may only be redeemed for 1) Support Tasks following the Support Task request process set forth in section 7.3 or 2) Managed Ordering Activity Support Projects as set forth in

section 7.5. Support Credits have no cash value, are non-transferrable and non-refundable. All Support Credits are valid for the term of the associated Subscription and expire immediately upon expiration of the Subscription Term or termination of Ordering Activity’s Support Plan.

Roll-Over Support Credits. Permuta will reissue a limited quantity of expired support credits (“Roll-Over Support Credits”) at the start of the associated Subscription’s new term. Section 7.8 identifies the Roll-Over Support Credits limit for each available Support Plan. The reissue quantity will not exceed the limit of the expiring Support Plan or the Follow-On Support Plan associated with a new Subscription, whichever is lowest.

Pre-determined Redemption Quantity. In accordance with appropriate procedures, Permuta will automatically accept and process Support Task requests of a type HAVING a pre-determined redemption quantity as set forth below in Section 7.4.5.

Redemption Quantity Approval and Work Orders. A Ordering Activity Enrollment Administrator will be required to issue Permuta a written Authority to Proceed for Support Task Requests of a type NOT HAVING a pre-determined redemption quantity. The Authority to Proceed must specify an approved redemption quantity for each Support Task Request. Generally, preestablished Support Request Work Order process will be followed to accommodate applicable Support Task Requests. The Table below identifies commercially reasonable response time expectations that will serve as a the guidelines for both Permuta and the customer throughout the execution of the Support Task Work Order Process.

Severity	Limitations	Permuta’s Expected Response	Customer’s Expected Response
Severity Level 1: Catastrophic business impact	<p>Work orders for Severity Level 1 Support must originate from Severity Level 1 Problem Resolution Support Request.</p> <p>Customers must be eligible for Severity Level 1 support.</p> <p>Work orders for Severity Level 1 Support Requests will be limited to the following types of tasks: Advisory Support, Sustainment Support, Rapid On-Site Support, Configuration Support, and Cyber Security Support.</p> <p>Permuta will accept an Authority to Proceed from Authorized Requesters or a Customer Sr. Manager or change control authority.</p> <p>Authorization may be provided over</p>	<p><input type="checkbox"/> Upon determination a Work order is required, Permuta may provide a best-guess level of effort over the phone to which an acceptable approval authority may provide an Authorization to Proceed.</p> <p>Once verbal Authorization to Proceed is provided, Permuta will work continuously to prepare and submit a work order for customer to approve electronically as soon as possible</p> <p>If requested, Permuta will endeavor to provide Rapid OnSite Support within 48 hours and no less than 72 hours. Permuta will work continuously to execute other support tasks.</p>	<p><input type="checkbox"/> Customer will work continuously to approve work order as soon as possible.</p> <p><input type="checkbox"/> Customer will work continuously to provide guidance, support, and access to resources as required during execution of support tasks.</p> <p>If required, customers will take all preparation measures requested by Permuta prior to projected arrival of On-Site Support.</p> <p>Customer will work continuously to verify successful execution of support tasks.</p>

Severity	Limitations	Permuta’s Expected Response	Customer’s Expected Response
	the telephone or via email without immediately requiring a signature.		



<p>Severity Level A: Critical business impact</p>	<p>Work orders for Severity Level A Support must originate from a Severity Level A Problem Resolution Support Request.</p> <p>Work orders for Severity Level A Support Requests will be limited to the following types of tasks: Advisory Support, Sustainment Support, Rapid On-Site Support, Configuration Support, and Cyber Security Support.</p> <p>Permuta will accept an Authority to Proceed from Authorized Requesters or a Customer Sr. Manager or change control authority.</p> <p>Authorization may be provided over the telephone or via email without immediately requiring a signature.</p>	<p><input type="checkbox"/> Upon determination a Work order is required, Permuta will work continuously to prepare and submit a work order for customer to approve electronically as soon as possible. If electronic approval is not viable, verbal authorization to proceed will be accepted.</p> <p><input type="checkbox"/> If requested, Permuta will endeavor to provide Rapid OnSite Support within 72 hours. Permuta will work continuously to execute other support tasks.</p>	<p><input type="checkbox"/> Customer will work continuously to approve work order as soon as possible.</p> <p><input type="checkbox"/> Customer will work continuously to provide guidance, support, and access to resources as required during execution of support tasks.</p> <p>If required, customers will take all preparation measures requested by Permuta prior to projected arrival of On-Site Support.</p> <p>Customer will work continuously to verify successful execution of support tasks.</p>
<p>Severity Level B: Moderate business impact</p>	<p>Work orders for Severity Level B Support must originate from a Severity Level B Problem Resolution Support Request.</p> <p>Work orders for Severity Level B Support Requests will be limited to the following types of tasks: Advisory Support, Sustainment Support, Rapid On-Site Support, Configuration Support, and Cyber Security Support.</p>	<p><input type="checkbox"/> Upon determination a Work Order is required, Permuta will initiate a work order and request verification of the customers objective within 8 business hours.</p> <p><input type="checkbox"/> Upon customer's verification of the business objective, within 8 business hours, Permuta will determine a level of effort and submit it to the customer for authorization to proceed OR inform the customer additional time is required and provide a new estimated date and time of submission.</p> <p><input type="checkbox"/> If requested, Permuta will endeavor to provide Rapid OnSite Support within 5 business days.</p> <p>Permuta will work to complete tasks in accordance with the estimated completion dates identified in the approved work order.</p>	<p><input type="checkbox"/> Customer will verify business objective within 8 business hours upon receiving the request for verification.</p> <p><input type="checkbox"/> Customer will provide an authorization decision within 16 business hours upon receiving a request for authorization to proceed. If requested, customers will take all preparation measures requested by Permuta prior to projected arrival of On-Site Support.</p> <p>Customer will endeavor to provide timely guidance, support, and access to resources as required during execution of support tasks.</p> <p>Customer will provide verification of successful execution of work order tasks within 16 business hours of being requested.</p>
<p>Severity Level C: Minimum</p>	<p>Work orders for Severity Level C Support Requests will be limited to the following types of tasks:</p>	<p><input type="checkbox"/> Upon determination a Work Order is required, Permuta will initiate a work order and</p>	<p><input type="checkbox"/></p>
<p><b>Severity</b></p>	<p><b>Limitations</b></p>	<p><b>Permuta's Expected Response</b></p>	<p><b>Customer's Expected Response</b></p>

business impact Or Routine Support	Advisory Support, Sustainment Support, Configuration Support, Training Support, Cyber Security Support, Scheduled On-Site Support, Solution Development Support, and On-Boarding Support.	<input type="checkbox"/> request verification of the customers objective within 16 business hours. <input type="checkbox"/> Upon customer's verification of the business objective, within 16 business hours, Permuta will determine a level of effort and submit it to the customer for authorization to proceed OR inform the customer additional time is required and provide a new estimated date and time of submission. Permuta will work to complete tasks in accordance with the estimated completion dates identified in the approved work order.	<input type="checkbox"/> request for verification. <input type="checkbox"/> Customer will provide an authorization decision within 24 business hours upon receiving a request for authorization to proceed. If requested, customers will take all preparation measures requested by Permuta prior to scheduled arrival of On-Site Support. Customer will endeavor to provide timely guidance, support, and access to resources as required during execution of support tasks. Customer will provide verification of successful execution of work order tasks within 72 business hours of being requested.
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Support Credit Redemption Rate. Support Credits will be redeemed by Ordering Activity at the following rates for the Support Tasks listed below:

Support Task Type	Redemption Rate Unit	Support Credit Redemption Rate
Advisory Support	Hour	See Discipline Rate
Sustainment Support	Hour	See Discipline Rate
Problem Resolution Support	Case/Incident	1
Rapid On-Site Support	Person Day	During business hours: 10  off hours, weekends & holidays  15
Configuration Support	Hour	See Discipline Rate
Training Support	Hour	See Discipline Rate
Cyber Security Support	Hour	See Discipline Rate
Scheduled On-Site Support	Person Day	During business hours; 6; off hours, weekends, &
Support Task Type	Redemption Rate Unit	Support Credit Redemption Rate



		holidays:10
Solution Development Support	Managed Customer Support Project	FFCRAQ
On-Boarding Support	Managed Customer Support Project	FFCRAQ

1 Under certain circumstances, credit redemption rate will be based on Discipline Rate or other factors. Permuta assumes customer's environment is configured in accordance with standard guidance or recommended best practices and the customer will make certain information available that is required for the problem resolution process. In the event the customer's environment does not comply with standard guidance or best practices, information is not made available, or otherwise does not provide commercially reasonable assistance in the problem resolution process, credit redemption rate will be based on the actual effort required to resolve the problem in accordance with Discipline Rates <sup>1</sup> Person Day is consists of 1 person up to and not exceeding 6 hours at a customer designated location .

**Work Order Preparation Request 2**

**Firm-Fixed Credit Redemption Allocation Quantity (FFCRAQ).** For Managed Customer Support Projects, Permuta will use its standard estimation methodology to determine a Firm-Fixed Credit Redemption Allocation Quantity (FFCRAQ) that will be allocated to the Managed Customer Support Project. To assist customers in determining the reasonableness of the Credit Redemption Quantity, Permuta will provide a detailed basis for the FFCRAQ.

**Discipline Rates.** For support request types without a pre-defined Credit Redemption Rate, Permuta will apply the following Discipline Credit Redemption Rates (CRR) when determining a final Credit Redemption Quantity for a given support request

Customer Support Discipline	Credit / Labor Hour
Program Management	1.3 / Labor Hour
Training	0.8 / Labor Hour
Business Process Analysis	0.8 / Labor Hour
Requirements and Configuration	0.8 / Labor Hour
Custom Coding	1 / Labor Hour
Quality and Testing	0.8 / Labor Hour
Infrastructure	1.2 / Labor Hour
Integration and Interfaces	1.2 / Labor Hour
Data Migration	1.2 / Labor Hour
Cyber Security	1.5 / Labor Hour
Subject Matter Expert	1.5 / Labor Hour

7.4.1 **Sufficient Credits.** The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required to avoid disrupting or otherwise negatively impacting its intended use of Products. Permuta may refuse to perform Support Tasks if Ordering Activity has insufficient Support Credits.

7.5 **Managed Ordering Activity Support Projects**

7.5.1 **Managed Ordering Activity Support Project.** As part of an eligible Support Plan and when appropriate, Permuta may perform certain support services as Managed Ordering Activity Support Projects ("Projects"). Projects will be used to deliver to Ordering Activity mutually agreed to deliverables ("Deliverables") to address requirements related to the Ordering Activity's desired use of the Products.

7.5.2 **Statement of Work.** Permuta will perform Projects in accordance with Permuta's commercially reasonable standard patterns and practices for processes, documentation, communication, design, configuration, customization, code, test, and operational support. Permuta shall only perform Projects if the parties have executed, and subject to, a mutually agreed to statement of work ("SOW") documenting the specific terms and conditions (including those relating to intellectual property rights) governing such Support Services and Deliverables. Ordering Activity and Permuta agree to each perform its respective obligations in each SOW.

7.5.3 **Support Credit Redemption Plan.** The terms of the Project SOW shall include a Support Credit Redemption Plan specifying a fixed quantity of Support Credits the Ordering Activity would be required to redeem and the redemption scheduled.

7.5.4 **Sufficient Credits.** The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required by the Support Credit Redemption Plan without disrupting or otherwise negatively impacting its intended use of the Products.

7.6 **Response Levels**

When submitting a Support Request, Ordering Activity is responsible for specifying the initial severity level in consultation with Permuta in accordance with the Ordering Activity situation. The Support Request severity level will determine Permuta's expected response and Ordering Activity's expected response as identified in the table below.

Severity	Situation	Permuta's Expected Response	Ordering Activity's Expected Response
1. Submission via phone only	Catastrophic business impact: Complete loss of a core (mission critical) business process and work cannot reasonably continue Needs immediate attention	1st call response in 1 hour or less. Permuta's resources at Ordering Activity site as soon as possible. Continuous effort on a 24x7 basis Rapid escalation within Permuta to product teams Notification of	Notification of Ordering Activity senior executives Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority
Severity	Situation	Permuta's Expected Response	Ordering Activity's Expected Response
		Permuta's senior executives	
A. Submission via phone only	Critical business impact: Significant loss or degradation of services Needs attention within 1 hour	1st call response in 1 hour or less Permuta's resources at Ordering Activity site as required. Continuous effort on a 24x7 basis Notification of Permuta's senior managers	Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority Management notification
B. Submission via phone or web	Moderate business impact: Moderate loss or degradation of services but work can reasonably continue in an impaired manner. Needs attention within 2 Business Hours	Initial response in 4 Business Hours or less Effort during Business Hours only	Allocation of appropriate resources to sustain Business Hours continuous effort Access and response from change control authority within 4 Business Hours
C. Submission via phone or web	Minimum business impact: Substantially functioning with minor or no impediments of services. Needs attention within 4 Business Hours	Initial response in 8 Business Hours or less Effort during Business Hours only	Accurate contact information on case owner Responsive within 24 hours

**7.7 Support Plan Credits**

Permuta will issue Support Credits as they are earned, either monthly or annually. For purchases placed under these Terms, the Support Credits will be earned in accordance with the following table.

Quantity of Support Credits earned per Unit of each Applicable Product Type by Support Plan						
Product Type	Standard	Silver	Gold	Platinum	OnBoard	Pilot
Mission Owner 12 Month SL	36	120	240	480	2400	1800
User Subscriber License/ Basic User CAL	0.03	0.22	0.36	0.52	1.03	5.15
Member Subscriber License/ Essential	0.012	0.022	0.036	0.052	0.103	0.515

Quantity of Support Credits earned per Unit of each Applicable Product Type by Support Plan						
Product Type	Standard	Silver	Gold	Platinum	OnBoard	Pilot
CAL						
Additional Prod Instance (12 Months)	36	36	72	108	120	120
Data Integration (12 Months)	12	12	18	24	40	40
Ordering Activity Portal (12 Months)	36	72	144	216	360	240

**7.8 Support Plan Terms, Conditions, and Limitations**

Applicable Terms, Conditions, and Limitations by Support Plan						
Term, Condition, or Limitation	Standard	Silver	Gold	Platinum	OnBoard	Pilot
Minimum Subscription Term	12 months	12 months	12 months	12 months	12 months	6 months
Eligible for Advisory Support	Yes	Yes	Yes	Yes	Yes	Yes
Eligible for Sustainment Support	Yes	Yes	Yes	Yes	Yes	Yes
Eligible for Problem Resolution	Yes	Yes	Yes	Yes	Yes	Yes
Eligible for Rapid On-Site Support	No	Yes	Yes	Yes	Yes	Yes

Eligible for Configuration Support	No	Yes	Yes	Yes	Yes	Yes
Eligible for Training Support	No	Yes	Yes	Yes	Yes	Yes
Eligible for Cyber Security Support	No	No	Yes	Yes	Yes	Yes
Eligible for Scheduled On-Site	No	No	No	Yes	Yes	Yes
<b>Applicable Terms, Conditions, and Limitations by Support Plan</b>						
<b>Term, Condition, or Limitation</b>	<b>Standard</b>	<b>Silver</b>	<b>Gold</b>	<b>Platinum</b>	<b>OnBoard</b>	<b>Pilot</b>
Support						
Eligible for Credit Redemption Plan	No	No	No	Yes	Yes	Yes
Eligible for Solution Development Support	No	No	No	Yes	Yes	Yes
Eligible for On-Boarding Support	No	No	No	No	Yes	Yes
Available Response Level	C	A, B, C	1, A, B, C	1, A, B, C	1, A, B, C	A, B, C
Rollover Support Credits	N/A	25	50	100	200	200
Allowed Number of Approved Requestors (Other than admins)	N/A	1	2	4	2	2

7.9 **Additional Support Services Provisions.**

7.9.1 Ordering Activity may not, unless specifically authorized by Permuta in writing, i) rent, lease, lend or host any Deliverables (including any computer code or materials that Permuta leaves with Ordering Activity at the conclusion of Permuta’s performance of Services) or Fixes; ii) reverse engineer, de-compile or disassemble Fixes or Deliverables, except to the extent expressly permitted by applicable law; or iii) transfer licenses to, or sublicense, Fixes or Deliverables to any government entity or quasi-governmental entity or any other third party.

7.9.2 Permuta may request that Microsoft deliver Problem Resolution Support on Permuta’s behalf to Ordering Activity subject to the terms and conditions set forth in these Terms. Permuta will coordinate and participate in the delivery of subcontracted Microsoft services. In order for Permuta to provide subcontracted Microsoft services, Ordering Activity will be required to provide consent to provide the required contact information to Microsoft.

**Service Level Agreement.**

If Permuta does not achieve and maintain the service levels as described in Section 8.4 for the applicable Hosted Services, then Ordering Activity may be eligible for a credit towards its monthly service fees for the applicable Hosted Services (a “**Service Credit**”). Permuta will not modify the terms of the SLA during a Subscription Term.

**Claims**

In order for Permuta to consider a claim that Permuta did not meet the SLA, Ordering Activity must submit the claim to Ordering Activity support at Permuta (in the manner requested by Permuta) including all information necessary for Permuta to validate the claim, including but not limited to: (i) a detailed description of the Incident; (ii) information regarding the time and duration of the Downtime; (iii) the number and location(s) of affected End Users (if applicable); and (iv) descriptions of Ordering Activity's attempts to resolve the Incident at the time of occurrence.

Claims must be received by the end of the calendar month following the month in which the Incident occurred. For example, if the Incident occurred on February 15th, Permuta must receive the claim and all required information by March 31st. Claims not submitted in accordance with this Section 8.1 are waived.

Permuta will evaluate the information provided by Ordering Activity in respect of a SLA claim and make a good faith determination of whether a Service Credit is owed. Permuta will use commercially reasonable efforts to process claims during the subsequent month or within forty-five (45) days of receipt, whichever is later. Ordering Activity must be in compliance with the Agreement in order to be eligible for a Service Credit. If Permuta determines that a Service Credit is owed to Ordering Activity, Permuta (or Reseller) will apply the Service Credit to Ordering Activity's applicable monthly services fees due for the immediately following month after such determination.

**Sole Remedy for Failure to Meet SLA**

Service Credits are Ordering Activity's sole and exclusive remedy for any performance or availability issues for any Hosted Services.

Ordering Activity may not set off any fees due under these Terms for any performance or availability issues with the Hosted Services.

Service Credits apply only to fees paid for the particular Hosted Service for which the applicable SLA has not been met. The Service Credits awarded in any billing month for a particular Hosted Service will not, under any circumstance, exceed Ordering Activity's monthly service fees for that Hosted Service, as applicable, in such billing month.

**Limitations**

This SLA and any applicable Service Levels do not apply to any performance or availability issues:

Due to a Force Majeure Event affecting Permuta (for example, natural disaster, war, acts of terrorism, riots, government action, or a network or device failure external to our data centers, including at Ordering Activity's site or between Ordering Activity's site and the hosting facility);

That result from the use of services, hardware, or software not provided by Permuta, including, but not limited to, issues resulting from inadequate bandwidth or related to third-party software or services;

Caused by Ordering Activity's use of the Hosted Services after Permuta advised Ordering Activity to modify its use of the Hosted Services, if Ordering Activity did not modify its use as advised;

During or with respect to Previews or to purchases made using Permuta subscription credits;

That result from Ordering Activity's unauthorized action or lack of action when required, or from Ordering Activity's employees, agents, contractors, or vendors, or anyone gaining access to Permuta's network by means of Ordering Activity Security Credentials or equipment, or otherwise resulting from Ordering Activity's failure to follow appropriate security practices;

That result from Ordering Activity's failure to adhere to any required configurations, use supported platforms, follow any policies for acceptable use, or Ordering Activity use of the Hosted Service in a manner inconsistent with the features and functionality of the Hosted Service (for example, attempts to perform operations that are not supported) or inconsistent with published guidance;

That result from faulty input, instructions, or arguments (for example, requests to access files that do not exist);

That result from Ordering Activity's attempts to perform operations that exceed prescribed quotas or that resulted from Permuta's throttling of suspected abusive behavior; or

Due to Ordering Activity's use of Hosted Service features that are outside of associated Ordering Activity support windows.

**Applicable Hosted Services**

The applicable hosted services and the corresponding SLA terms are identified below.

**DefenseReady, CHS Edition**

**Downtime:** Any period of time when End Users are unable to login to their instance of the Hosted Services.

**Monthly Uptime Percentage:** The Monthly Uptime Percentage is calculated using the following formula:

$$\frac{\text{Service Minutes} - \text{Downtime}}{\text{Service Minutes}} \times 100$$

where Downtime is measured in service-minutes; that is, for each month, Downtime is the sum of the length (in minutes) of each Incident that occurs during that month multiplied by the number of services impacted by that Incident.

**Service Credit:**

Monthly Uptime Percentage	Service Credit
< 99.9%	5%
< 99%	10%
Monthly Uptime Percentage	Service Credit
< 95%	50%
< 85%	75%
< 75%	100%

**DefenseReady for Mission Owner Members, CHS Edition**

**Downtime:** Any period of time when End Users are unable to read or write any service data for which they have appropriate permission but this does not include non-availability of service add-on features.

**Monthly Uptime Percentage:** The Monthly Uptime Percentage is calculated using the following formula:

$$\frac{\text{User Minutes} - \text{Downtime}}{\text{User Minutes}} \times 100$$

where Downtime is measured in user-minutes; that is, for each month, Downtime is the sum of the length (in minutes) of each Incident that occurs during that month multiplied by the number of End Users impacted by that Incident.

**Service Credit:**

Monthly Uptime Percentage	Service Credit
< 99.9%	5%
< 99%	10%
< 95%	50%
< 85%	75%
< 75%	100%

DefenseReady for Mission Owner Users, CHS Edition

**Downtime:** Any period of time when End Users are unable to read or write any service data for which they have appropriate permission but this does not include non-availability of service add-on features.

**Monthly Uptime Percentage:** The Monthly Uptime Percentage is calculated using the following formula:

$$\frac{\text{User Minutes} - \text{Downtime}}{\text{User Minutes}} \times 100$$

where Downtime is measured in user-minutes; that is, for each month, Downtime is the sum of the length (in minutes) of each Incident that occurs during that month multiplied by the number of End Users impacted by that Incident.

**Service Credit:**

Monthly Uptime Percentage	Service Credit
< 99.9%	5%
< 99%	10%
< 95%	50%
< 85%	75%
< 75%	100%

**Representations, Warranties and Disclaimers.**

**General Representations and Warranties.** Each party represents and warrants that (a) it is validly existing and in good standing under the laws of the place of its establishment or incorporation, (b) it has full corporate power and authority to execute, deliver and perform its obligations under these Terms, (c) the person signing these Terms on its behalf has been duly authorized and empowered to accept these Terms, and (d) these Terms are valid, binding and enforceable against it accordingly.

**Additional Warranties.**

For a period of one year from the commencement of the applicable Ordering Activity Subscription Term (the “**Warranty Period**”) Permuta represents and warrants that it will use commercially reasonable efforts to cause the Hosted Services to conform, in all substantial respects, to the Permuta’s then-current technical documentation for the Hosted Services. If it does not, and Ordering Activity notifies Permuta within the Warranty Period, then Permuta will, at its option, (1) return the price Ordering Activity paid for the non-performing Hosted Services (prorated for any period of usage by Ordering Activity) or (2) repair or replace the Hosted Services. Ordering Activity waives any breach of warranty claims not made during the Warranty Period.

Permuta warrants that all Ordering Activity Support will be performed with professional care and skill. If Permuta fails to do so and Ordering Activity notifies Permuta within 90 days of the date of performance, then Permuta will re-perform the Ordering Activity Support.

The remedies above are Ordering Activity’s sole remedies for breach of the warranties in this Section 9.2. The warranties in these Terms do not apply to problems caused by accident, abuse or use inconsistent with these Terms, including failure to meet minimum system requirements.

**Disclaimers of Warranty.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 9.1 and 9.2, PERMUTA DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THESE TERMS, HOSTED SERVICES AND ANY THIRD-PARTY SERVICES, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY

COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (A) IMPLIED WARRANTIES OF MERCHANTABILITY; (B) EXPRESS WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT PERMUTA KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); OR (C) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE, LOSS OF DATA, TIMELINESS OR SECURITY. THE HOSTED SERVICES AND SOFTWARE AND ALL ACCOMPANYING MATERIALS ARE PROVIDED BY PERMUTA AS-IS. PERMUTA DOES NOT GUARANTEE THAT THE HOSTED SERVICES OR SOFTWARE WILL BE FREE OF ERRORS.

**Reserved.**

**Reserved.**

**Effect of Termination.**

**Effect of Termination.** Upon any termination or expiration of the Subscription: (a) all rights and licenses granted to Ordering Activity under these Terms will immediately cease; (b) Ordering Activity will immediately pay to Permuta all amounts due and payable up to the effective date of termination of the Subscription; . Notwithstanding any terms to the contrary in these Terms, Sections 1.2, 4, 5, 9.3, 10, 12.1, and 13 will survive any termination or expiration of the Subscription.

**Data Retention.** Permuta will retain Ordering Activity Data stored on the Hosted Service in a limited function account for ninety (90) days (the "Wind Down Period") after expiration or termination of the applicable Subscription. Ordering Activity is responsible for extracting all of its Ordering Activity Data during the Wind Down Period. After the Wind Down Period, Permuta will disable Ordering Activity's account and delete all Ordering Activity Data without further notice to Ordering Activity. Permuta has no liability for the deletion of Ordering Activity Data in accordance with this Section 12.2. Other Provisions.

**Reserved.**

**Independent Contractors.** Neither party will, for any purpose, be deemed to be an agent, franchisor, franchise, employee, representative, owner or partner of the other party, and the relationship between the parties will only be that of independent contractors. Neither party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.

**Governing Law and Venue.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Permuta shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. The Agreement shall be governed under applicable U.S. Federal law.

**Microsoft Products and Services and Other Third-Party Services.** Ordering Activity acknowledges and agrees that Permuta uses third-party software and services in connection with the Services ("Third-Party Services"), and Permuta may charge Ordering Activity for the Third Party Services as part of Ordering Activity's bill for the Products. Ordering Activity agrees to abide by the terms and conditions provided by Permuta with respect to the Third-Party Services, including the Microsoft Cloud Agreement attached to this Agreement as Exhibit A and incorporated by reference into this Agreement (the "Microsoft Cloud Agreement"). All Microsoft products (whether software, online services or otherwise) are Third Party Services. Ordering Activity also agrees that the

Microsoft Cloud Agreement shall be deemed incorporated by reference into the Government Contract pursuant to which Ordering Activity purchases the Products, regardless if the Microsoft Cloud Agreement is actually attached to the Government Contract.

**Reserved.**

**Reserved.**

**Reserved.**

**Reserved.**

**Reserved.**

**Subcontractors.** Permuta may hire subcontractors to provide services (including Support Services) on its behalf. Any such subcontractors will be required to act consistently with these Terms and will only be permitted to obtain Ordering Activity Data to deliver the services Permuta is obligated to provide and will be prohibited from using Ordering Activity Data for any other purpose. Permuta shall remain responsible for the actions of its subcontractors.

**Definitions.**

**"Affiliate"** means,

for Permuta, any legal entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Permuta; and for Ordering Activity, any entity that is an office, agency, department or other subdivision of that Ordering Activity controlled by or under common control with Ordering Activity.

For this definition, "ownership" means owning more than 50% of applicable interests, and "control" means the legal right to bind contractually and exercise decision power over administration, finances, and operations.

**"Authority to Operate (ATO)"** means the official management decision given by a senior organizational official to authorize operation of an information system and to explicitly accept the risk to organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, and the Nation based on the implementation of an agreed-upon set of security controls.

**"Business Hours"** means as 9:00 AM to 5:30 PM Eastern Standard Time, excluding Federal holidays and weekends.

**"Change of Control"** means any of the following: (a) any transaction or series of transactions resulting in the change in beneficial ownership of the voting securities representing at least fifty percent (50%) of the total voting power of a party, excluding any initial public offering of its common stock, (b) a merger of a party with or into another party, whether or not the party is the surviving entity, or (c) the sale or other transfer of more than fifty percent (50%) of a party's assets whether in a single transaction or series of transactions.

**"Ordering Activity Data"** means all data, including all text, sound, video, or image files, and software, that are provided to Permuta by, or on behalf of, Ordering Activity through use of the Products.

**"Ordering Activity Support"** means the support and maintenance services provided by or on behalf of Permuta to Ordering Activity with respect to the Products under these Terms.

**"Downtime"** is defined for each Product in Section 8. Downtime does not include Downtime scheduled by Permuta in advance. Downtime does not include unavailability of a Product due to limitations described in Section 8.3.

**"End User"** means any person Ordering Activity permits to access Ordering Activity Data hosted in the Products or otherwise uses the Products. Employees of Affiliates of Ordering Activity may be End Users.

**"Feedback"** means any suggestions, comments or other feedback provided by Ordering Activity to Permuta or Reseller with respect to Permuta or the Products.

**"Follow-on Support Plan"** means a future Support Plan associated with a Subscription renewal.

**"Fixes"** are fixes, modifications or enhancements, or their derivatives for the Products, that Permuta either releases generally (such as service packs) or that Permuta provides to Ordering Activity to address a specific issue.

**"Government Contract"** means the binding agreement between Ordering Activity and Reseller under which Ordering Activity orders Products from Reseller and Reseller binds Ordering Activity to these Terms.

**"Hosted Services"** means the hosted services provided by Permuta, directly or indirectly, to Ordering Activity.

**"Incident"** in the context of the SLA, means (i) any single event, or (ii) any set of events, that result in Downtime.



**“Intellectual Property Rights”** means all patent rights, copyrights, moral rights, trademark rights, trade secret rights and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

**“Microsoft”** means Microsoft Corporation.

**“Permuta-Provided Data”** means any data provided by Permuta to Ordering Activity under these Terms, including Sample Data. Permuta-Provided Data excludes Ordering Activity Data.

**“Previews”** means preview, trial, beta, or other pre-release version or feature of the Products offered by Permuta to obtain Ordering Activity feedback.

**“Receiving Party”** means the party that receives Confidential Information from the Disclosing Party. **“Reseller”** means any reseller authorized by Permuta to resell the Products to Ordering Activity.

**“Roll-Over Support Credits”** means a limited quantity of expired support credits reissued in a Followon Support Plan in accordance with section 7.4.2.

**“Sample Data”** means data in, originating from, or derived from an information system consumable form that mimics or is representative of real-world operational data which may be used for testing, demonstrations or other purposes and that is made available to Ordering Activity under these Terms.

**“Security Categorization”** means the characterization of information or an information system based on an assessment of the potential impact that a loss of confidentiality, integrity, or availability of such information or information system would have on organizational operations, organizational assets, individuals, other organizations, and the Nation.

**“Security Control”** means a safeguard or countermeasure prescribed for an information system or an organization designed to protect the confidentiality, integrity, and availability of its information and to meet a set of defined security requirements.

**“Security Policy”** means the collective policies and procedures of Hosted Service followed by Permuta to establish and maintain the Hosted Service’s Trustworthiness as required by Ordering Activity.

**“SLA”** means Service Level Agreement, which specifies the minimum service level of the Hosted Services.

**“Software”** means any software provided by Permuta, directly or indirectly, to Ordering Activity. Software does not include Hosted Services but Hosted Services may include Software.

**“Subscription”** means an enrollment by Ordering Activity for Products for a defined Subscription Term.

**“Subscription Term”** means the length of time that Ordering Activity has rights to access the Products. Subscriptions shall be twelve (12) months from the date of Ordering Activity’s purchase of the Products as stated in the applicable purchase order.

**“Support Credits”** are allotments for Ordering Activity Support that are earned either monthly or annually with an Ordering Activity Support Plan.

**“Support Credit Redemption Plan”** means a detailed plan for redeeming no less than 500 Support Credits in support of a specific Ordering Activity initiative or set of requirements related to the Ordering Activity’s desired use of Products.

**“Support Plan”** means one of the support plans listed in Section 7.2 in which Ordering Activity enrolls during a Subscription Term.

**“Support Task”** means a specific instance of Ordering Activity’s access to Permuta expertise or technical support in connection with a Ordering Activity Support Plan.

**“System Security Plan”** means a formal document that provides an overview of the security requirements for an information system and describes the security controls in place or planned for meeting those requirements.

**“Trustworthiness”** means the degree to which Hosted Service, against a full range of threats, can be expected to preserve the confidentiality, integrity, and availability of the Ordering Activity information it processes, stores or transmits.

**“Use Rights”** means the rights of members, users, mission owners, and other End Users to use the Software as described by Permuta herein.

## EXHIBIT A

### Microsoft Cloud Agreement

This Microsoft Cloud Agreement is incorporated into the Government Contract entered into between the Ordering Activity who is a Government entity (“Ordering Activity”) and the person or entity who has entered into a prime contract with the Government (“Contractor”) as an addendum and governs Ordering Activity’s use of the Microsoft Products. It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the “agreement”). It is effective on the date that the Contractor provisions the Ordering Activity’s Subscription. Key terms are defined in Section 10.

#### **Grants, rights and terms.**

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Ordering Activity nor any of its Affiliates is in material breach of this agreement.

**Software.** Upon acceptance of each order, Microsoft grants Ordering Activity a limited right to use the Software in the quantities ordered.

**(i) Use Rights.** The Use Rights in effect when Ordering Activity orders a Subscription License for Software will apply to Ordering Activity’s use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply if agreed to by all parties in writing. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Ordering Activity chooses to have those changes apply. **(ii) Temporary licenses.** Licenses available on a subscription basis are temporary.

**Online Services.** Ordering Activity may use the Online Services as provided in this agreement.

**Online Services Terms.** The Online Services Terms in effect when Ordering Activity orders a Subscription to an Online Service will apply for the applicable Subscription term. For Online Services that are billed periodically based on Consumption Offerings, as described in Section 2.a, below, the Online Services Terms current at the start of each billing period will apply to usage during that period if agreed to by all parties in writing.

#### **Reserved.**

**End Users.** Ordering Activity controls access by End Users, and is responsible for their use of the Product in accordance with this agreement. For example, Ordering Activity will ensure End Users comply with the Acceptable Use Policy.

**Ordering Activity Data.** Ordering Activity is solely responsible for the content of all Ordering Activity Data. Ordering Activity will secure and maintain all rights in Ordering Activity Data necessary for Microsoft to provide the Online Services to Ordering Activity without violating the rights of any third party or otherwise obligating Microsoft to Ordering Activity or to any third party. Microsoft does not and will not assume any obligations with respect to Ordering Activity Data or to Ordering Activity's use of the Product other than as expressly set forth in this agreement or as required by applicable law.

**Responsibility for Ordering Activity's accounts.** Ordering Activity is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Ordering Activity's use of the Products. Ordering Activity must promptly notify Ordering Activity support about any possible misuse of Ordering Activity's accounts or authentication credentials, or any security incident related to the Products.

**Reservation of rights.** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to accessor use Software on a device do not give Ordering Activity any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

**Restrictions.** Ordering Activity may use the Product only in accordance with this agreement. Ordering Activity may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Ordering Activity may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Ordering Activity's use of the Products.

Except as expressly permitted in this agreement or Product documentation, Ordering Activity may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.

**Preview releases.** Microsoft may make Previews available. **Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLA and all limited warranties provided in this agreement.** Previews may not be covered by Ordering Activity support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Use Rights and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into "General Availability."

**Verifying compliance for Products.**

**Right to verify compliance.** Ordering Activity must keep records relating to all use and distribution of Products by Ordering Activity and its Affiliates. **Subject to applicable Government security requirements,** Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Ordering Activity must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Ordering Activity hosts, sublicenses, or distributes to third parties. Ordering Activity agrees to complete Microsoft's self-audit process, which Microsoft may request as an alternative to a third-party audit.

**Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use of Products, then within 30 days Microsoft will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit. Notwithstanding the foregoing, nothing in this section prevents the Ordering Activity from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), if and as applicable. Microsoft will not subject Ordering Activity to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.

**Verification process.** Microsoft will notify Ordering Activity at least 30 days in advance of its intent to verify Ordering Activity's compliance with the license terms for the Products Ordering Activity and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours and in a manner that does not unreasonably interfere with Ordering Activity's operations.

**Subscriptions, ordering.**

**Available Subscription offers.** The Subscription offers available to Ordering Activity will be established by the Government Contract and generally can be categorized as one or a combination of the following:

**Online Services Commitment Offering.** Ordering Activity commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service. Online Services Commitment Offerings are also referred to as "License Plans" in the Product Terms.

**Consumption Offering (also called Pay-As-Ordering Activity-Go).** Ordering Activity pays based on actual usage with no upfront commitment. Consumption Offerings are billed according to Consumption Rates, as defined in the Product Terms.

**Limited Offering.** Ordering Activity receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.

**Software Commitment Offering.** Ordering Activity commits in advance to purchase a subscription for a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.

**Ordering.**

Orders must be placed through the Contractor. Ordering Activity may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Ordering Activity also may assign the rights granted under Section 1.a and 1.b to a third party for use by that third party in Ordering Activity's internal business. If Ordering Activity grants any rights to Affiliates or third parties with respect to Software or Ordering Activity's Subscription, such Affiliates or third parties will be bound by this agreement and Ordering Activity agrees to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.

The Contractor may permit Ordering Activity to modify the quantity of Products ordered during the Term of a Subscription. Additional quantities of Products added to a Subscription will expire at the end of that Subscription.

**Pricing and payment.** Prices for each Product and any terms and conditions for invoicing and payment will be established by the Contractor in accordance with the GSA Pricelist. **d. Renewal.**

**(i) Reserved. (ii) Reserved.**

**Eligibility.** Ordering Activity's Product must qualify as Federal Agencies or State/Local Governments. Microsoft reserves the right to verify eligibility at any time and suspend the Product if the eligibility requirements are not met.

**Taxes.** The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay, and which are incurred or arise in connection with or related to the transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax. Microsoft shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3 **Term, termination.**

**Agreement term and termination.** This agreement will remain in effect until the expiration or termination of the Government Contract, whichever is earliest.

**Cancel a Subscription.** The Government Contract will establish the terms and conditions, if any, upon which Ordering Activity may cancel a Subscription.

**Security, privacy, and data protection.**

Reseller Administrator Access and Ordering Activity Data. Ordering Activity acknowledges and agrees that (i) the Contractor will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Ordering Activity Data, however, Ordering Activity may request additional administrator privileges from its Contractor; (ii) Ordering Activity can, at its sole discretion and at any time during the Term, terminate its Contractor's administrative privileges; (iii) the Contractor's privacy practices with respect to Ordering Activity Data or any services provided by the Contractor are subject to the terms of the Government Contract and may differ from Microsoft's privacy practices; and (iv) the Contractor may collect, use, transfer, disclose, and otherwise process Ordering Activity Data, including personal data. Ordering Activity consents to Microsoft providing the Contractor with Ordering Activity Data and information that Ordering Activity provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.

Ordering Activity consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Ordering Activity may choose to provide personal information to Microsoft on behalf of third parties (including Ordering Activity's contacts, resellers, distributors, administrators, and employees) as part of this agreement. Ordering Activity will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.

Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by the Contractor.

As and to the extent required by law, Ordering Activity shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by the Contractor or as required by law, and Ordering Activity shall obtain the users' consent to the same.

**Warranties.**

**Limited warranty.**

**Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Ordering Activity is first licensed for that version. If it does not, and Ordering Activity notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Ordering Activity paid for the Software license or (2) repair or replace the Software.

**Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Ordering Activity's use. Ordering Activity's remedies for breach of this warranty are in the SLA.

The remedies above are Ordering Activity's sole remedies for breach of the warranties in this section.

**Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Ordering Activity is permitted to redistribute.

**Disclaimer.** Except for the limited warranties above, to the extent not prohibited by applicable law, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, noninfringement, merchantability and fitness for a particular purpose. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**Defense of third party claims.**

**By Microsoft.** Microsoft will defend Ordering Activity against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Ordering Activity's license and refund any prepaid subscription license fees for Products for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Ordering Activity's continued use of a Product or Fix after being notified to stop due to a third-party claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

**Ordering Activity's agreement.** Ordering Activity agrees that use of Ordering Activity Data or non-Microsoft software Microsoft provides or otherwise makes available on Ordering Activity's behalf will not infringe any third party's patent, copyright or trademark or make unlawful use of any third party's trade secret. In addition, Ordering Activity will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.

**Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Ordering Activity's use of the Product or Fix, Microsoft will seek to obtain the right for Ordering Activity to keep using it or modify or replace it with a functional equivalent, in which case Ordering Activity must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Ordering Activity's right to the Product or Fix and refund any amounts Ordering Activity has paid for those rights to Fixes and, for Products, any amount paid for a usage period after the termination date.

**Other terms.** Ordering Activity must notify Microsoft promptly in writing of a claim subject to this section. To the extent permitted by applicable law, give Microsoft sole control over the defense and settlement (provided that for any Federal Agency Ordering Activity's, the control of the defense and settlement is subject to 28 U.S.C. 516) and provide reasonable assistance in defending the claim. Microsoft will reimburse Ordering Activity for reasonable out of pocket expenses that it incurs in providing assistance. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, and solely with respect to Federal Agency Ordering Activity's, Microsoft's rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

**Limitation of liability.**

For each Product, each party's maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the contract price.

For Ordering Activity's that are Federal Agencies, this Section shall not impair the Ordering Activity's right to recover for personal injury or death resulting from Licensor's negligence, or fraud or crimes arising out of or related to this agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

**Support.**

The Contractor will provide details on support services available for Products purchased under this agreement.

**Miscellaneous.**

**Notices.** Ordering Activity must send notices by mail, return receipt requested, to the address below.



Notices should be sent to:

Copies should be sent to:

Microsoft Corporation  
 Volume Licensing Group  
 One Microsoft Way  
 Redmond, WA 98052  
 USA  
 Via Facsimile: (425) 936-7329

Microsoft Corporation  
 Legal and Corporate Affairs  
 Volume Licensing Group  
 One Microsoft Way  
 Redmond, WA 98052  
 USA  
 Via Facsimile: (425) 936-7329

Ordering Activity agrees to receive electronic notices from us, which will be sent by email to the account administrator(s) named for Ordering Activity's Subscription. Notices are effective on the date on the return receipt or, for email, when sent. Ordering Activity are responsible for ensuring that the email address for the account administrator(s) named for Ordering Activity's Subscription is accurate and current.

**Assignment.** Any proposed assignment must be approved by the other party in writing in accordance with the procedures for securing such approval are set forth in FAR 42.1204. Any prohibited assignment is void.

**Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.

**Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.

**No agency.** This agreement does not create an agency, partnership, or joint venture.

**No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.

**Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.

**Microsoft as an independent contractor.** The parties are independent contractors. Ordering Activity and Microsoft each may develop products independently without using the other's confidential information.

**Agreement not exclusive.** Ordering Activity is free to enter into agreements to license, use or promote non-Microsoft products or services.

**Entire agreement.** This agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) The GSA Purchase Order, (2) this agreement, (3) the Product Terms, (4) the Use Rights, and (5) any other documents in this agreement.

**Survival.** All provisions survive termination of this agreement except those requiring performance only during the term of the agreement.

**U.S. export jurisdiction.** Products are subject to U.S. export jurisdiction. Ordering Activity must comply with all applicable international and national laws, including the U.S. Export

Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.

**Force majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**Contracting authority.** If Ordering Activity are an individual accepting these terms on behalf of an entity, Ordering Activity represent that Ordering Activity have the legal authority to enter into this agreement on that entity's behalf.

**Applicable Law.**

**When the Ordering Activity is a State/Local Entity.** The terms of this Agreement will be governed by and construed in accordance with the Federal laws of the United States.

Where the Ordering Activity is a Federal Agency, all disputes under this Agreement shall be governed by FAR 52.233-1, Disputes and the Agreement shall be governed under applicable US Federal law.

**Additional Terms Applicable when the Ordering Activity**



No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s) acquired under this agreement shall apply in place of, or serve to modify any provision of this agreement, even if a user or authorized officer of Ordering Activity purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoidance of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of this agreement, then the relevant term or condition of this agreement shall govern and supersede the purchase of such Product(s) to the extent of any such conflict. All acceptance of agreements shall be executed in writing.

If any document incorporated by reference into this agreement, including the Use Rights included and/or referenced or incorporated herein and/or therein, contains a provision (1) allowing for the automatic termination of Ordering Activity's license rights or Online Services; (2) allowing for the automatic renewal of services and/or fees; (3) requiring the governing law to be anything other than the applicable law set forth above in Section 9.o; and/or (4) otherwise violates applicable law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into this agreement, including the Use Rights included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

**Definitions.**

Any reference in this agreement to "day" will be a calendar day.

"**Acceptable Use Policy**" is set forth in the Online Services Terms.

"**Affiliate**" means,

for Microsoft, any legal entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Microsoft; for Contractor, any entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Contractor; and for each Ordering Activity identified on an Initial Order Form, any entity that

(i) is a bureau, office, agency, department or other subdivision of that Ordering Activity (and located in Ordering Activity's State, if Ordering Activity is a State/Local Entity) controlled by or under common control with Ordering Activity for whose use of Products Contractor is contractually responsible under its Government Contract in accordance with these Microsoft Cloud Agreement terms and conditions, and (ii) controls, is controlled by, or is under common control with, Ordering Activity.

For this definition, "ownership" means owning more than 50% of applicable interests, and "control" means the legal right to bind contractually and exercise decision power over administration, finances, and operations.

"**Community**" means the community consisting of one or more of the following: (1) a Government, (2) a Ordering Activity using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Ordering Activity with Ordering Activity

Data that is subject to Government regulations for which the Ordering Activity determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet the Ordering Activity's regulatory requirements. Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"**Consumption Offering**", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 2.

"**Ordering Activity Data**" is defined in the Online Services Terms.

"**End User**" means any person Ordering Activity permit to access Ordering Activity Data hosted in the Online Services or otherwise use the Online Services.

"**Federal Agency**" means a bureau, office, agency, department or other entity of the United States Government.

"**Fix**" means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Ordering Activity to address a specific issue.

"**Government**" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"**Government Community Cloud Services**" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"**Government Contract**" means the binding agreement between the Contractor and Ordering Activity under which Ordering Activity orders Products from the Contractor and the Contractor binds Ordering Activity to the terms of the this agreement.

"**Licensing Site**" means <http://www.microsoft.com/licensing/contracts> or a successor site.

"**Instance**" means an image of software that is created by executing the software's setup or install procedure or by duplicating such an image.

"**Microsoft Trust Center Compliance Page**" is Microsoft's website accessible at <https://www.microsoft.com/en-us/TrustCenter/Compliance/> or a successor upon which Microsoft provides information about how each of its Online Services complies with, and/or is certified under, various government and industry control standards.

"**Non-Microsoft Product**" is defined in the Online Services Terms.

"**Online Services**" means any of the Microsoft-hosted online services identified as such in the Product Terms and/or Online Services Terms and subscribed to by Ordering Activity under this agreement, including but not limited to those which are Government Community Cloud Services: Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, Microsoft Power BI Services, or Microsoft Intune Online Services. For clarity:

Microsoft's subcontract with Contractor may limit the scope and variety of Microsoft Online Services available to Ordering Activity, for example based upon either a Microsoft License Program restriction and/or Ordering Activity's unique regulatory or other requirement. Ordering Activity should not issue a purchase order to Contractor for an Online Service unless Ordering Activity is first satisfied, pursuant to Microsoft's public statements on the Microsoft Trust Center Compliance Page, that its regulatory and other requirements will be met. In certain cases, Microsoft may require Contractor to provide Ordering Activity with an amendment to this Ordering Activity Agreement, in cases where an Online Service's compliance with a regulation is predicated upon joint Ordering Activity responsibility, as set for in the Microsoft Trust Center Compliance Page.

"**Online Services Terms**" means the additional terms that apply to Ordering Activity's use of Online Services provided herein.

"**Previews**" means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain Ordering Activity feedback.

"**Product**" means all products sold to Ordering Activity by Contractor, as identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews. For clarity, not all Products shown in the Product Terms will be available to Ordering

Activity under this Agreement. Contractor will inform Ordering Activity of Products made available to purchase under the Government Contract.

**"Product Terms"** means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is attached herein.

**"SLA"** means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site.

**"State/Local Entity"** means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Ordering Activity's state and located within Ordering Activity's state' jurisdiction and geographic boundaries.

**"Software"** means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.

**"Subscription"** means an enrollment for Online Services for a defined Term as established by Ordering Activity's Reseller.

**"Term"** means the duration of a Subscription (e.g., 30 days or 12 months).

**"Tribal Entity"** means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

**"Use Rights"** means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product.

The Use Rights for Online Services are published in the Online Services Terms. In addition, the Product Terms (a) contain product-specific references which may apply to certain Online Services and (b) may reference Online Services, and certain types of SKUs for them, that are not made available to Ordering Activity.

The Use Rights for Software are published by Microsoft in the Product Terms.

#### **EXHIBIT B TERMS FOR DEFENSEREADY ON-PREMISE EDITION**

DefenseReady On-Premise Edition is a Unified Solution with Microsoft Dynamics CRM software. Microsoft Corporation or one of its affiliates (collectively, "Microsoft") has licensed the Microsoft Dynamics CRM software to Permuta Technologies, Inc. ("Permuta").

The terms of the Agreement apply only to DefenseReady On-Premise Editions licensed perpetually and includes the media on which Ordering Activity received it, if any. The terms also apply to any DefenseReady or Microsoft

updates,

supplements, and

Internet-based services

for Software covered under this Exhibit B, unless other terms accompany those items. If so, those terms apply.

#### **OVERVIEW.**

Software. The Software includes:

Server software.

Additional software that may only be used with the server software directly, or indirectly through other additional software.

License Model. The Software is licensed based on

The number of operating system environments that Ordering Activity run; and

the number of instances of server software that Ordering Activity run; and

the number of users that access instances of server software.

License Terms for Use with Virtual Server and other Similar Technologies.

**Instance.** Ordering Activity create an "instance" of Software by executing the Software's setup or install procedure. Ordering Activity also create an instance of Software by duplicating an existing instance. References to Software in this agreement include "instances" of the Software.

**Run an Instance.** Ordering Activity "run an instance" of Software by loading it into memory and executing one or more of its instructions. Once running, an instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.

**Operating System Environment.** An "operating system environment" is all or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and instances of applications, if any, configured to run on the operating system instance or parts identified above.

There are two types of operating system environments, physical and virtual. A physical operating system environment is configured to run directly on a physical hardware system. A virtual operating system environment is configured to run on a virtual (or otherwise emulated) hardware system. A physical hardware system can have either or both of the following:

one physical operating system environment

one or more virtual operating system environments

**Server.** A server is a physical hardware system capable of running server Software. A hardware partition or blade is considered to be a separate physical hardware system. For the purposes of these terms, a server may be owned and managed by Ordering Activity ("Ordering Activity's server"), or be fully physically dedicated to Ordering Activity under the day to day management and control of a third party entity (e.g. Outsourcing Company).

**Assigning a License.** To assign a license means simply to designate that license to one server or user.

## USE RIGHTS.

### Assigning the License to the Server.

Before Ordering Activity run any instance of the server software under a Software license, Ordering Activity must assign that license to one of Ordering Activity's servers. That server is the licensed server for that particular license. Ordering Activity may assign other Software licenses to the same server, but Ordering Activity may not assign the same license to more than one server.

ii. Ordering Activity may reassign a Software license, but not within 90 days of the last assignment. Ordering Activity may reassign a Software license sooner if Ordering Activity retire the licensed server due to permanent hardware failure or replacement. If Ordering Activity reassign a license, the server to which Ordering Activity reassign the license becomes the new licensed server for that license.

**Running Instances of the Server Software.** Ordering Activity may run, at any one time, one instance of the server software in one physical or virtual operating system environment on the licensed server.

**Running Instances of the Supplemental Server Software.** Ordering Activity may run or otherwise use any number of instances of the Supplemental Server Software listed below in physical or virtual operating system environments on any number of devices. Ordering Activity may use those instances only with the server software. Use of any instance with the server software may be indirect, through other instances of the Supplemental Server Software, or direct.

DefenseReady Data Services Server

DefenseReady Recon Server

DefenseReady WebDav Server

DefenseReady Learning Management System (LMS) SCORM Engine and Player

DefenseReady External User Self-Service Portal Server

Microsoft Dynamics CRM 2016 for Microsoft Office Outlook

Microsoft E-Mail Router and Rule Deployment Wizard for Microsoft Dynamics CRM 2016

Microsoft Dynamics CRM Reporting Extensions for Microsoft Dynamics CRM 2016 Microsoft SharePoint Grid for Microsoft Dynamics CRM 2016

Microsoft Dynamics CRM 2016 Report Authoring Extensions

Microsoft Dynamics CRM 2016 Best Practices Analyzer

Microsoft Dynamics CRM 2016 Multilingual User Interface (MUI)

MarketingPilot Connector for Microsoft Dynamics CRM

Microsoft Dynamics CTM Sales Workspace

Microsoft Dynamics CRM for supported devices

Creating and Storing Instances on Ordering Activity's Servers or Storage Media. Ordering Activity have the additional rights below for each Software license Ordering Activity acquire.

Ordering Activity may create any number of instances of the server software and Supplemental Server Software.

Ordering Activity may store instances of the server software and Supplemental Server Software on any of Ordering Activity's servers or storage media.

Ordering Activity may create and store instances of the server software and Supplemental Server Software solely to exercise Ordering Activity's right to run instances of the server software under any of Ordering Activity's Software licenses as described (e.g., Ordering Activity may not distribute instances to third parties).

## ADDITIONAL LICENSING REQUIREMENTS AND/OR USE RIGHTS.

Operating System Environment License



Ordering Activity must acquire and assign an Operating System Environment License (OSEL) to each Operating System Environment hosting one or more instances of the server software.

Client Access Licenses (CALs).

Ordering Activity must acquire and assign the appropriate CAL to each device or user that accesses Ordering Activity's instances of the server software directly or indirectly. A hardware partition or blade is considered to be a separate device.

Ordering Activity do not need CALs for any of Ordering Activity's servers licensed to run instances of the server software.

Ordering Activity do not need CALs for up to two devices or users to access Ordering Activity's instances of the server software only to administer those instances.

Ordering Activity's CALs permit access to Ordering Activity's instances of earlier versions, but not later versions, of the server software.

**Categories of User CALs.** There are three categories of CALs: the Essential CAL, Basic Use Additive CAL and the Professional Use Additive CAL. Ordering Activity may not have a Professional Use Additive CAL without an underlying Basic Use Additive CAL, and a Basic Use Additive CAL without an underlying Essential CAL.

The DefenseReady Essential CAL, with the Microsoft Dynamics CRM Essential CAL, allows users only Essential use access to the DefenseReady 2016 Operating System Environment and Microsoft Dynamics CRM Server 2016.

The DefenseReady Basic Use Additive CAL, with the Microsoft Dynamics CRM Basic Use Additive CAL, allows users only Basic use access to the DefenseReady 2016 Operating System Environment and Microsoft Dynamics CRM Server 2016.

The DefenseReady Professional Use Additive CAL, with the Microsoft Dynamics CRM Professional Use Additive CAL, allows users Professional use access to the DefenseReady 2016 Operating System Environment and Microsoft Dynamics CRM Server 2016.

Each CAL permits one user, using any device, to access instances of the software on Ordering Activity's licensed servers in Ordering Activity's licensed DefenseReady operating system environment.

iii. Reassignment of CALs. Ordering Activity may permanently reassign Ordering Activity's user CAL from one user to another;

or temporarily reassign Ordering Activity's user CAL to a temporary worker while the user is absent. c. Multiplexing. Hardware or software Ordering Activity use to

Pool connections,

Reroute information, or

Reduce the number of devices or users that directly access or use the software (sometimes referred to as "multiplexing" or "pooling"), does not reduce the number of licenses of any type that Ordering Activity need.

**No Separation of Server Software.** Ordering Activity may not separate the server software for use in more than one operating system environment under a single license, unless expressly permitted. This applies even if the operating system environments are on the same physical hardware system.

**Additional Functionality.** Permuta or Microsoft may provide additional functionality for the Software. Other license terms and fees may apply if all parties agree to them in writing prior to additional terms and fees becoming effective.

NET FRAMEWORK SOFTWARE. The software contains Microsoft .NET Framework software. This software is part of Microsoft Windows. The license terms for Microsoft Windows apply to Ordering Activity's use of the .NET Framework software.

BENCHMARK TESTING. Ordering Activity must obtain Permuta's and Microsoft's prior written approval to disclose to a third party the results of any benchmark test of the software. However, this does not apply to the Microsoft .Net Framework (see below).

MICROSOFT .NET BENCHMARK TESTING. The software includes one or more components of the .NET Framework 3.0 ("NET Components"). Ordering Activity may conduct internal benchmark testing of those components. Ordering Activity may disclose the results of any benchmark test of those components. Notwithstanding any other agreement Ordering Activity may have with Microsoft, if Ordering Activity disclose such benchmark test results, Microsoft shall have the right to disclose the results of benchmark tests it conducts of Ordering Activity's products that compete with the applicable .NET Component.

SCOPE OF LICENSE. Subject to Ordering Activity's continuing obligation for compliance with the terms set forth herein, the underlying GSA Schedule Contract, Schedule Pricelist and applicable purchase order, Permuta hereby grants to Ordering Activity a limited, nonexclusive, non-transferable, non-assignable license to use the Software during the term of Ordering Activity's license only as expressly authorized in this Terms. By using the Software, Ordering Activity acknowledge and agree that the Software is licensed, not sold, that all Software and accompanying documentation are proprietary to Permuta and/or Microsoft and are protected under copyright and other intellectual property laws and international treaties Ordering Activity further acknowledge and agree that, as between Ordering Activity and Permuta, Permuta owns and its third party licensors own and shall continue to own all right, title and interest to the Software and accompanying Documentation, including any associated intellectual property rights. Except for the limited license granted herein, these Terms do not grant Ordering Activity any ownership or other right or interest in the Software, whether by estoppel, implication or otherwise. Ordering Activity must comply with any technical limitations in the Software that only allow Ordering Activity to use it in certain ways. Ordering Activity may not

work around any technical limitations in the Software;

reverse engineer, decompile or disassemble the Software, except and only to the extent that applicable law expressly permits, despite this limitation;

make more copies of the Software than specified in this agreement or allowed by applicable law, despite this limitation;

publish the Software for others to copy;

rent, lease or lend the software; or

GS-35F-0511T

<https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/>

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use the Software for commercial software hosting services.

Rights to access the Software on any device do not give Ordering Activity any right to implement Permuta patents or other Permuta intellectual property in Software or devices that access that device.

**SOFTWARE MAINTENANCE.** Ordering Activity may receive upgrades to future Software versions by acquiring Maintenance for a fee in accordance with the GSA Pricelist. Please note, however, that the right to upgrade is limited to new versions of the Software during the Maintenance coverage period. Licenses must be enrolled in Maintenance when the license is originally acquired, and coverage must be renewed annually during the agreement's term without lapse or the right to upgrade is voided. Users who are not enrolled in Maintenance who want to upgrade must purchase a new license. Maintenance shall be provided only to unmodified Software and commercially released updated versions of the Software. Ordering Activity are solely responsible for making or arranging for updates to interfaces for custom applications which Ordering Activity have installed or created. Software Maintenance allows a Ordering Activity access to product updates, including bug fixes, new quarterly releases with additional capabilities, as well as major product version updates for DefenseReady and Embedded Microsoft Dynamics CRM. Additional instances may be allowed if Maintenance is purchased. Additional software modules may also be made available to Ordering Activity through Ordering Activity's purchase of Maintenance. Any such additional software shall also be subject to these Terms. Maintenance will be provided by Permuta provided that Ordering Activity's environment and infrastructure is configured according to and in compliance with the guidance provided by Permuta.

**Ordering Activity Support and Support Plans.** Terms for Ordering Activity Support and Support Plans for software covered by this Exhibit B are identified in Exhibit C.

**BACKUP COPY.** Ordering Activity may make one backup copy of the Software media. Ordering Activity may use it only to create instances of the Software.

**DOCUMENTATION AND USAGE.** Any person that has valid access to Ordering Activity's computer or internal network may copy and use the documentation for Ordering Activity's internal, reference purposes. By using the Software, Ordering Activity acknowledge and agree that Permuta may use limited amounts of technical data and information (for example, but not limited to, information concerning Ordering Activity's device, system, application software and peripherals) to facilitate the provision of Software updates, product support and other services (if any) attributable or related to the Software. Permuta may use this information as long as it is in a form that does not personally identify Ordering Activity in order to operate, improve, provide and develop other services, products and/or technologies, for research and development and for any other purpose expressly described to Ordering Activity as a part of Permuta's products and services.

**FEEDBACK.** In the event that Ordering Activity provide any feedback, ideas, materials, suggestions, opinions, information or any other input to Permuta ("Feedback"), Ordering Activity acknowledge and agree that, while Permuta is under no obligation to consider or implement any such Feedback, Permuta and its successors and assigns receive an unconditional and unlimited right to use, reproduce, modify and disclose to others any such Feedback without any obligation to provide Ordering Activity with compensation or attribution. Further, Ordering Activity acknowledge and agree that any and all such Feedback is provided by Ordering Activity on a non-confidential basis and Ordering Activity waive and agree not to assert any rights (potential or vested) that Ordering Activity may have in the Feedback. Permuta acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203-71.

**EXPORT RESTRICTIONS.** The Software is subject to United States export laws and regulations. Ordering Activity must comply with all domestic and international export laws and regulations that apply to the Software. These laws include restrictions on destinations, end users and end use.

Reserved.

**LEGAL EFFECT.** This agreement describes certain legal rights. Ordering Activity may have other rights under the laws of Ordering Activity's state or country. This agreement does not change Ordering Activity's rights under the laws of Ordering Activity's state or country if the laws of Ordering Activity's state or country do not permit it to do so.

Reserved.

**UNITED STATES GOVERNMENT USE RIGHTS.** By using the Software, Ordering Activity agree that the Software is a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 and that all U.S. Government end users acquire the Software with only those rights set forth therein.

**NOT FAULT TOLERANT. THE SOFTWARE IS NOT FAULT TOLERANT. BY USING THE SOFTWARE, ORDERING ACTIVITY AGREE TO IMPLEMENT AND ASSUME FULL RESPONSIBILITY FOR SAVING ALL OF ORDERING ACTIVITY'S FILES ONTO MAGNETIC TAPE OR OTHER OFFLINE MASS STORAGE MEDIA FOR THE PURPOSE OF PREVENTING LOSS OF DATA IN THE EVENT OF EQUIPMENT OR SOFTWARE (INCLUDING THIRD PARTY SOFTWARE) FAILURE OR DESTRUCTION. ORDERING ACTIVITY FURTHER AGREE THAT ORDERING ACTIVITY ASSUME FULL RESPONSIBILITY FOR MAINTAINING ORDERING ACTIVITY'S OWN SECURITY POLICIES AND PROCEDURES FOR THE PROTECTION OF ORDERING ACTIVITY'S DATA AND SOFTWARE.**

#### **WARRANTIES**

**LIMITED WARRANTY.** For a period of one year from the date Customer is first licensed for a version of the Software (the "Warranty Period"), Permuta represents and warrants that it will use commercially reasonable efforts to cause the Software to conform, in all substantial respects, to the Permuta's then-current technical documentation for the Software. If it does not, and Customer notifies Permuta within the Warranty Period, then Permuta will, at its option, (1) return the price Customer paid for the Software License or (2) repair or replace the Software.

**DISCLAIMERS OF WARRANTY.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 19, PART a, PERMUTA DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THESE TERMS, THE SOFTWARE AND ANY THIRD-PARTY SOFTWARE, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (A) IMPLIED WARRANTIES OF MERCHANTABILITY; (B) EXPRESS WARRANTIES OF FITNESS OR SUITABILITY FOR ANY

PURPOSE (WHETHER OR NOT PERMUTA KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); OR (C) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE, LOSS OF DATA, TIMELINESS OR SECURITY. THE SOFTWARE AND ALL ACCOMPANYING MATERIALS ARE PROVIDED BY PERMUTA AS-IS. PERMUTA DOES NOT GUARANTEE THAT THE SOFTWARE WILL BE FREE OF ERRORS.

**Reserved.**  
**Reserved.**

#### EXHIBIT C-

#### TERMS AND CONDITIONS OF DEFENSEREADY / FEDERALREADY ORDERING ACTIVITY SUPPORT for PERPETUALLY LICENSED SOFTWARE WITH ANNUAL SOFTWARE MAINTENANCE

Permuta's Ordering Activity Support Program ("Ordering Activity Support") is a cost effective, flexible program for Ordering Activities to plan, request, receive, and manage support for DefenseReady and FederalReady Products ("Products").

The following Terms and Conditions ("Terms") apply to Ordering Activity's access to Ordering Activity Support for Perpetually Licensed Software covered under EXHIBIT B.

#### Ordering Activity Support Program

#### **Support Program Administration**

**Eligibility.** Ordering Activity must purchase Annual Software Maintenance ("SW Maintenance") for Products to receive Ordering Activity Support.

**Term.** The term of the Ordering Activity Support plan coincides with the Coverage Period of the associated Software Maintenance.

**Account Manager.** Permuta will designate two contacts to serve as the primary and secondary account managers to manage Permuta's responsibilities associated with the Ordering Activity's Support Plan.

**Enrollment Administrators.** Ordering Activity shall designate two contacts to serve as the primary and secondary enrollment administrators ("Enrollment Administrator") to manage Ordering Activity's responsibilities associated with its Support Plan.

**Approved Requesters.** Ordering Activity shall designate approved requesters ("**Approved Requesters**") in accordance with the terms of the selected Support Plan. Approved Requesters are presumed to have the authorization authority to request Support Tasks.

**Modifications.** Permuta may make commercially reasonable changes to the Ordering Activity Support program from time to time, without amendment to the Terms.

#### **Support Plans**

Included with the purchase of SW Maintenance at no additional cost is automatic enrollment in the "Standard" Ordering Activity Support Plan. Ordering Activity may select an alternative Support Plan with the purchase of SW Maintenance.

The following Support Plans are available:

**Standard** – The Standard Plan is included with SW Maintenance at no additional cost. This Support Plan may be suitable for organizations with 1) mature deployments of the Products or 2) limited support budgets.

**Silver** – The Silver Plan is designed for small organizations intending to extend the value from its current use of the Products.

**Gold** – The Gold Plan is designed for mid-sized organizations intending to extend the value from its current use of the Products.

**Platinum** – The Platinum Plan is designed for large organizations intending to extend the value from its current use of the Products.

**OnBoard** – The OnBoard Plan is designed for new Ordering Activity's intending to use Products operationally within a 12-month time.

**Pilot** – The Pilot Plan is designed for potential Ordering Activity's intending to conduct an operational pilot of the Products for qualification, evaluation, and/or comparative purposes.

If Permuta provides a Fix in connection with Ordering Activity Support, each Fix is licensed under the same terms as the Product to which it applies.

#### **Support Task Request Process**

**Support Tasks.** Ordering Activity may only access Ordering Activity Support by requesting a Support Task through Ordering Activity's Approved Requesters. The Support Task is administered by the Account Manager(s), in cooperation with the Enrollment Administrator(s) and Approved Requesters. At no additional cost, Permuta may provide tools, resources, and software to facilitate the Support Task request process.

**Types.** The types of Support Tasks available to the Ordering Activity under the Terms are:

**Advisory Support** – Advisory support is available for short-term advice and guidance from Permuta for problems not covered with problem resolution support as well as requests for consultative assistance for design, development, deployment and operation issues.

**Sustainment Support** – Sustainment support includes sustainment planning services, off-site integration test environments, update rollout testing, and periodic on-site support for applying updates, performing major upgrades, and Products infrastructure optimization.

**Problem Resolution Support (PRS)** – Problem resolution support is available for assistance with resolving problems with specific symptoms encountered while using the Products, where there is a reasonable expectation that the problem is caused by the Products.

**Rapid On-Site Support (ROSS)** – Rapid onsite support is available for urgent requirements for onsite support by Permuta resources necessitating less than 48 hours' notice. Permuta's ability to provide rapid onsite support is subject to Permuta's resource availability, and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Permuta will redeem Support Credits to account for travel time at a rate of one Support Credit for each required non-business hour of travel not otherwise accounted for in the support day.

**Configuration Support** – Configuration support is available for Ordering Activities requiring minor configuration changes on a short-term basis.

**Training Support** – Training support is available to support curriculum development and to conduct training.

**Cyber Security Support** – Subject to availability of Permuta resources, cyber security support may be available to support Ordering Activity's cyber security needs in relation to its intended use of the Products.

**Scheduled On-Site Support** – Scheduled on-site Ordering Activity support is available for Ordering Activities subject to Permuta's resource availability and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Permuta may redeem Support Credits to account for travel time at a rate of one-half Support Credit for each required nonbusiness hour of travel not otherwise accounted for in the support day.

**Solution Development Support** – Solution development support is available for Ordering Activities requiring or engaged in a complex custom solution development effort following commercial best practices.

**On-Boarding Support** – On-boarding support is available for new implementations and integration services of a new Ordering Activity.

#### **Support Credits**

General. As part of the Ordering Activity’s Support Plan, Permuta will issue Support Credits redeemable for Support Tasks. Credits may only be redeemed for 1) Support Tasks following the Support Task request process set forth in section 1.3 or 2) Managed Ordering Activity Support Projects in accordance with section 1.5. Support Credits have no cash value, are non-transferrable and nonrefundable. All Support Credits are valid for the term of the Support Plan and expire immediately upon expiration of the SW Maintenance Coverage Period or termination of Ordering Activity’s Support Plan.

Roll-Over Support Credits. Permuta will reissue a limited quantity of expired support credits (“Roll-Over Support Credits”) at the start of the Follow-On SW Maintenance’s Coverage Period. Section 7.8 identifies the Roll-Over Support Credits limit for each available Support Plan. The reissue quantity will not exceed the limit of the expiring Support Plan or the Follow-On Support Plan associated with a SW Maintenance renewal, whichever is lowest.

Pre-determined Redemption Quantity. In accordance with commercially acceptable procedures, Permuta will automatically accept and process valid Support Task requests of a type HAVING a predetermined redemption rate as set forth below in Section 7.4.4.

Redemption Quantity Approval. A Ordering Activity Enrollment Administrator will be required to issue Permuta a written Authority to Proceed for Support Task Requests of a type NOT HAVING a predetermined redemption rate. The Authority to Proceed must authorize a redemption quantity specified by Permuta for each Support Task Request.

Support Credit Redemption Rate. Support Credits will be redeemed by Ordering Activity at the following rates for the Support Tasks listed below:

Support Task Type	Redemption Rate Unit (as reasonably determined by Permuta)	Support Credit Redemption Rate
Advisory Support	per Task	2
Sustainment Support	by Task	To be mutually agreed
Problem Resolution Support	per Case	1
Rapid On-Site Support	per Day	10
Support Task Type	Redemption Rate Unit (as reasonably determined by Permuta)	Support Credit Redemption Rate
Configuration Support	by Task	To be mutually agreed
Training Support	by Task	To be mutually agreed
Cyber Security Support	by Task	To be mutually agreed
Scheduled On-Site Support	Day	6
Solution Development Support	by Task / by Lot	To be mutually agreed

On-Boarding Support	by Task / by Lot	To be mutually agreed
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**Sufficient Credits.** The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required to avoid disrupting or otherwise negatively impacting its intended use of the Products. Permuta may refuse to perform Support Tasks if Ordering Activity has insufficient Support Credits.

**Managed Ordering Activity Support Projects.**

**Managed Ordering Activity Support Project.** As part of an eligible Support Plan and when appropriate, Permuta may perform certain support services as Managed Ordering Activity Support Projects (“Projects”). Projects will be used to deliver to Ordering Activity mutually agreed to deliverables (“Deliverables”) addressing requirements related to the Ordering Activity’s desired use of the Products.

**Statement of Work.** Permuta will perform Projects in accordance with Permuta’s commercially reasonable standard patterns and practices for processes, documentation, communication, design, configuration, customization, code, test, and operational support. Permuta shall only perform Projects if the parties have executed, and subject to, a mutually agreed to statement of work (“SOW”) documenting the specific terms and conditions (including those relating to intellectual property rights) governing such Support Services and Deliverables. Ordering Activity and Permuta agree to each perform its respective obligations in each SOW.

**Support Credit Redemption Plan.** The terms of the Project SOW shall include a Support Credit Redemption Plan specifying a fixed quantity of Support Credits the Ordering Activity would be required to redeem and the redemption scheduled.

**Sufficient Credits.** The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required by the Support Credit Redemption Plan without disrupting or otherwise negatively impacting its intended use of the Products.

**Response Levels.** When submitting a Support Request, Ordering Activity is responsible for specifying the initial severity level in consultation with Permuta in accordance with the Ordering Activity situation. The Support Request severity level will determine Permuta’s expected response and Ordering Activity’s expected response as identified in the table below.

Severity	Situation	Permuta’s Expected Response	Ordering Activity’s Expected Response
1. Submission via phone only	Catastrophic business impact: Complete loss of a core (mission critical) business process and work cannot reasonably continue Needs immediate attention	1st call response in 1 hour or less Permuta’s resources at Ordering Activity site as soon as possible Continuous effort on a 24x7 basis Rapid escalation within Permuta to product teams Notification of Permuta’s senior executives	Notification of Ordering Activity senior executives Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority

A. Submission via phone only	<p>Critical business impact:</p> <p>Significant loss or degradation of services</p> <p>Needs attention within 1 hour</p>	<p>1st call response in 1 hour or less</p> <p>Permuta's resources at Ordering Activity site as required</p> <p>Continuous effort on a 24x7 basis</p> <p>Notification of Permuta's senior managers</p>	<p>Allocation of appropriate resources to sustain continuous effort on a 24x7 basis</p> <p>Rapid access and response from change control authority</p> <p>Management notification</p>
B. Submission via phone or web	<p>Moderate business impact:</p> <p>Moderate loss or degradation of services but work can reasonably continue in an impaired manner</p>	<p>Initial response in 4 Business Hours or less</p> <p>Effort during Business Hours only</p>	<p>Allocation of appropriate resources to sustain</p> <p>Business Hours continuous effort</p>
<b>Severity</b>		<b>Permuta's Expected Response</b>	<b>Ordering Activity's Expected Response</b>
	Needs attention within 2 Business Hours		Access and response from change control authority within 4 Business Hours
C. Submission via phone or web	<p>Minimum business impact:</p> <p>Substantially functioning with minor or no impediments of services.</p> <p>Needs attention within 4 Business Hours</p>	<p>Initial response in 8 Business Hours or less</p> <p>Effort during Business Hours only</p>	<p>Accurate contact information on case owner</p> <p>Responsive within 24 hours</p>

Permuta may downgrade the severity level if Ordering Activity is not able to provide adequate resources or responses to enable Permuta to continue with problem resolution efforts.

**Support Plan Credits.**

Permuta will issue Support Credits as they are earned, either monthly or annually. The Support Credits will be earned in accordance with the following table.

Quantity of Support Credits earned per Unit of each Applicable Product Type by Support Plan
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Product Type	Standard	Silver	Gold	Platinum	OnBoard	Pilot
Operating System Environment (OSE) License	36	120	240	480	2400	1800
Basic Professional User & CAL	0.12	0.24	0.36	0.48	0.96	4.8
Essential CAL	0.012	0.024	0.036	0.048	0.098	0.48
Additional Instance Prod	120	120	120	120	120	120

**Support Plan Conditions and Limitations.**

Terms, conditions, and limitations will vary for each Support Plan. The following table identifies the applicable terms, conditions, and limitations for Support Plans available under the Terms.

Applicable Terms, Conditions, and Limitations by Support Plan						
Term, Condition, or Limitation	Standard	Silver	Gold	Platinum	OnBoard	Pilot
Eligible for Advisory Support	Yes	Yes	Yes	Yes	Yes	Yes
Eligible for Sustainment Support	Yes	Yes	Yes	Yes	Yes	Yes
Eligible for Problem Resolution	Yes	Yes	Yes	Yes	Yes	Yes
Eligible for Rapid On-Site Support	No	Yes	Yes	Yes	Yes	Yes
Eligible for Configuration Support	No	Yes	Yes	Yes	Yes	Yes
Eligible for Training Support	No	Yes	Yes	Yes	Yes	Yes
Eligible for Cyber Security Support	No	No	Yes	Yes	Yes	Yes



Eligible for Scheduled On-Site Support	No	No	No	Yes	Yes	Yes
Eligible for Credit Redemption Plan	No	No	No	Yes	Yes	Yes
Eligible for Solution Development Support	No	No	No	Yes	Yes	Yes
Eligible for On-Boarding Support	No	No	No	No	Yes	Yes
Available Response Level	C	A, B, C	1, A, B, C	1, A, B, C	1, A, B, C	A, B, C
Rollover Support Credits	N/A	25	50	100	200	200
Allowed Number of Approved Requestors (Other than admins)	N/A	1	2	4	2	2

**Additional Support Services Provisions.**

Ordering Activity may not, unless specifically authorized by Permuta in writing, i) rent, lease, lend or host any Deliverables (including any computer code or materials that Permuta leaves with Ordering Activity at the conclusion of Permuta’s performance of Services) or Fixes; ii) reverse engineer, decompile or disassemble Fixes or Deliverables, except to the extent expressly permitted by applicable law; or iii) transfer licenses to, or sublicense, Fixes or Deliverables to any government entity or quasi-governmental entity or any other third party. Permuta may request that Microsoft deliver problem resolution support on Permuta’s behalf to Ordering Activity subject to the Terms. Permuta will coordinate and participate in the delivery of subcontracted Microsoft services. In order for Permuta to provide subcontracted Microsoft services, Ordering Activity will be required to provide consent to provide the required contact information to Microsoft.

**General Terms.**

**Fees and Payment Terms.** The fees and payment terms applicable to Ordering Activity Support are set forth in the GSA schedule contract, schedule pricelist and applicable purchase order.

**Ordering Activity Support Term Updates.** When Ordering Activity renews or purchases SW Maintenance, the then current Terms, underlying GSA Schedule Contract, Schedule pricelist, and applicable purchase order will apply and will not change during Ordering Activity’s coverage period of the associated SW Maintenance purchase.

**Ownership and License.** Except as otherwise set forth in a Statement of Work (SOW) in accordance with section 1.5, this section governs the ownership and use rights of any computer code or other materials that may be provided under these Terms.

**Fixes.** Except as otherwise provided herein, the underlying GSA schedule contract, schedule pricelist and applicable purchase order Ordering Activity’s right to use fixes is governed by the license agreement for the affected Product or, if the fix is not provided for a specific product, any other use terms provided by Permuta. All fixes provided are licensed to Ordering Activity. For the purposes of these Terms, “fixes” means any Product related bug fixes, workarounds, patches, beta fixes or beta builds other than sample code or materials. Permuta does not transfer ownership rights in Products and reserves all rights not expressly granted.

**Pre-existing Work.** All rights in any computer code or materials developed or otherwise obtained independently of the efforts of a Party under these Terms (“Pre-existing Work”) shall remain the sole property of the Party providing the Pre-existing Work. During the performance of Ordering Activity Support services, each Party grants to the other Party (and their contractors as necessary) a temporary, nonexclusive license to use, reproduce and modify any of its Pre-existing Work provided to the other Party solely for the performance of such Services. Permuta grants Ordering Activity a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) Permuta’s Pre-existing Work in the form delivered to Ordering Activity for Ordering Activity’s internal business operations without any obligation of accounting or payment of royalties. Ordering Activity’s licenses to Permuta’s Pre-existing Work is conditioned upon Ordering Activity’s compliance with these Terms and the perpetual license applies solely to Permuta’s Pre-existing Work that is left with Ordering Activity at the conclusion of Permuta’s performance of services.

**Materials.** All rights in any materials developed by Permuta (other than software code) and provided to Ordering Activity in connection with the Ordering Activity Support services ("Materials") shall be owned by Permuta except to the extent such Materials constitute Ordering Activity's Pre-existing Work. We grant Ordering Activity a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify the Materials solely for Ordering Activity's internal business operations and without any obligation of accounting or payment of royalties. All rights not expressly granted, are reserved.

**Reservation of Rights.** All rights not expressly granted in this Section 2.3 are reserved.

**Restrictions on Use.** Ordering Activity may not i) rent, lease, lend or host any computer code or materials that Permuta leaves with Ordering Activity at the conclusion of Permuta's performance of Services ("Deliverables") or fixes, except as otherwise provided herein; ii) reverse engineer, de-compile or disassemble fixes or Deliverables, except to the extent expressly permitted by applicable law despite this limitation; or iii) transfer licenses to, or sublicense fixes or Service Deliverables to any government entity or quasi-governmental entity, except as specifically authorized herein.

**Export.** Ordering Activity agree to comply with all applicable international and national laws that apply to the products, fixes and Service Deliverables, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

**Permuta-Provided Data.** Permuta may use or provide Permuta-Provided Data in connection with Ordering Activity's access to Ordering Activity Support. Ordering Activity acknowledges that Permuta-Provided Data has commercial value. All rights in Permuta-Provided Data shall be owned by Permuta unless explicitly stated otherwise in written form by Permuta. All rights not expressly granted to Ordering Activity, are reserved to Permuta.

**Commercial Item.** Ordering Activity Support is a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "installation services, maintenance services, repair services, training services, and other services" for support of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212. Ordering Activity acquires Ordering Activity Support with only the rights set forth in these Terms. Ordering Activity acknowledges and agrees that Permuta sells Ordering Activity Support as a commercial item only and will engage as a subcontractor for Ordering Activity Support subject only to the required U.S. Government flowdown clauses listed at 48 CFR 52.244-6, "Subcontracts for Commercial Items", plus other terms necessary in meeting performance obligations under the specific Government Contract under which Ordering Activity purchases the Products.

**Subcontractors.** Permuta may hire subcontractors to provide Support Services on its behalf. Any such subcontractors will be required to act consistently with this Agreement and will only be permitted to obtain Ordering Activity Data to deliver the services Permuta is obligated to provide and will be prohibited from using Ordering Activity

Data for any other purpose. Permuta shall maintain responsibility for the actions of its subcontractors

Representations, Warranties and Disclaimers.

**General Representations and Warranties.** Each party represents and warrants that (a) it is validly existing and in good standing under the laws of the place of its establishment or incorporation, (b) it has full corporate power and authority to execute, deliver and perform its obligations under these Terms, (c) the person signing these Terms on its behalf has been duly authorized and empowered to accept these Terms, and (d) these Terms are valid, binding and enforceable against it accordingly.

**Additional Warranties.**

For a period of one year from the commencement of the applicable Ordering Activity Support Plan Term (the "**Warranty Period**") Permuta represents and warrants that it will use commercially reasonable efforts to cause Ordering Activity Support Deliverables to conform, in all substantial respects, to the Permuta's then-current technical documentation for the Products. If it does not, and Ordering Activity notifies Permuta within the Warranty Period, then Permuta will take commercially reasonable measures to repair or replace the Ordering Activity Support Deliverables. Ordering Activity waives any breach of warranty claims not made during the Warranty Period.

Permuta warrants that all Ordering Activity Support will be performed with professional care and skill. If Permuta fails to do so and Ordering Activity notifies Permuta within 90 days of the date of performance, then Permuta will re-perform the Ordering Activity Support.

**Disclaimers of Warranty.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 4.1 and 4.2, PERMUTA DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THESE TERMS, PRODUCTS AND ANY THIRD-PARTY SERVICES, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (A) IMPLIED WARRANTIES OF MERCHANTABILITY; (B) EXPRESS

WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT PERMUTA KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); OR (C) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE, LOSS OF DATA, TIMELINESS OR SECURITY. THE ORDERING ACTIVITY SUPPORT AND ALL ACCOMPANYING MATERIALS ARE PROVIDED BY PERMUTA AS-IS. PERMUTA DOES NOT GUARANTEE THAT CUSTOMER SUPPORT WILL BE PROVIDED FREE OF ERRORS.

Effect of Termination.

**Effect of Termination.** Upon any termination or expiration of the Support Plan: (a) all rights and licenses granted to Ordering Activity under these Terms will immediately cease; (b) Ordering Activity will within thirty (30) days of receipt of invoice pay to Permuta all amounts due and payable up to the effective date of termination of the Support Plan. Notwithstanding any terms to the contrary in these Terms, Sections 3 and 4 will survive any termination or expiration of the Support Plan.

Definitions.

**"Software Maintenance"** means the right to upgrade to future Software versions. Software maintenance is acquired by the Ordering Activity for a fee on an annual basis. The right to upgrade is limited to new versions of the associated Software during the Software Maintenance Coverage Period.

**"Business Hours"** means as 9:00 AM to 5:30 PM Eastern Standard Time, excluding Federal holidays and weekends.

Reserved.

**"Coverage Period"** means the 12 month period during which the Ordering Activity is eligible for the Software Maintenance benefits of

Perpetually Licensed Software.

**"Ordering Activity Data"** means all data, including all text, sound, video, or image files, and software, that are provided to Permuta by, or on behalf of, Ordering Activity through use of the Products.

**“Ordering Activity Support”** means the support and maintenance services provided by or on behalf of Permuta to Ordering Activity these Terms.

**“Disclosing Party”** means the party that discloses Confidential Information to the Receiving Party.

**“End User”** means any person Ordering Activity permits to access Ordering Activity Data hosted in the Products or otherwise uses the Products. Employees of Affiliates of Ordering Activity may be End Users.

**“Fixes”** are fixes, modifications or enhancements, or their derivatives for the Products, that Permuta either releases generally (such as service packs) or that Permuta provides to Ordering Activity to address a specific issue.

**“Follow-on Support Plan”** means a future Support Plan associated with a Subscription renewal.

**“Hosted Services”** means the hosted services provided by Permuta, directly or indirectly, to Ordering Activity.

**“Intellectual Property Rights”** means all patent rights, copyrights, moral rights, trademark rights, trade secret rights and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

**“Managed Ordering Activity Support Project”** means a carefully planned, multi-phase effort contemplated and executed in performance of a Statement of Work (SOW).

**“Microsoft”** means Microsoft Corporation.

**“Permuta-Provided Data”** means any data provided by Permuta to Ordering Activity under this Agreement, including Sample Data. Permuta-Provided Data excludes Ordering Activity Data.

**“Perpetually Licensed Software”** means the version(s) of Software licensed by the Ordering Activity for which the Ordering Activity’s use rights do not expire. Unless Software Maintenance is acquired for a fee, Ordering Activity’s use rights are limited to the versions of software accessed at the time the perpetual licenses were purchased and during a valid Software Maintenance Coverage Period.

**“Previews”** means preview, trial, beta, or other pre-release version or feature of the Products offered by Permuta to obtain Ordering Activity feedback.

**“Product(s)”** means any or all product(s) sold to Ordering Activity by Permuta, such as all Software, Hosted Services and other web-based services, including Previews.

**“Purchase Agreement”** means the binding agreement between Ordering Activity and Reseller or Prime Contractor under which Ordering Activity orders Products and accepts the Terms.

**“Receiving Party”** means the party that receives Confidential Information from the Disclosing Party.

**“Reseller”** means any reseller authorized by Permuta to resell the Products and Software to Ordering Activity.

**“Roll-Over Support Credits”** means a limited quantity of expired support credits reissued in a Follow-on Support Plan in accordance with section 7.4.2.

**“Sample Data”** means data in, originating from, or derived from an information system consumable form that mimics or is representative of real-world operational data which may be used for testing, demonstrations or other purposes and that is made available to Ordering Activity under this Agreement.

**“Security Policy”** means the collective policies and procedures followed by Permuta to establish and maintain the Products’ Trustworthiness as required by Ordering Activity.

**“Software”** means any software provided by Permuta, directly or indirectly, to Ordering Activity. Software does not include Hosted Services but Hosted Services may include Software.

**“Support Credits”** are allotments for Ordering Activity Support that are earned either monthly or annually with a Ordering Activity Support Plan.

**“Support Credit Redemption Plan”** means a detailed plan for redeeming no less than 500 Support Credits in support of a specific Ordering Activity initiative or set of requirements related to the Ordering Activity’s desired use of Products.

**“Support Plan”** means one of the support plans listed in Section 7.2 in which Ordering Activity enrolls during a Subscription Term.

**“Support Task”** means a specific instance of Ordering Activity’s access to Permuta expertise or technical support in connection with a Ordering Activity Support Plan.

**“Use Rights”** means the rights of members, users, mission owners, and other End Users to use the Software as described by Permuta from time to time.

**PC MATIC, INC.**  
2515 W. 22ND ST.  
SIOUX CITY, IA, 51103

## **EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)**

**Scope.** This Rider and the attached PC Matic, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.





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**NOTICE TO ALL USERS** Carefully read the following legal agreement ("Agreement"), which sets forth license terms for PC Matic software. If someone else uses a copy of PC Matic installed by you, he or she may do so only subject to all conditions, obligations and limits described in this Agreement.

**LICENSE GRANT** PC Matic, Inc hereby licenses you for unlimited use of PC Matic on your personal computer(s), such as desktop and laptop, or for multiple users on a single personal computer, but not both, and to make one copy in machine-readable form for backup purposes only. "You" means the authorized Ordering Activity placing an order under the GSA Schedule contract. "Use" means storing, loading, installing, executing or displaying PC Matic. Within any such copy, you must reproduce the copyright notices and any other proprietary legends that were on the original downloaded copy of PC Matic. No license, right or interest in any trademark, trade name or service mark of PC Matic, Inc or any third party is granted under this License. You may not modify PC Matic or disable any licensing or control features of PC Matic except as an intended part of PC Matic's programming features. This license is not transferable to another organization or individual. Any reproduction or redistribution of PC Matic not in accordance with the License Agreement is prohibited by law.

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**RESTRICTIONS** You may not rent, lease, loan or resell PC Matic. You may not permit third parties to benefit from the use or functionality of PC Matic via a timesharing, service bureau or other arrangement. You may not transfer any of the rights granted to you under this Agreement. You may not reverse engineer, decompile, or disassemble PC Matic, except to the extent that the foregoing restriction is expressly prohibited by applicable law. You may not modify, or create derivative works based upon, PC Matic in whole or in part. You may not copy PC Matic or Documentation except as expressly permitted above. You may not remove any proprietary notices or labels on PC Matic.

**TERMINATION** This License is effective until terminated. You may terminate this License at any time by destroying PC Matic, and all copies thereof. If this license is terminated for any reason, you must destroy PC Matic and all copies thereof.

**EXPORT CONTROLS** You may not download or otherwise export or reexport the Software or any underlying information or technology except in full compliance with all laws of the United States and other applicable laws and regulations.

**GOVERNING LAW** This license will be governed by United States Federal law.



**LIMITED WARRANTY** PC MATIC WARRANTS THAT THE FOREGOING PC MATIC AND THE ACCOMPANYING FILES WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH PC MATIC AND THE ACCOMPANYING FILES WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, PC Matic AND THE ACCOMPANYING FILES ARE SOLD "AS IS" AND WITHOUT WARRANTIES AS TO PERFORMANCE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES EXPRESSED OR IMPLIED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

**NO LIABILITY FOR CONSEQUENTIAL DAMAGES** IN NO EVENT SHALL PC Matic, Inc OR ITS SUPPLIERS BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF THE DELIVERY, PERFORMANCE OR USE OF, OR INABILITY TO USE, PC Matic, EVEN IF PC Matic, Inc HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitation of liability shall not apply to personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**SEVERABILITY** In the event of invalidity of any provision of this license, the parties agree that such invalidity shall not affect the validity of the remaining portions of this license.

**ENTIRE AGREEMENT** This Agreement, together with the underlying GSA Schedule contract, Schedule pricelist and applicable purchase orders, is the entire agreement between you and PC Matic, Inc. which supersedes any prior agreement or understanding, whether written or oral, relating to the subject matter of this license.

**Peraton, Inc.**  
12975 Worldgate Drive  
Herndon, VA 20170-6008

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Peraton, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

- h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- 3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**PERATON INC.****END USER LICENSE AGREEMENT**

This End User License Agreement (EULA) is between Peraton Inc., a corporation incorporated under the laws of the State of Maryland, United States of America, by and through its offices at Herndon, Virginia (hereinafter referred to as "Peraton") and the Ordering Activity under GSA Schedule contracts identified in the Order Form (hereinafter referred to as "Licensee"). Either or both may be referred to as "Party" or "Parties". This EULA is effective as of the effective date located on the attached Order Form.

**1. Definition**

The definitions listed below pertain to this EULA.

- A. **Affiliate**: Any entity the Licensee owns at least a fifty-one percent (51%) or through board of directors' control if a not for profit entity. For Government Licensees, the "Affiliate" definition and provisions shall not apply.
- B. **Confidential Information**: Information, which the Disclosing Party provides, either directly or indirectly, to the Receiving Party in connection with this EULA. Information includes the software, personal information, or information related to the business of the Disclosing Party. If information is:
  - Tangible Form - clearly marked at the time of disclosure as being confidential
  - Orally or Visually Form - designated at the time of disclosure as confidential
  - Other Form - is reasonably understood to be confidential information, whether or not marked
- C. **Concurrent Users**: The total number of users simultaneously accessing the Software at any given time is limited to those for whom Licensee has paid a License Fee in accordance with the Order Form. If the Licensee has reached capacity of the Concurrent Users, there will not be any additional users able to access the Software until the Licensee has procured additional licenses from Peraton.
- D. **Core**: A core is an individual processor within a CPU.
- E. **Core Based-Server**: The number of Cores is limited to those for whom Licensee has paid a license fee in accordance with the Order Form. An unlimited (until Core capacity is reached) number of authorized users may use the Software, provided the total number of Cores residing on all computers where the Software is installed does not exceed the permitted number of Cores identified on the Order Form. When the Software is installed and distributed across multiple computers, all the Cores in each of these computers count toward to the total number of Cores licensed.
- F. **Documentation**: Technical documentation, release notes, and user manuals for the Baseline Version of the Software.
- G. **Effective Date**: The date the Software Maintenance Agreement (SWMA) takes effect. The Effective Date is located in the Order Form.
- H. **End User License Agreement**: An agreement between Peraton and Licensee to provide use of a license for a given period of performance.
- I. **Error**: Material deviation of the Baseline Version of the Software from its technical documentation.
- J. **License Fees**: Fees paid for Software Licenses. License Fees do not include Maintenance

or Services fees.

- K. License Term: The term for License is unlimited. Whereas the Software Maintenance Agreement will identify a Maintenance Term for a Period of Performance.
- L. License Location: The physical location where the Software is installed on equipment the Licensee owns, leases, or otherwise controls.
- M. Maintenance Fee: Fee paid for Software Maintenance. Maintenance Fees do not include cost of the initial Peraton License or Support Services provided by Peraton.
- N. Maintenance Term: Is identify as a Maintenance Term for a Period of Performance. The Maintenance Term is located in the Order Form.
- O. Named User: The total number of users given a fixed license that is assigned to them in accordance with the Order Form. Each user accessing the Software's functionality is one Named User of the Software, whether or not using Software components to access the Software's functionality, and must be counted towards the number of authorized Named Users.
- P. Order Form: A form specifying the Licensee Information, Business Contact (e.g., Program Manager, etc.), Primary Technical Contact, Alternate Technical Contact, and Software Details.
- Q. Release: A software upgrade that adds new features and corrects Errors.
- R. Services: Baseline Support Services.
- S. Software: The Peraton Software products and any Third Party Software products listed in the Order Form.
- T. Software License: A non-exclusive, non-transferable right to use the Software in a machine-readable form, together with the Documentation, solely for Licensee's internal business.
- U. Software Maintenance Agreement: An agreement between Peraton and Licensee to provide maintenance for a given period of performance.
- V. Subject Matter: The Peraton Software and applicable Documentation.
- W. Third Party Software: Any third-party Software listed on the Order Form that is produced by a party other than Peraton. Software may include the initial purchase of the license or subsequent maintenance fee.
- X. Upgrades: New Versions and Release of the Software.
- Y. Version: A major enhancement to the Software that adds substantial new features or other significant changes.

## 2. Commercial Items

The software and documentation provided hereunder are "Commercial Items" as defined by Federal Acquisition Regulation ("FAR") 2.101, consisting of "Commercial Computer Software" and

"Commercial Computer Software Documentation" as defined in FAR 12.212. No other regulation or data rights clause applies to the delivery of this software and documentation to the Government. Accordingly, the terms and conditions of this License govern the Government's use and disclosure of the Software, and supersede any conflicting terms and conditions of any contract pursuant to which the software and documentation is delivered to the Government.

The FAR clauses stated in this section do not apply to Non-Government customers.

## 3. Permitted Use

Licensee may not permit any unauthorized third party to use or access the Software. Licensee may not use the Software in the operation of a service bureau, commercial time-sharing or in any other



resale capacity. For purposes of Concurrent Users and Core-Based Server, authorized users are not uniquely identified.

#### 4. Proprietary Rights

This Agreement does not convey to Licensee title to or ownership of the Subject Matter or any results of the Services, but only a right of limited use in accordance with the License. The Subject Matter, all results of the Services, and all copies of any of them are proprietary to Peraton and title in each of them, including without limitation, all applicable rights to patents, copyrights, trademarks, confidential information and trade secrets, remains solely in Peraton, and are subject to the terms and conditions of the License. All Upgrades and any results of the Services provided by Peraton under this Agreement will become a part of the Software for the purposes of the License at the time they are provided to Licensee and are hereby licensed to Licensee as part of the Software pursuant to the terms and conditions of the License.

#### 5. Limited Warranties

Peraton warrants that the Subject Matter will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Subject Matter written materials accompanying it. Except as expressly set forth in the foregoing, Peraton furnishes the licensed Subject Matter, and

Licensee agrees to accept same, on a strictly "as is" basis. Peraton warrants the Services will be performed in a competent manner consistent with industry standards reasonably applicable to the performance of such Services.

- A. Software Warranty: Licensee acknowledges that it is solely responsible for the results obtained from use of the Software. Peraton further warrants that it has not introduced into the Software any feature designed to damage or erase the Software or data. The Software may contain license protection features that limit access to the Software to the use permitted under this EULA. Licensee shall not circumvent or render inoperative any such protection features. To be valid, a warranty claim must be in writing and submitted to Peraton. If Licensee believes that the Software has Defects, Licensee shall promptly notify Peraton in writing, describe with specificity any such Defect, and provide a listing of output and such other data as may be required by Peraton to reproduce the Defect. Licensee's exclusive remedy and Peraton's sole liability for Software performance under this software warranty will be:
- To use reasonable efforts to correct any such Defects and supply Licensee with a correction as soon as reasonably practicable
  - If correction or replacement is not reasonably achievable by Peraton, to terminate Licensee's License(s) for the affected Software and refund the License Fee paid upon Licensee's certification that all copies of the Software have been returned or destroyed.
- B. Warranty Exceptions and Exclusions: The express warranties set forth in this Limited Warranties Section do not apply to errors or malfunctions caused by (a) Licensee's equipment, (b) software not licensed from or approved in writing by Peraton, (c) Misuse, (d) Licensee's failure to use or implement corrections or updates, (e) use of the Software in combination with materials not provided, specified or approved in writing by Peraton, (f) improper installation by Licensee, Support Contractor, or a third party not authorized in writing by Peraton, or (g) any other cause not directly attributable to Peraton. Peraton does not warrant the functions contained in the Software will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error-free. These limited warranties shall be void if Licensee or any third party modifies or changes the Software in



any way beyond the scope of the configuration options contained in the Software. In order to receive and maintain these warranties, Licensee must:

- Use the Software in accordance with the Documentation
- Use the Software on the hardware and with the operating system for which it was designed
- Use only qualified personnel to operate the Software

Peraton will not be required to maintain compatibility between Peraton Software and any other software (other than Peraton-supported Third Party Software) except as otherwise agreed in writing.

- c. **Disclaimer of Warranties:** EXCEPT AS EXPRESSLY SET FORTH IN THIS LIMITED WARRANTIES SECTION AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, PERATON DOES NOT MAKE ANY EXPRESSED, IMPLIED OR STATUTORY WARRANTIES, TERMS, CONDITIONS OR REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

## 6. Infringement

Peraton warrants the use of the licensed Subject Matter under this EULA shall not infringe upon, misappropriate or otherwise violate any property, ownership or proprietary rights of any other person or organization. Upon notice of an alleged infringement, or if, in Peraton's opinion, such a claim is likely, Peraton shall have the right, at its option, to obtain the right to continue the

distribution of products, substitute other products with similar operating capabilities, or modify the product so that it is no longer infringing. In the event that none of the above options are reasonably available in Peraton's opinion, Licensee's sole and exclusive remedy shall be to cease using and to return to Peraton all of the products, and to obtain from Peraton a refund of the fee paid by Licensee for such products. This section states Peraton's entire liability for intellectual property infringement.

## 7. Limitation of Liability

Peraton shall have no liability to Licensee for any loss, claim, remedy, suit, action, indirect, incidental or consequential damages, and/or liability under any cause of action whatsoever whether in contract or tort including but not limited to action by agents or employees of Licensee, or property damage based on products liability, strict liability, concerning any defects, bugs or deficiencies or lack thereof of any nature in the licensed Subject Matter.

Peraton shall not be liable to Licensee for special, indirect, incidental or consequential loss or damage including, without limitation, any punitive damages, lost profits, or lost business opportunity arising out of or in connection with the license granted under this or any business activity of Licensee.

The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## 8. Grant of License

Peraton grants to Licensee a non-exclusive, non-transferable, revocable, indivisible right to use the licensed Subject Matter specified in the Order Form in accordance with the terms and conditions of this EULA. Licensee shall use the licensed Subject Matter solely as installed in sites listed in the Order Form and for the permitted use for which Licensee has paid a License Fee. Licensee shall not, and shall not permit others to, decompile, disassemble, or otherwise reverse engineer the licensed Software. The right to revise, modify or enhance the licensed Software is expressly prohibited. All terms and conditions of this EULA are material terms of the license granted by this Agreement. The violation of any term or condition of this EULA will constitute grounds for termination of this Agreement by Peraton in accordance with the procedures set forth in the Contact Disputes Act.

## 9. Production and Non-Production Environments

- A. Disaster Recovery and Archival Instance (Production Instances): Licensee may make back-up copies of the Software as necessary for use in disaster recovery and archival purposes, provided keeping the copies in a secure location (e.g., location to be owned or controlled by Licensee or Licensee's disaster recovery vendor). All archival and backup copies of the Software are subject to the provisions of this EULA. Licensee shall reproduce all titles, trademarks, copyright and restricted rights notices in such copies.

The Licensee should not use the disaster recovery and archival copies of the Software for production purposes unless the primary copy of the Software is not being used for production purposes.

- B. Non-Production Instances: Non-Production Instances are considered Test, Development, and Training Instance. Unless otherwise listed in the Order Form, Licensee may use one Instance of the Software in a non-production environment solely for Licensee's internal testing, development, and training purposes. Licensee's installation and use of the Software for these purposes is limited to the same number of licensed users as permitted under the applicable Order Form and this EULA.

## 10. Export

The Software, including technical data relating thereto, is subject to applicable export control laws and regulations, including the U.S. International Traffic in Arms Regulations (ITAR) and the U.S. Export Administration Regulations (EAR). Licensee shall strictly comply with all applicable export laws and regulations and, in addition to other restrictions in this EULA, Licensee agrees that it will not export, re-export or import the Software, except in accordance with all applicable export laws and regulations and only if permitted under the License terms. Licensee warrants and represents that Licensee, including its Affiliates and Support Contractors, is not (a) affiliated with or a resident of any embargoed or terrorist-supporting country or (b) affiliated with anyone on the U.S. Commerce

Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals.

## 11. Confidentiality

The licensed Subject Matter, including the design and elements of the database tables, as well as any information that is marked confidential and those rights designated proprietary is confidential information, the disclosure of which would harm Peraton.

Confidential Information will be protected and held in confidence by the Receiving Party and will be used for the purposes of this EULA and related internal administrative purposes only. Disclosure of the Confidential Information will be restricted to the Receiving Party's affiliates, employees,

contractors and business partners on a "need to know" basis, provided that they are bound by confidentiality obligations no less stringent than those in this EULA prior to any disclosure.

Confidential Information does not include information that:

- Is already known to Receiving Party at the time of disclosure
- Is or becomes publicly known through no wrongful act or failure of the Receiving Party
- Is independently developed by Receiving Party without benefit of Disclosing Party's Confidential Information
- Is received from a third party which is not under and does not thereby breach an obligation of confidentiality

Each party agrees to protect the other's Confidential Information at all times and in the same manner as each protects the confidentiality of its own proprietary and confidential materials of similar kind, but in no event with less than a reasonable standard of care. A Receiving Party may disclose Confidential Information to the extent required by law, provided that the party required to disclose the Confidential Information provides the original Disclosing Party with notice as soon as reasonably practicable to allow the Disclosing Party an opportunity to respond to such request, and provided further that such disclosure does not relieve Receiving Party of its confidentiality obligations with respect to any other party. These confidentiality restrictions and obligations will remain in effect until the information ceases to be Confidential. If Licensee participates in the Peraton-sponsored group event, this Confidential Information Section shall apply to Confidential Information disclosed by any group participant, and Peraton may provide a copy of this Confidential Information Section to any Disclosing Party seeking to enforce its provisions. Peraton recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

Upon the request of Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party all copies of the Confidential Information and any documents derived from the Confidential Information, or at the Disclosing Party's option, shall certify in writing that all copies of the Confidential Information and derivative documents have been destroyed. The Receiving Party may return any Confidential Information to the Disclosing Party at any time. This obligation to return or destroy materials or copies thereof does not extend to automatically generated computer back up or archival copies generated in the ordinary course of Receiving Party's information systems procedures, provided that Receiving Party shall make no further use of Confidential Information contained in those copies.

## 12. Services

The license fees do not include any maintenance, online help, training, implementation support or other support services. Licensee is required to procure at least one year of Software maintenance under a separate SWMA. The manner and periods in which, and the terms and conditions under which, such maintenance will be performed will be solely set forth in the SWMA and the Order Form incorporating the SWMA.

## 13. Compliance

Licensee shall keep adequate and proper records relating to its use and distribution of the licensed Software pursuant to this EULA. Peraton reserves the right to request that Licensee conduct an internal audit at any time but no more than annually. Following such an audit, Licensee shall deliver to Peraton a certified statement in writing signed by an authorized representative of Licensee, that

Licensee either

(a) has sufficient licenses to permit all usage disclosed by such audit or (b) verifying that it has ordered sufficient licenses to permit all usage disclosed by such audit. Failure to complete a requested audit may result in the termination of this EULA in accordance with the procedures set forth in the Contract Disputes Act.

#### **14. Governing Law**

This EULA shall be interpreted and construed, its performance and any dispute arising hereunder shall be governed, in all respects by the substantive and procedural Federal laws and judicial decisions of the United States.

#### **15. General**

This EULA may be modified or amended solely in writing by both Parties. The provisions of this EULA shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any other provisions. Licensee may not assign or otherwise transfer this EULA or any of the rights granted therein without the prior written consent of Peraton. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver, and no waiver will be effective unless it is in writing and signed by the waiving party. Any provision of this EULA that imposes or contemplates continuing obligations on a party will survive termination of this EULA. This EULA is separate and distinct from any services associated with the Software delivered hereunder.

Payment under this EULA is due and payable within thirty (30) days of the invoice receipt date following the Effective Date of this Agreement. There shall be no right of offset to license fees due under this EULA.

#### **16. Complete and Exclusive**

EACH PARTY ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OUTLINES IN THIS EULA. THE PARTIES AGREE THIS EULA, INCLUDING THE GSA SCHEDULE CONTRACT, ORDER FORM AND ANY WRITTEN MODIFICATIONS MADE PURSUANT TO IT CONSTITUTES THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE TERMS OF THIS EULA BETWEEN THE PARTIES, AND SUPERSEDE ALL PRIOR OR CONTEMPORANEOUS PROPOSALS, ORAL OR WRITTEN, UNDERSTANDINGS, REPRESENTATIONS, CONDITIONS, WARRANTIES, COVENANTS, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS EULA.

THE PARTIES FURTHER AGREE THIS EULA MAY NOT IN ANY WAY BE EXPLAINED OR SUPPLEMENTED BY A PRIOR OR EXISTING COURSE OF DEALING BETWEEN THE PARTIES, BY ANY USAGE OF TRADE OR CUSTOM, OR BY ANY PRIOR PERFORMANCE BETWEEN THE PARTIES PURSUANT TO THIS EULA OR OTHERWISE.

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END USE LICENSE AGREEMENT - ORDER FORM

Licensee Information	
Name:	
Address:	

Business Contact	
Name:	
Office & Cell Phones:	
Email:	

Primary Technical Contact*	
Name:	
Office & Cell Phones:	
Email:	

Alternate Technical Contact*	
Name:	
Office & Cell Phones:	
Email:	

\*The Primary and Alternate Technical Contacts must be knowledgeable in the current Release of the Software, including without limitation Client's operating environment and use and error correction of the Software.

Software Details			
Peraton Software Description	Unit Price	Quantity	Price
	\$		\$
	\$		\$
<b>Total License Fee</b>			\$

Additional Details	
<u>Delivery</u> : Peraton shall deliver the licensed Subject Matter electronically within 30 days of the Effective Date of this Agreement.	
Licensed Location:	
Type of User (Concurrent, Core-Based Server or Named):	
EULA Effective Date:	
Notes (Optional):	

The Parties have caused this EULA to be signed by their duly authorized representatives on the day and year last written below:

**Peraton**  
**PERATON INC.**

**Licensee**

By: \_\_\_\_\_

By: \_\_

Name: \_\_\_\_\_

Name: \_\_

Title: \_\_\_\_\_

Title: \_\_

Date: \_\_\_\_\_

Date: \_\_

**PERATON INC.****SOFTWARE MAINTENANCE AGREEMENT**

This Software Maintenance Agreement (SWMA) is between Peraton Inc., a corporation incorporated under the laws of the State of Maryland, United States of America, by and through its offices at Herndon, Virginia (hereinafter referred to as "Peraton") and Ordering Activity under GSA Schedule contracts identified in the Order Form (hereinafter referred to as "Licensee"). Either or both may be referred to as "Party" or "Parties". This SWMA is effective as of the effective date located on the attached Order Form.

**Definitions**

The definitions listed below pertain to both this SWMA.

- A. **Affiliate**: Any entity the Licensee owns at least a fifty-one percent (51%) or through board of directors' control if a not for profit entity. For Government Licensees, the "Affiliate" definition and provisions shall not apply.
- B. **Confidential Information**: Information, which the Disclosing Party provides, either directly or indirectly, to the Receiving Party in connection with this SWMA. Information includes the software, personal information, or information related to the business of the Disclosing Party. If information is:
  - Tangible Form - clearly marked at the time of disclosure as being confidential
  - Orally or Visually Form - designated at the time of disclosure as confidential
  - Other Form - is reasonably understood to be confidential information, whether or not marked
- C. **Concurrent Users**: The total number of users simultaneously accessing the Software at any given time is limited to those for whom Licensee has paid a License Fee in accordance with the Order Form. If the Licensee has reached capacity of the Concurrent Users, there will not be any additional users able to access the Software until the Licensee has procured additional licenses from Peraton.
- D. **Core**: A core is an individual processor within a CPU.
- E. **Core Based-Server**: The number of Cores is limited to those for whom Licensee has paid a license fee in accordance with the Order Form. An unlimited (until Core capacity is reached) number of authorized users may use the Software, provided the total number of Cores residing on all computers where the Software is installed does not exceed the permitted number of Cores identified on the Order Form. When the Software is installed and distributed across multiple computers, all the Cores in each of these computers count toward to the total number of Cores licensed.
- F. **Documentation**: Technical documentation, release notes, and user manuals for the Baseline Version of the Software.
- G. **Effective Date**: The date the SWMA takes effect. The Effective Date is located in the Order Form.
- H. **End of Life**: The point in time when Northrop will cease to create updates and patches for a particular piece of software.
- I. **End User License Agreement**: An agreement between Peraton and Licensee to provide use of a license for a given period of performance.



- J. Error: Material deviation of the Baseline Version of the Software from its technical documentation.
- K. License Fees: Fees paid for Software Licenses. License Fees do not include Maintenance or Services fees.
- L. License Term: The term for License is unlimited. Whereas the Software Maintenance Agreement will identify a Maintenance Term for a Period of Performance.
- M. License Location: The physical location where the Software is installed on equipment the Licensee owns, leases, or otherwise controls.
- N. Maintenance Fee: Fee paid for Software Maintenance. Maintenance Fees do not include cost of the initial Peraton License or Support Services provided by Peraton.
- O. Maintenance Term: Is identify as a Maintenance Term for a Period of Performance. The Maintenance Term is located in the Order Form.
- P. Named User: The total number of users given a fixed license that is assigned to them in accordance with the Order Form. Each user accessing the Software's functionality is one Named User of the Software, whether or not using Software components to access the Software's functionality, and must be counted towards the number of authorized Named Users.
- Q. Peraton Supported Third Party Software: Third Party Software contained in Peraton's Baseline Software or Upgrades.
- R. Order Form: A form specifying the Licensee Information, Business Contact (e.g., Program Manager, etc.), Primary Technical Contact, Alternate Technical Contact, and Software Details.
- S. Release: A software upgrade that adds new features and corrects Errors.
- T. Services: Baseline Support Services.
- U. Software: The Peraton Software products and any Third Party Software products listed in the Order Form.
- V. Software License: A non-exclusive, non-transferable right to use the Software in a machine-readable form, together with the Documentation, solely for Licensee's internal business.
- W. Software Maintenance Agreement: An agreement between Peraton and Licensee to provide maintenance for a given period of performance.
- X. Subject Matter: The Peraton Software and applicable Documentation.
- Y. Third Party Software: Any third-party Software listed on the Order Form that is produced by a party other than Peraton. This software is not contained in the Baseline Software or Upgrades. Software may include the initial purchase of the license or subsequent maintenance fee.
- Z. Upgrades: New Versions and Release of the Software.
- AA. Version: A major enhancement to the Software that adds substantial new features or other significant changes.

### Commercial Items

The software and documentation provided hereunder are "Commercial Items" as defined by Federal Acquisition Regulation ("FAR") 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation" as defined in FAR 12.212. No other regulation or data rights clause applies to the delivery of this software and documentation to the Government. Accordingly, the terms and conditions of this License govern the Government's use and disclosure of the Software, and supersede any conflicting terms and conditions of any contract pursuant to which the software and documentation is delivered to the Government.

The FAR clauses stated in this section do not apply to Non-Government customers.

## Permitted Use

Licensee may not permit any unauthorized third party to use or access the Software. Licensee may not use the Software in the operation of a service bureau, commercial time-sharing or in any other resale capacity. For purposes of Concurrent Users and Core-Based Server, authorized users are not uniquely identified.

## Proprietary Rights

This Agreement does not convey to Licensee title to or ownership of the Subject Matter or any results of the Services, but only a right of limited use in accordance with the License. The Subject Matter, all results of the Services, and all copies of any of them are proprietary to Peraton and title in each of them, including without limitation, all applicable rights to patents, copyrights, trademarks, confidential information and trade secrets, remains solely in Peraton, and are subject to the terms and conditions of the License. All Upgrades and any results of the Services provided by Peraton under this Agreement will become a part of the Software for the purposes of the License at the time they are provided to Licensee and are hereby licensed to Licensee as part of the Software pursuant to the terms and conditions of the License.

## Limited Warranties

Peraton warrants that the Subject Matter will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Subject Matter written materials accompanying it. Except as expressly set forth in the foregoing, Peraton furnishes the licensed Subject Matter, and

Licensee agrees to accept same, on a strictly "as is" basis. Peraton warrants the Services will be performed in a competent manner consistent with industry standards reasonably applicable to the performance of such Services.

- A. **Software Warranty:** Licensee acknowledges that it is solely responsible for the results obtained from use of the Software. Peraton further warrants that it has not introduced into the Software any feature designed to damage or erase the Software or data. The Software may contain license protection features that limit access to the Software to the use permitted under this SWMA. Licensee shall not circumvent or render inoperative any such protection features. To be valid, a warranty claim must be in writing and submitted to Peraton. If Licensee believes that the Software has Defects, Licensee shall promptly notify Peraton in writing, describe with specificity any such Defect, and provide a listing of output and such other data as may be required by Peraton to reproduce the Defect. Licensee's exclusive remedy and Peraton's sole liability for Software performance under this software warranty will be:
- 1) To use reasonable efforts to correct any such Defects and supply Licensee with a correction as soon as reasonably practicable.
  - 2) If correction or replacement is not reasonably achievable by Peraton, to terminate Licensee's License(s) for the affected Software and refund the License Fee paid upon Licensee's certification that all copies of the Software

have been returned or destroyed.

- B. Warranty Exceptions and Exclusions: The express warranties set forth in this Limited Warranties Section do not apply to errors or malfunctions caused by (a) Licensee's equipment, (b) software not licensed from or approved in writing by Peraton, (c) Misuse, (d) Licensee's failure to use or implement corrections or updates, (e) use of the Software in combination with materials not provided, specified or approved in writing by Peraton, (f) improper installation by Licensee, Support Contractor, or a third party not authorized in writing by Peraton, or (g) any other cause not directly attributable to Peraton. Peraton does not warrant the functions contained in the Software will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error-free. These limited warranties shall be void if Licensee or any third party modifies or changes the Software in any way beyond the scope of the configuration options contained in the Software. In order to receive and maintain these warranties, Licensee must:
- 1) Use the Software in accordance with the Documentation.
  - 2) Use the Software on the hardware and with the operating system for which it was designed.
  - 3) Use only qualified personnel to operate the Software.

Peraton will not be required to maintain compatibility between the Peraton Software and any other software (other than Peraton-supported Third Party Software) except as otherwise agreed in writing.

- C. Disclaimer of Warranties: EXCEPT AS EXPRESSLY SET FORTH IN THIS LIMITED WARRANTIES SECTION AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, PERATON DOES NOT MAKE ANY EXPRESSED, IMPLIED OR STATUTORY WARRANTIES, TERMS, CONDITIONS OR REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

### **Infringement**

Peraton warrants the use of the licensed Subject Matter under this SWMA shall not infringe upon, misappropriate or otherwise violate any property, ownership or proprietary rights of any other person or organization. Upon notice of an alleged infringement, or if, in Peraton's opinion, such a claim is likely, Peraton shall have the right, at its option, to obtain the right to continue the distribution of products, substitute other products with similar operating capabilities, or modify the product so that it is no longer infringing. In the event that none of the above options are reasonably available in Peraton's opinion,

Licensee's sole and exclusive remedy shall be to cease using and to return to Peraton all of the products, and to obtain from Peraton a refund of the fee paid by Licensee for such products. This section states Peraton's entire liability for intellectual property infringement.

### **Limitation of Liability**

- A. Peraton shall have no liability to Licensee for any loss, claim, remedy, suit, action, indirect, incidental or consequential damages, and/or liability under any cause of action whatsoever whether in contract or tort including but not limited to action by agents or employees of Licensee, or property damage based on products liability, strict liability,

concerning any defects, bugs or deficiencies or lack thereof of any nature in the licensed Subject Matter.

- B. Peraton shall not be liable to Licensee for special, indirect, incidental or consequential loss or damage including, without limitation, any punitive damages, lost profits, or lost business opportunity arising out of or in connection with the license granted under this or any business activity of Licensee. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.
- C. Reserved.

**Maintenance Services**

- A. Scope of Services: This SWMA provides the terms and conditions on which Peraton will provide to Licensee. Peraton will provide the Services solely with respect to the unmodified, baseline Software as originally delivered by Peraton and as updated by Upgrades. Software maintenance is comprised of software patches and fixes (to correct latent defects in licensed software) and software updates or incremental software releases (to provide minor improvements to licensed software). In some instances, software maintenance will also include major upgrades or new versions of licensed software. New features or improvements are not customer specific but changes that improve the overall product.
- B. Baseline Support Services: During the Maintenance Term, Peraton will provide the Baseline Support Services described below with respect to the unmodified, baseline Software as originally delivered by Peraton and as updated by Upgrades. Unless otherwise specified in the Order Form, Peraton will provide Baseline Support Services only with respect to the current Release plus two prior Releases of the Baseline Version of the Software.

**End of Life Dates**

<Insert Product Name>	Version Number
<b>Current Release</b>	
<b>First Prior Release</b>	
<b>Second Prior Release</b>	

Performance of the Baseline Support Services is expressly conditioned upon (i) reserved, and (ii) Licensee incorporating each Upgrade into the Software within one hundred eighty days after receiving the Upgrade from Peraton. The Baseline Support Services are as follows:

- 1) Peraton will correct any material deviation of the Baseline Version of the Software from its technical documentation (“Error”). If Licensee determines

during the Term the Baseline Version of the Software contains an Error, Licensee will inform Peraton in writing, in accordance with Peraton's reporting procedures, describing the alleged Error in sufficient detail to allow Peraton to recreate it. Peraton will respond by email or telephone after receiving the request, and will assist Licensee with respect to the Error. Peraton will correct any Error in the Baseline Version of the Software by either (at

Peraton's sole election) providing corrected program code to Licensee or by correcting the Error in the next subsequent Release or Version of the Baseline Version of the Software. If Peraton determines that a suspected Error is attributable to a cause other than a material deviation of the Baseline Version of the Software from its technical documentation, then Licensee will pay for Peraton's work.

- 2) Peraton will provide support for the Baseline Version of the Software to Licensee's Primary Contact and Alternate Contact listed in the order form during the Maintenance Term Period of Performance.
  - 3) Peraton will provide, at no charge to Licensee, any Upgrades to the Software that Peraton develops.
  - 4) Peraton may provide, at no charge to Licensee, upgrades to Third Party Software that are integrated within the baseline software.
  - 5) Peraton will provide and update technical documentation, release notes, and user manuals for the Baseline Version of the Software, as available.
  - 6) Peraton will inform Licensee of any free upgrades that are made available to any third party software products that Licensee obtained from Peraton. Licensee and Peraton will jointly determine whether implementation of any such upgrade is necessary. Peraton will provide Licensee with installation instructions for any upgrade that Licensee and Peraton mutually determine should be implemented. Licensee acknowledges that, the Baseline Support Services do not include any support of, upgrades to or other services relating to any third party products that Licensee obtained from Peraton.
- C. Out-of-Scope Services: The following Out-of-Scope Services are expressly excluded from the scope of the Baseline Support Services provided under this SWMA. If Peraton provides any Out-of-Scope Services at the request of Licensee, Licensee will pay Peraton for the Out-of-Scope Services in accordance with the GSA Schedule Pricelist, if applicable. Out-of-Scope Services include, without limitation:
- 1) Identification and correction of problems other than Errors in the Baseline Version of the Software. This includes but is not limited to (a) installing, integrating or testing Upgrades; (b) performing support necessary due to changes in Licensee's environment; (c) data communications problem solving; (d) developing, supporting or maintaining custom software or application programs (custom systems development, if any, will be governed by a separate agreement between Peraton and Licensee); (e) assisting with interface problems or any assistance with respect to third party software which is not part of the Baseline Version of the Software; (f) integrating Licensee specific functionality into Upgrades to the Baseline Version of the Software; (g) performing support or assisting with problems arising with or related to Licensee's legacy systems;
  - 2) On-site support including support for day-to-day operations and training Licensee personnel in the use of the Software;

- 3) Data entry and conversion including (a) providing assistance or guidance in documenting conversion procedures; (b) performing media or data conversion or conversion cleanup; (c) performing data entry of Licensee data, text or software;
  - 4) Support or maintenance generally attributable to network, system or database administration. This may include but not be limited to (a) performing backup or restoration of Licensee data; (b) tuning databases as required by production loads; (c) assisting with network and infrastructure related issues that negatively affect response times and that do not appear until significant production activity occurs on the system; (d) assisting with any problems arising with or related to Licensee's mainframe computer, underlying operating system or wide area network communications system.
- D. Support Package: The Baseline Support Services for all licensed Software will be covered by the Maintenance Term Period of Performance in the Order Form as defined below.
- 1) The Support Package includes all of the services set forth above in Section B, and additionally:
  - 2) Email, Live Chat, Web and/or Telephone Support. Peraton will provide Customer technical email, live chat, web and/or telephone support for the Software during the hours of 9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, excluding US Government holidays. Peraton's support technician shall only be obligated to respond to Customer's two designated contacts, which Customer may change from time to time by providing written notice to Peraton. Peraton shall use commercially reasonable efforts to respond to the request for support within four business hours of receiving the inquiry from Customer if received during the business hours noted above. If received out of these hours, Peraton will respond to the request for support on the next business day.
- E. Maintenance Support Request: Peraton maintains an incident tracking system to steward receipt of Maintenance Support requests and resolution of problems related to use of Software and to measure performance of Maintenance Support. Peraton will acknowledge all Maintenance Support requests via email or call according to the severity levels defined. Peraton will assign a tracking number and will provide such information to Customer in Peraton's acknowledgment. The Licensee (Technical and Alternate POCs) will provide all information and assistance needed by Peraton to recreate and resolve a problem. The Licensee will assign a severity level assessment to each service request based on the severity level criteria described below. If Peraton disagrees with the severity level assigned to a problem by the Licensee, the parties will mutually reassess the problem in good faith to agree on what severity level to assign a problem. Peraton will notify the Licensee when Peraton has completed resolution of a Maintenance Support request.
- 1) Severity Level 1. A problem has been identified that makes the continued use of one or more functions impossible (or severely restricted) on a critical system and prevents the Licensee from continued production or severely risks critical business operations. Problem may cause loss of data, restrict data availability, or cause



significant financial impact to the Licensee.

- 2) Severity Level 2. A problem has been identified that severely affects or restricts major functionality. The problem is time sensitive and important to long-term productivity but is not causing an immediate work stoppage. No workaround is available and operation can continue in a restricted fashion.
- 3) Severity Level 3. (i) A minor problem that does not have major effect on business operations; or (ii) A major problem for which a Licensee acceptable workaround exists.
- 4) Severity Level 4. A minor condition or documentation error that has no significant effect on the Licensee's operations or additional requests for new feature suggestions that are defined as new functionality in existing Software.

**Standard Level Maintenance Response Times & Resolution Efforts**

<b>Severity Level</b>	<b>Response Time</b>	<b>Resolution Effort</b>
<b>Severity Level 1</b>	Within four business hours of receipt of a service request on weekdays. Incident reports received during the weekends will be handled on Mondays.	Peraton to use best efforts (8 hours x 5 days a week) to verify, diagnose, replicate, and successfully fix the problem as quickly as possible. Incident reports received during the weekends will be handled on Mondays.
<b>Severity Level 2</b>	Within twenty-four hours of receipt of a service request of the day or time the service request is received, excluding weekends.	Peraton to use commercially reasonable efforts during Peraton's Business Day to verify, diagnose, replicate, and fix the problem as quickly as possible.
<b>Severity Level 3</b>	Within two business days of receipt of a service request.	Peraton will use commercially reasonable efforts to verify, diagnose, replicate, and fix the problem within ninety days or within the next release of the Software, whichever comes later.
<b>Severity Level 4</b>	Within five business days of receipt of a service request.	Peraton will notify the Licensee regarding Peraton's plans to correct a minor problem, to address requests for new features, or suggestions for upgraded Software.

**Maintenance Fees and Payment Terms**

- A. Licensee will pay the Baseline Annual Maintenance Price set forth in the Order Form in accordance with the GSA Schedule Pricelist. The Baseline Annual Maintenance Price for each Term is payable in full, and must be paid by Licensee at the time of purchase within thirty days of the invoice receipt date .
- B. If Licensee discontinues maintenance and then later elects to reinstate maintenance, Peraton may elect to reinstate maintenance retroactive to the time that maintenance last ended or was discontinued, at 100% of the then current Baseline Annual Maintenance Fee.
- C. Licensee will pay Peraton for any Out-of-Scope Services and any other services under this SWMA that are not within the scope of the Baseline Support Services. If Peraton's

personnel travel to Licensee's place of business to perform Services pursuant to this SWMA, Licensee will pay Peraton for the travel time and other out-of-pocket expenses of Peraton's personnel in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Licensee shall only be liable for such travel expenses as approved by Licensee and funded under the applicable ordering document.

#### Licensee Resources and Responsibilities

- A. Licensee will provide Peraton with log files, as requested, and with sufficient support and test time on Licensee's computer system to allow Peraton to duplicate any suspected Error, confirm the Error is in the Baseline Version of the Software, and determine that the Error has been corrected.
- B. Licensee will provide Peraton with thirty days' prior written notice of any modifications made by Licensee to the Software. Any technical support or maintenance attributable to such modifications will be deemed to be Out-of-Scope Services.

#### Term and Termination

- A. The term of this SWMA will commence on the effective date the maintenance set forth on the Order Form. The Maintenance Term Period of Performance is listed on the Order Form.
- B. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Peraton shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
- C. If Licensee discontinues and then resumes any Services, Licensee will pay Peraton, in addition to the Maintenance Fee for the new Term commencing on the date the Services are resumed, the entire Maintenance Fee for the period Licensee was not receiving Services.
- D. If the License is terminated, this SWMA will automatically terminate without demand or notice on the effective date of the termination of the License.
- E. Reserved.

#### General

- A. For one year after delivery of an order, or after termination of an SOW, neither party shall solicit for hire as an employee, consultant or otherwise any of the other party's personnel who have had direct involvement with the Licenses or Services or proposal for the Licenses or Services specified in the Order Form or SOW, without the other party's express written consent. However, neither party will be precluded from hiring any employee of the other party who responds to any public notice or advertisement of an employment opportunity or who terminated his/her employment with the other party at least six months previously, provided that the hiring party did not solicit the termination. A party shall not be in breach of this Non-solicitation of Employees Section if those responsible for the solicitation, hiring or retention of the other party's personnel were not aware of these restrictions. However, personnel of either party working on a proposal or

order for any Licenses or Services under this Agreement shall be presumed to know of the restriction.

- B. Dates or times by which Peraton is required to make performance under this SWMA will be postponed automatically to the extent that Peraton is prevented from meeting them by causes beyond its reasonable control in accordance with FAR 52.212-4(f).

**Complete and Exclusive**

EACH PARTY ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OUTLINES IN THIS SWMA. THE PARTIES AGREE THIS SWMA, INCLUDING THE GSA SCHEDULE CONTRACT, ORDER FORM AND ANY WRITTEN MODIFICATIONS MADE PURSUANT TO IT CONSTITUTES THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE TERMS OF THIS SWMA BETWEEN THE PARTIES, AND SUPERSEDE ALL PRIOR OR CONTEMPORANEOUS PROPOSALS, ORAL OR WRITTEN, UNDERSTANDINGS, REPRESENTATIONS, CONDITIONS, WARRANTIES, COVENANTS, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS SWMA.

THE PARTIES FURTHER AGREE THIS SWMA MAY NOT IN ANY WAY BE EXPLAINED OR SUPPLEMENTED BY A PRIOR OR EXISTING COURSE OF DEALING BETWEEN THE PARTIES, BY ANY USAGE OF TRADE OR CUSTOM, OR BY ANY PRIOR PERFORMANCE BETWEEN THE PARTIES PURSUANT TO THIS SWMA OR OTHERWISE.

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**SOFTWARE MAINTENANCE AGREEMENT - ORDER FORM**

Licensee Information	
Name:	
Address:	

Business Contact	
Name:	
Office & Cell Phones:	
Email:	

Primary Technical Contact*	
Name:	
Office & Cell Phones:	
Email:	

Alternate Technical Contact*	
Name:	
Office & Cell Phones:	
Email:	

\* The Primary and Alternate Technical Contacts must be knowledgeable in the current Release of the Software, including without limitation Licensee’s operating environment and use and error correction of the Software.

Software Details			
Peraton Software Description	Unit Price	Quantity	Price
	\$		\$
	\$		\$
<b>Peraton Subtotal</b>			\$
3 <sup>rd</sup> Party Software Description	Unit Price	Quantity	Price
	\$		\$
	\$		\$
<b>3<sup>rd</sup> Party SW Subtotal</b>			\$
<b>Total Maintenance Fee</b>			\$

Additional Details	
Delivery:	Peraton shall deliver the licensed Subject Matter electronically within thirty days of this Agreement's Effective Date.
Licensed Location:	
Type of User (Concurrent, Core-Based Server or Named):	
SWMA Effective Date:	
Maintenance Term Period of Performance:	
Notes (Optional):	

The Parties have caused this Order Form to be signed by their duly authorized representatives on the day and year last written below:

**Peraton**  
**PERATON INC.**

Licensee

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Pivot3, Inc.  
221 W 6th Street, Suite 750  
Austin, TX 78701

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Pivot3, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics,

quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this



Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A – PIVOT3

## END USER LICENSE AGREEMENT

## PIVOT3

This License Agreement (the “Agreement”) is a legal agreement between you (“Ordering Activity” or “End User”) and Pivot3, Inc (“Pivot3”). This Agreement governs your use of the Pivot3 Software, the Pivot3 Management Application(s), and other related software distributed with this Agreement (the “Software”) and the accompanying end-user technical documentation and help files provided by Pivot3 with the Software (the “Documentation”). You must accept the terms of this Agreement before using such Software and Documentation.

If you do not agree to the terms of the Agreement, you are not granted any rights whatsoever in the Software or Documentation. If you are not willing to be bound by these terms and conditions, do not download or install the Software.

**LICENSE.**

**License Grant.** Subject to the terms and conditions of this Agreement, Pivot3 grants to End User a personal, limited, non-exclusive, non-transferable, non-sublicensable right and license to (a) reproduce (solely to download and install) and execute one (1) copy of the Software on a single server controlled by End User solely for End User’s internal business purposes and (b) make one (1) copy of the Software and Documentation solely for backup and/or archival purposes.

**Restrictions.** End User shall not, and shall not permit any third party to: (a) distribute, sell, lease, license, rent, loan, or otherwise transfer the Software or Documentation, with or without consideration;

(b) access or use the Software or Documentation except as expressly permitted above; (c) make available the Software via a timesharing, service bureau, or other arrangement; (d) reverse engineer, decompile, or disassemble the Software or otherwise attempt to derive the source code thereof; (e) modify, or create or develop derivative works based upon, the Software or Documentation, in whole or in part; (f) reproduce the Software or Documentation, except as expressly permitted in Section 1.1(b) above; (g) incorporate the Software into, or combine the Software with, other software not licensed under this Agreement; (h) remove, alter, or obscure any proprietary notices or labels on the Software or Documentation; (i) use the Software or Documentation in violation of any law or regulation; or (j) use the Software or Documentation for purposes of competitive analysis of the Software or the development of a competing software product or service.

**Third Party Software.** Certain items of software included with the Software are licensed from third parties and subject to the terms and conditions provided by such third parties (“Third Party Software”). The Third Party Software is not subject to the terms and conditions of Sections 1.1 and 1.2. Instead, each item of Third Party Software is licensed under the terms of the license that accompanies such Third Party Software. Nothing in this document limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable license for the Third Party Software.

**Additional Software and/or Services.** Except as expressly provided herein, neither Pivot3 nor any of its licensors or suppliers is obligated to provide any maintenance or support services or updates or upgrades to the Software. In the event that Pivot3 does provide End User with updates or upgrades to the Software, the terms and conditions of this Agreement shall apply to End User’s use of any such updates or upgrades.

**PROPRIETARY RIGHTS.** The Software is licensed, not sold. Pivot3 and its licensors retain exclusive ownership of all worldwide copyrights, trade secrets, patents, and all other intellectual property rights throughout the world and all applications and registrations therefore, in and to the Software and Documentation and any full or partial copies thereof, including any additions or modifications thereto. End User acknowledges that, except for the limited license rights expressly provided in this Agreement, no right, title, or interest in the intellectual property in the Software or Documentation is provided to End User, and that End User does not obtain any rights, express or implied, in the Software or Documentation. All rights in and to the Software not expressly granted to End User in this Agreement are expressly reserved to Pivot3 and its licensors. The Pivot3 trademark and other trademarks and logos are the trademarks of Pivot3, its affiliates, and their respective licensors. This Agreement does not permit End User to use any such trademarks.

**RESERVED.****WARRANTY.**

**Performance Warranty.** For a period of ninety (90) days after delivery of the Software to End User (the “Software Warranty Period”), Pivot3 warrants that the Software, when used as permitted under this Agreement and in accordance with the instructions in the Documentation (including use on a computer hardware and operating system supported by Pivot3), will operate substantially as described in the Documentation. Pivot3 does not warrant that End User’s use of the Software will be error-free or uninterrupted. Pivot3 will, at its own expense and as its sole obligation and End User’s exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Software reported to Pivot3 by End User in writing during the Software Warranty Period or, if Pivot3 determines that it is unable to correct the error, Pivot3 will refund to End User all Fees paid for such nonconforming Software, in which case this Agreement and End User’s right to use such Software will terminate.

**Disclaimer.** THE EXPRESS WARRANTIES IN SECTION 4.1 ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE OR DOCUMENTATION, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 4.1, THE SOFTWARE IS PROVIDED “AS-IS” AND WITH ALL FAULTS, AND THE ENTIRE RISK AS TO

SATISFACTORY QUALITY, RELIABILITY, AVAILABILITY, ACCURACY, AND EFFORT IS WITH END USER. END USER ACKNOWLEDGES AND AGREES THAT END USER HAS NOT RELIED ON ANY ORAL OR WRITTEN INFORMATION OR ADVICE, WHETHER GIVEN BY PIVOT3, ITS SUPPLIERS, LICENSORS, AGENTS, OR EMPLOYEES.

**RESERVED.**

**CONFIDENTIAL INFORMATION.** The Software and Documentation and the structure, organization, and source code of the Software, including but not limited to the shell scripts of the Software, are confidential and proprietary information (“Confidential Information”) of Pivot3 and/or its licensors. End User agrees to (a) safeguard such Confidential Information with the same degree of care that End User uses to safeguard its own confidential and proprietary information of a similar nature, but with no less than reasonable care; (b) not disclose or make available such Confidential Information to anyone except End User’s employees having a need to know for purposes related to this Agreement and only insofar as such persons are bound by nondisclosure agreements consistent with these non-disclosure terms; and (c) not use the Confidential Information except to exercise the license rights expressly granted in this Agreement.

**TERM AND TERMINATION.** This Agreement will remain in effect until terminated. End User may terminate this Agreement by removing the Software from End User’s computers, ceasing all use thereof, and destroying all copies of the Software and Documentation and certifying to Pivot3 that it has done so.

**EXPORT CONTROLS.** End User acknowledges and agrees that the Software and Documentation which is the subject of this Agreement may be controlled for export purposes. End User agrees to comply with all United States export laws and regulations including, but not limited to, the United States Export Administration Regulations, International Traffic in Arms Regulations, directives and regulations of the Office of Foreign Asset Control, treaties, Executive Orders, laws, statutes, amendments, and supplement thereto. End User assumes sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any United States export law or regulation.

**U.S. GOVERNMENT END USERS.** The Software is a “commercial item” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein.

**MISCELLANEOUS.** This Agreement, together with the underlying GSA Schedule Contract, Schedule pricelist and applicable purchase orders, is the complete and exclusive agreement between the parties relating to the Software and Documentation, and supersedes all prior or contemporaneous proposals, representations, understandings, or agreements relating thereto, whether oral or written. Software shall be deemed irrevocably accepted by End User upon installation. All waivers must be in writing and signed by both parties. The waiver of a breach of any term hereof will in no way be construed as a waiver of any other term or breach hereof. The headings in this Agreement do not affect its interpretation. This Agreement shall be interpreted without giving effect to any presumptions against the drafting party. Neither party may assign or transfer any of its rights or obligations under this Agreement to a third party without the prior written consent of the other party. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement will remain in full force and effect. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Should you have any question about this Agreement, or if you desire to contact Pivot3, please contact us by mail at Pivot3, Inc, 221 West 6<sup>th</sup> St., Suite 750; Austin, TX 78701.

**PROCORE TECHNOLOGIES, INC.**  
**6309 CARPINTERIA AVE.**  
**CARPINTERIA, CA 93101**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

**Scope.** This Rider and the attached **Procore Technologies, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**PROCORE TECHNOLOGIES  
PROCORE TECHNOLOGIES LICENSE, WARRANTY AND SUPPORT TERMS**



## PROCORE Subscription TERMS

Background. Procure has developed certain construction project management Software (defined below), to which it provides access as part of its Services (defined below). Ordering Activity wishes to enter into this Agreement for a subscription to the Services identified on an Ordering Document. Procure desires to make those Services available to Ordering Activity subject to the terms of this Agreement.

Definitions. The capitalized terms listed below have the following meanings:

"Agreement" means, collectively, the terms of the Ordering Document, the underlying GSA Schedule Contract, the Schedule pricelist, and these terms.

"Authorized User" means any individual who is authorized by virtue of such individual's relationship to, or permissions from, Ordering Activity, to access and use the Services pursuant to Ordering Activity's rights under this Agreement.

"Construction Volume" means the aggregate dollar value of the construction work performed, planned, or put in place by Ordering Activity for all Ordering Activity Projects during a given time period, most often a one-year period.

"Ordering Activity Content" means any content created by or on behalf of Ordering Activity or an Authorized User in connection with the Services and Ordering Activity Projects.

"Ordering Activity Data" means the data provided by Ordering Activity to Procure regarding Authorized Users, including personally identifiable information.

"Ordering Activity Project" means each distinct construction project constrained by a specific scope, budget, and schedule, as specified in a construction project agreement. The Project lifecycle phases for typical construction projects may include initiation, planning, design, demolition, construction, commissioning, and closeout. Procure considers projects in the construction phase to be subject to restriction in number by "project caps" within an Ordering Document that specify how many simultaneous projects may be managed under the terms of a Procure subscription. The construction phase is considered to commence with the bid and award process, and is considered to be complete upon the project owner's written acknowledgement of substantial completion, or the award of a certificate of occupancy from the local regulatory or governmental authority responsible for determining substantial completion.

"Documentation" means the online screen-share demonstration materials, marketing collateral, and other materials in written or electronic form provided to Ordering Activity by Procure in connection with Ordering Activity's subscription to the Services.

"Enhancements" means the following: minor modifications, revisions, and corresponding Documentation with respect to the Services, including the addition of enhancements or improved performance made available by Procure to the Services; however, Enhancements do not include the addition of New Features not originally included as part of the Services described on a particular Ordering Document.

"Maintenance Modifications" means bug fixes, patches, modifications, or revisions to the Services that correct errors therein; however Maintenance Modifications do not include New Features not originally included as part of the Services described on a particular Ordering Document.

"New Features" means those significant technological or service features and/or tools that Procure develops over time, which are offered to Ordering Activities as additional features for a fee and are distinct from included Enhancements and Maintenance Modifications.

"Ordering Document" means the order form document issued by Ordering Activity.

"Services" means Procure's distinct services purchased by Ordering Activity as specified on the Ordering Document.

"Site" means app.procure.com and all associated Procure mobile applications.

"Software" means Procure's software programs and any associated user interfaces and related technology that Procure uses to provide the Services, and that Procure makes available pursuant to this Agreement, including any Enhancements and Maintenance Modifications thereto.

"Subscription Fee" means the agreed-upon subscription fee for the Services as stated on the Ordering Document.

Provision of Service/Responsibilities.

Subscription Rights and Access. Procure grants Ordering Activity the nonexclusive limited-time subscription and right to use the Services in accordance with this Agreement. Further, Procure agrees that Ordering Activity may access and use, and permit each Authorized User to access and use, the Services for its intended purpose, in accordance with the specifications set forth in any Documentation and subject to the terms of this Agreement and the limits on Construction Volume, Projects, and/or other use restrictions specified on each Ordering Document. Procure shall provide to Ordering Activity the necessary passwords, security protocols and policies, and network links or connections to allow Ordering Activity and its Authorized Users to access the Services. Procure shall provide the Ordering Activity and Authorized Users with (a) support for the Services as outlined in Exhibit A, and (b) access to Enhancements and Maintenance Modifications as they become available. Ordering Activity and its Authorized Users are solely responsible for ensuring that they have sufficient and compatible hardware, software, telecommunications equipment, and Internet service necessary for the use of the Site and Services. All other rights not expressly granted in this agreement are reserved by Procure.

Site Updates. Procure may change, modify, upgrade, or discontinue any aspect or feature of the Site in whole or in part. Such changes, upgrades, modifications, additions, or deletions will be effective immediately upon notice thereof, which may be made by posting such changes to the Site. In the event Procure modifies or discontinues any content or feature of the Site which results in reduction of functionality or degradation of the Site, Procure shall provide comparable functionality.

Limitations. Ordering Activity shall not, and shall not authorize or permit any Authorized User to (a) rent, loan, or re-license rights to access and/or use the Services or Software (except as specifically provided herein); (b) copy, modify, disassemble, decompile, or reverse engineer software included as part of the Services; (c) share identification or password codes with persons other than Authorized Users, or permit Ordering Activity's account to be accessed by individuals who are not Authorized Users; (d) access, use, or permit a third party to access or use the Services or Software for purposes of competitive analysis, including the development, provision, or use of a competing software or service or for any other purpose that may be to Procure's detriment or commercial disadvantage; or (e) use the Services in any way not expressly provided for in this Agreement. Ordering Activity shall be responsible for all activities that occur under Ordering Activity's account and for all actions of Ordering Activity or its Authorized Users and both Ordering Activity and Authorized Users shall use the Services in accordance with this Agreement. Ordering Activity shall notify Procure of any unauthorized use of Ordering Activity's passwords or account, or any other breach of security that is known or suspected by Ordering Activity. Ordering Activity and its Authorized Users shall abide by all applicable local, state, and national laws and regulations in connection with their use of the Services. Ordering Activity shall be responsible for any breach of this Agreement by its Authorized Users and agrees to enter into agreements with its Authorized Users that contain terms that impose no less restrictions in all material respects than those imposed on Ordering Activity herein, including, but not limited to, the provisions regarding the use of the Services and protection of Procure's intellectual property.

Ordering Activity Content. Procure will process Ordering Activity Content as instructed by Ordering Activity in order to perform the Services. The Parties acknowledge and agree that the Ordering Activity is at all times the data controller and Procure is a data processor. Ordering Activity represents and warrants that it has all necessary rights in the Ordering Activity Content to grant Procure the right to use, and Ordering Activity hereby grants Procure a non-exclusive, worldwide, royalty-free and fully paid license to use, the Ordering Activity Content as necessary for Procure to provide the Services. All rights in and to the Ordering Activity Content not expressly granted to Procure in this Agreement are reserved by Ordering Activity. Ordering Activity represents and warrants that any Ordering Activity Content hosted by Procure as part of the Services will not (a) infringe or violate the rights of any third party; (b) be deceptive, defamatory, obscene, or unlawful; or (c) contain any viruses, worms, or other malicious computer programming codes intended to

damage Procore's system or data. Ordering Activity acknowledges that any use of the Services by Ordering Activity or Authorized Users contrary to or in violation of the representations and warranties of Ordering Activity in this section constitutes unauthorized and improper use of the Services. Ordering Activity shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Ordering Activity Content. The Parties acknowledge that Procore does not and cannot review all Ordering Activity Content and will not be responsible for such content.

**Ordering Activity Data.** Procore will process Ordering Activity Data as instructed by Ordering Activity in order to perform the Services. The Parties acknowledge and agree that the Ordering Activity is at all times the data controller and Procore is a data processor. Ordering Activity represents and warrants that Ordering Activity shall only provide to Procore the minimum amount of personally identifiable information for each Authorized User to enable the Authorized User to enjoy the benefit of this Agreement. Ordering Activity represents and warrants that Ordering Activity is entitled to transfer relevant Ordering Activity Data to Procore so that Procore may lawfully use, process, and transfer the Ordering Activity Data in accordance with this Agreement on Ordering Activity's behalf and Ordering Activity shall ensure the same; Ordering Activity shall ensure that the relevant third parties, including data subjects, have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation. Ordering Activity acknowledges that Procore is reliant on Ordering Activity for direction as to the extent to which Procore is entitled to use and process the Ordering Activity Data. Procore shall process the Ordering Activity Data only in accordance with the terms of this Agreement and any written instructions given by Ordering Activity. Ordering Activity acknowledges and agrees that the Ordering Activity Data may be transferred or stored in the United States of America in order to carry out the Services and Procore's other obligations under this Agreement. Ordering Activity acknowledges and agrees that the Ordering Activity Data may be shared with third parties only as necessary to provide the Services. Procore will not be liable for any claim brought by an Authorized User arising from any action or omission by Procore, to the extent that such action or omission resulted from Ordering Activity's instructions.

**Ordering Activity Acknowledgement.** As of the effective date listed on the Ordering Document, Ordering Activity acknowledges and agrees that an authorized representative of Ordering Activity has evaluated the features and functionality of the Services in a means satisfactory to Ordering Activity and accepts that the Services have been demonstrably shown to have all of the features and functionality that have been represented to Ordering Activity. Ordering Activity agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features, nor dependent on any oral or written public comments made by Procore regarding future functionality or features.

**Non-Procore Applications.** Procore or third parties may make available third-party products or services ("Non-Procore Applications"). Any use by Ordering Activity and any exchange of data between Ordering Activity and the provider of Non-Procore Applications is solely between Ordering Activity and the applicable provider. Procore does not warrant or support Non-Procore Applications or other non-Procore products or services. If Ordering Activity installs or enables a Non-Procore Application for use with the Services, Ordering Activity hereby grants Procore permission to allow the provider of that Non-Procore Application to access Ordering Activity's data and content as required for the interoperation of that Non-Procore Application with the Services. Procore is not responsible for any disclosure, modification, or deletion of any of Ordering Activity's data or content resulting from access by a Non-Procore Application. The Services may contain features designed to interoperate with Non-Procore Applications. To use such features, Ordering Activity may be required to obtain access to Non-Procore Applications from their providers, and may be required to grant Procore access to Ordering Activity's account(s) on the Non-Procore Applications.

Reserved.

Reserved.

Reserved.

#### Proprietary Rights.

Procore will retain all worldwide rights in the intellectual property in and on the Site, the look and feel of the Site, and all copyrights in and to its content. The Site is copyrighted, trademarked, or otherwise protected, and owned or licensed by Procore. Nothing in this Agreement grants Ordering Activity or any Authorized User an express or implied right to use any Procore intellectual property except as set forth in section 3.1 above. All proprietary rights in the Services, including the Software as well as any aggregate usage statistics, traffic patterns, and other non-personally identifiable data collected by Procore in connection with use of the Services, will be the sole and exclusive property of Procore. Procore retains the royalty-free right to use any suggestions, ideas, feedback, or other recommendations provided by Ordering Activity or Authorized Users relating to the Services. Ordering Activity hereby grants Procore the right to contact Ordering Activity and Authorized Users in connection with their use of the Services unless otherwise stated on the Ordering Document.

#### Warranties and Liability.

**Limited Warranty.** Each Party warrants that it has all necessary authority to enter into and perform its obligations under this Agreement. Procore represents and warrants that (1) the Services will perform in accordance with the Documentation under normal circumstances, and (2) the Services provided hereunder will be performed in a professional manner in accordance with prevailing industry Standards. Provided that Ordering Activity notifies Procore of any breach of the foregoing warranty during the Term, Procore shall, as Ordering Activity's sole and exclusive remedy, provide the support services set forth in Exhibit A to this Agreement. The Services may contain links to sites on the Internet that are owned and operated by third parties. Ordering Activity acknowledges and agrees that Procore is not responsible for the availability of, or the content located on or through, any such external site.

**Disclaimer.** Except as specifically provided in this Agreement, Procore disclaims all other warranties and conditions, express or implied. Procore expressly disclaims any implied warranties, including the warranties of merchantability, fitness for a particular purpose, title and non-infringement. Procore does not warrant that the operation of the Services will be uninterrupted or error-free.

7.3 Reserved.



EXHIBIT A  
SUPPORT AND MAINTENANCE

**Service-Level Agreement.**

Procore has a service-level objective for the Services of 99.9% availability, 24 hours a day, 7 days a week, 365 days a year. Downtime does not include (i) problems caused by factors outside of Procore's reasonable control, and (ii) unavailability of the Services during scheduled maintenance. Scheduled maintenance is communicated to users through "in app" notifications, with a minimum of a 24 hour notice of the scheduled maintenance.

During the Term of this Agreement, the Services will be operational and available to Ordering Activity at least 99.9% of the time in any calendar month (the "Procore SLA"). If Procore does not meet the Procore SLA, and if Ordering Activity meets its obligations under this Procore SLA, Ordering Activity will be eligible to receive the Service Credits described below. This Procore SLA states Ordering Activity's sole and exclusive remedy for any failure by Procore to provide the Service.

**Definitions.** The following definitions shall apply to the Procore SLA.

"Downtime" means the inability to utilize the Services in the normal course of business due to a failure within the Service and not resulting from (i) factors outside of Procore's reasonable control, (ii) Ordering Activity's systems or equipment, or (iii) third party products, services or equipment not supplied by Procore.

"Downtime Period" means a period of ten consecutive minutes of Downtime. Intermittent Downtime for a period of less than ten minutes will not be counted towards any Downtime Periods.

"Monthly Uptime Percentage" means total number of minutes in a calendar month minus the number of minutes of Downtime suffered from all Downtime Periods in a calendar month, divided by the total number of minutes in a calendar month.

"Scheduled Downtime" means those times where Procore notifies Ordering Activity of periods of Downtime at least twenty-four hours prior to the commencement of such Downtime. There will be no more than six hours of Scheduled Downtime per calendar month. Scheduled Downtime is not considered Downtime for purposes of this Procore SLA, and will not be counted towards any Downtime Periods.

Monthly Uptime Percentage	Days of Service
< 99.9% - ≥ 99.0%	3
< 99.0% - ≥ 95.0%	7
< 95.0%	15

**Service Credits.** Service Credit shall be applied against the Service cost. If service is discontinued for any reason, the Service Credit shall be in the form of a rebate at the end of service. Service Credit shall be computed by dividing the number of Days of Service credited by the number 365 and multiplied by the Annual Service GSA Fee set forth in the applicable Ordering Document. In order to receive any of the Service Credits described above, Ordering Activity must notify Procore, within thirty days from the end of the month during which Ordering Activity becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Ordering Activity's right to receive a Service Credit.

**Maximum Service Credit.** The aggregate maximum number of Service Credits to be issued to Ordering Activity for any and all Downtime Periods that occur in a month shall not exceed fifteen days of Service Credit.

**Support.**

During the Term, Ordering Activity and Authorized Users will have access to technical support via telephone, online chat, email, or self-paced online tutorials. Support hours will be 5:00 a.m. to 10:00 p.m. Pacific Time ("PT") Monday through Friday, and 10:00 a.m. to 6:00 p.m. PT Saturday and Sunday, excluding holidays. Support does not include training sessions on the features and functionality of the Services (implementation) or training in computer skills considered prerequisite to an individual's ability to use personal computers, the Internet/World Wide Web, and online software.

Upon Procore's receipt of a support request, Procore will use commercially reasonable efforts to answer questions and provide standard error corrections to known problems. In the event of any problems or errors involving the Services that Procore cannot immediately resolve, Procore will begin working on a resolution to the problem and will work diligently and in a commercially reasonable manner on the problem until it is resolved.

**Data Backup and Return.**

During the Term, Procore shall make commercially reasonable efforts to protect the security of Ordering Activity's data, and shall complete daily data backups of Ordering Activity's data to an archive format that will be kept physically separate from the Procore database and web server hardware. The Services do not replace the need for Ordering Activity to maintain regular data backups or redundant data archives.

Procore contracts with a third-party data center provider to provide essential technology services such as network connectivity to the Internet for the servers running the Services. Personnel access to the data center used by Procore for these Services is restricted, and all entrances and common areas are monitored 24x7 via closed-circuit cameras. Public access to the data center is forbidden. Fire-suppression systems are located in the data center, and power systems in the data center are designed to run uninterrupted even in the event of a total power outage. All servers are supplied with Uninterruptible Power Supply ("UPS") power sources that will continue to run if utility power fails. The UPS power subsystem is fully redundant, with instantaneous fail over in case the primary UPS fails. In the event of an extended power outage, onsite diesel generators can run indefinitely. Generators are regularly tested to ensure functionality in the event of an emergency.

All Ordering Activity Content is the property of the Ordering Activity. Upon restriction, suspension or termination of an Ordering Activity account, Procore will allow Ordering Activity, at no additional cost, to export all of Ordering Activity Content as well any additional data that may be readily exported from the Services to a standard electronic file format. At Procore's sole discretion, an Ordering Activity's area within the Services may be kept active as long as the Ordering Activity is provided with "read-only" access. Ordering Activity shall accept this access as a full substitute for a complete file export of Ordering Activity's project data.

**Maintenance.**

4.1 **Unplanned Outages.** If a system failure should occur that creates an outage of the Services, Procore will utilize all reasonable means to end the outage as soon as possible. Outages due to the Internet, hosting providers, and/or Ordering Activity or Authorized User systems are outside Procore's control and, in such event, Procore will assist the Ordering Activity or Authorized User in the diagnosis but may not be able to resolve the problem.

4.2 **Preventative Maintenance.** From time to time, Procore or its hosting providers will perform preventative maintenance, such as updating servers and routers with security patches, and software upgrades. Procore will provide notice prior to any interruption in the Services and will keep any resulting downtime reasonable. Procore will use all reasonable efforts to perform such maintenance at hours convenient for the Ordering Activity and Authorized Users.

PROLION INC.  
666 3<sup>RD</sup> AVENUE, FLOOR 10  
NEW YORK, NY 10017

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached ProLion Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## END-USER LICENSE AGREEMENT

This Software License and Maintenance Agreement (“Agreement”) is a legal agreement between you, the Licensee (Ordering Activity under GSA Schedule Contracts, hereinafter referred to as “you” or “Customer”) and the GSA Schedule Contractor acting by and through its supplier, ProLion GmbH, Maierhöfen 8/3 2813 Lichtenegg, Austria, as the Licensor (“ProLion”). Please read this Agreement carefully prior to installing or using the Software. By executing a purchase order under the GSA Schedule Contract that incorporates this Agreement, you are agreeing to be bound by the terms of this Agreement and that this Agreement is enforceable like any written agreement negotiated and signed by you.

IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT (a) you may not use the Software and you must terminate the installation of the Software, and (b) you must promptly return to ProLion the uninstalled software copy and all accompanying items together with proof of payment. If you return all items within fifteen (15) days of your receipt of the Software, ProLion will refund in full any license fees and unused maintenance fees paid for the software.

### 1. OBJECT AND SCOPE OF THE LICENSE

1.1. The term “Software” as used in this Agreement includes a) the computer software copy contained in the package or file(s) to which this Agreement is annexed, b) the associated media, c) any related printed or electronic documentation and materials provided by ProLion, d) any replacements, updates, patches, additions, or enhancements thereof or thereto that may be provided by ProLion, and e) any backup copy of any of the foregoing made in compliance with this Agreement.

1.2. Subject to the terms and conditions of this Agreement, ProLion hereby grants you a non-exclusive, non-transferable, non-sublicensable right and license (“License”) to use the Software within the Territory in accordance with the term, licensing configuration and use specified in the applicable purchase document. The term “Territory” as used in this Agreement means, the geographic area for which the Software has been authorized for use by ProLion, and for which the applicable fees have been paid. The Software License granted herein is conditional on timely payment in full of all applicable invoices and charges. If the Software is an upgrade of a previous version of the product, you may use that upgraded Software only in accordance with this Agreement and you must discontinue the use of the previous version.

1.3. If the Software was provided to you on a no-charge basis (a “Trial Version”), then the Software may be used solely for evaluation purposes for the period specified by ProLion at the time of delivery, and if no such period has been specified, then for a period of fourteen (14) days (the “Trial Period”). Trial Version Software may not be used for any development, commercial, or production purpose. If at the end of the Trial Period you do not purchase a license for a Full-Use Version of the Software, you must discontinue all use of the Software and destroy any and all copies of the Software and all of its component parts. The terms and conditions of the license for a 1.4. This Agreement shall also apply to any maintenance, support, training, implementation, consulting or other professional services (collectively, “Customer Support”) that may be provided to Customer by ProLion in accordance with the terms of the separate Customer Support Guide. All Customer Support is provided subject to the limitations on warranties, remedies and liability set forth in this Agreement.

1.5. You will comply with applicable law and ProLion’s instructions regarding the use of the Software. You agree to ensure that your employees and agents who may have access to the Software of the restrictions contained in this Agreement comply with these restrictions at all times.

1.6. The scope and the term of the Software and Customer Support is specified in the respective purchase agreement. ProLion reserves the right to adjust the Software and Customer Support at any time if, in ProLion’s discretion such adjustments are necessary to i) improve security, ii) satisfy legal standards, or iii) do not materially restrict your authorized use of the Software.

1.7. In case the Software contains components by ProLion’s third party suppliers (“Supplier” or “Suppliers”), you herewith agree to such Suppliers’ terms of use. Unless otherwise agreed in writing, you will only use Supplier components as integrated in the Software.

1.8. It is your responsibility to ensure the proper processing of the data and to satisfy all and any requirements with respect to the use, storage and archiving of the data in accordance with applicable laws and regulations

### 2. TRANSFER TO THIRD PARTIES, BACKUPS

2.1. Except for backup or archival copies as provided in Section 2.5. herein, no copies shall be made of the Software, and the Software shall not be transferred to or installed on a computer other than as specified in accordance with the applicable licensing configuration. Furthermore, you may not transfer, sell, assign or otherwise convey the Software to any third party, without ProLion’s prior written consent.

2.2. Software provided by ProLion may require a serialized key for operation (“Serialized Version”). The license for Serialized Version Software is restricted to the specific computer(s), node(s) and/or configurations as specified by ProLion in connection with such key.

2.3. ProLion may provide versions of the Software which do not require a serialized key for operation (“Unserialized Version”). You may install such Unserialized Version Software on any computer within your organization and copy the Unserialized Version Software for the sole purpose of such installation, provided that each and every such installation and copy shall remain subject to all terms and conditions of this Agreement. Unserialized Version Software may only be used by you for testing and development purposes and may be functionally limited to prevent any other use.

2.4. If the applicable Software licensing configuration has been authorized by ProLion for your use with an installation of a cluster-based environment (“Licensed Framework”), this Agreement shall apply to every instance of the Software automatically distributed by the Licensed Framework. You agree that you will not use any RPM or other installation package for the Software provided in connection with installation of the Licensed Framework for installing or operating the Software outside of the Licensed Framework.

2.5. You may make backups and archival copies of the Software (other than Trial Version Software per Section 1.3. hereof or Unserialized Version Software as per Section 2.3. hereof) as required by applicable government regulations or a commercially reasonable archival backup policy, provided that such backups or archival copies are not installed or used on any computer and further provided that all such copies shall bear the original and unmodified copyright, patent and/or other intellectual property markings that appear on the Software.

2.6. You may request permission from ProLion for a transfer of the Software or this Agreement not provided for herein, and such permission shall not be unreasonably withheld, subject to payment of any applicable additional fees. If such permission is granted by ProLion, you may transfer the Software License to: (a) a replacement computer or (b) a transferee of the originally licensed computer, provided that the transferee agrees to and accepts in writing all the terms of this Agreement and that you do not keep any part or copy of the Software as defined in Section 1.1. of this Agreement. You may not under any circumstances effect any transfer authorized under this Section 2.6. or any other provision of this Agreement by means of communication over the Internet or any other public network (other than an initial authorized download of the Software from ProLion).

2.7. If you grant a security interest in the programs and/or any resulting Customer Support, the secured party has no right to use or transfer the programs and/or any work resulting from Customer Support.

### 3. PERMITTED USE AND RESTRICTIONS

3.1. You may use the Software solely as authorized and provided by ProLion for your internal data processing operations. Without limiting your obligations under any other provision herein, or under any applicable law, you further agree to the following additional restrictions on use:

3.2. You will not conceal or remove any markings or notices such as product identification, copyright or any other proprietary restrictions contained in or on the Software.

3.3. You will not make the Software available for commercial timesharing, rental, or any service provider use without ProLion’s prior written consent.

3.4. You will not modify the Software, incorporate it into or with other software, or translate or create any derivative works of any part of the Software or based thereon.

3.5. You will not disclose any information related to the Software (other than information in the public domain not as a result of any act or omission on your part), including, but not limited to diagnostic tests, screen images, printed output, results of any performance or benchmark tests, scripting languages or program interfaces defined by ProLion in connection with the Software, (including, without limitation, Customer-created scripts or routines incorporating or reflecting any portions or elements of such languages or interfaces) to anyone other than the employees and agents specified above, without ProLion’s prior written consent.

3.6. You will not use the Software in any way to develop or market a competing product.

3.7. You will not make any attempt to bypass or disable product serialization, keying, or time limit mechanisms or otherwise circumvent any access controls incorporated in the Software.

3.8. You will not transfer or use the Software outside of the Territory without ProLion’s prior written consent and without paying any applicable additional fees. You agree that, in the event that ProLion consents to such transfer, you will fully comply with all applicable laws and regulations to assure that neither the Software nor any direct product thereof is exported, directly or indirectly, in violation of any laws or regulations.

3.9. You will not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, underlying ideas, underlying user interface techniques or algorithms of the Software by any means whatsoever, directly or indirectly, or disclose any of the foregoing, except to the limited extent you may be expressly permitted to decompile under applicable law in the European Union, if a) it is essential to do so in order to achieve operability of the Software with another software program, b) you have first requested the information necessary to achieve such operability from ProLion, and c) ProLion has not made such information available. ProLion has the right to impose reasonable conditions and to request a reasonable fee before providing such information. Any information supplied by ProLion or obtained by you, as permitted hereunder, may only be used by you for the purpose described herein and may not be disclosed to any third party or used to create any software which is substantially similar to the Software.

3.10. You will take all reasonably necessary precautions to safeguard the Software from any unauthorized disclosure or use by any person.

3.11. You may make the Software and related information available to your employees and agents who require such access and information in order for you to exercise the rights granted to you hereunder, provided that you require



such employees and agents to fully safeguard the Software and information from unauthorized use and disclosure as provided herein. You may not permit or assist any employee, agent, contractor or other person to do anything that is prohibited under this Agreement.

#### 4. INTELLECTUAL PROPERTY

4.1. You acknowledge that the Software and any copies that you are authorized by ProLion to make are the intellectual property of and are owned by ProLion and its Suppliers. You acquire only the right to use the Software and you do not acquire any rights, express or implied, in the Software or media containing the Software other than those specified in this Agreement.

4.2. ProLion and its Suppliers shall retain all rights, title, and interest, including intellectual property rights, in the Software and its media at all times. You agree not to challenge the validity of ProLion's or its suppliers' copyright or trademark rights in and to the Software. All rights in the Software not expressly licensed to Customer herein are reserved to ProLion.

4.3. The structure, organization and code of the Software are the valuable trade secrets and confidential information of ProLion and its Suppliers. You acknowledge that ProLion retains the ownership of all patents, copyrights, trade secrets, trademarks and other intellectual property rights pertaining to the Software, and that ProLion's ownership rights extend to any images, photographs, animations, videos, audio, music, text, and "applets" incorporated into the Software and all accompanying printed materials. You will take no actions which adversely affect ProLion's intellectual property rights in the Software.

4.4. Trademarks shall be used in accordance with accepted practice, including identification of trademark owners' names, and such use of any trademark does not give you any rights in connection with the trademarks.

#### 5. LIMITED WARRANTY AND LIMITATION OF LIABILITY

5.1. ProLion warrants that for 90 days from date of delivery to you: (a) enclosed media (if any) is free of defects in materials and workmanship under normal use; and (b) unmodified Software will substantially perform the functions described in documentation provided by ProLion when operated on the designated licensed configuration in accordance with this Agreement. ProLion and its suppliers do not warrant that: (i) the Software will meet your requirements, (ii) the Software will operate in combinations you may select for use,

(iii) operation of the Software will be uninterrupted or error-free, or (iv) all Software errors will be corrected. Furthermore, the warranty only covers malfunctions that are reproducible and verifiable and does not extend to third party software or other items not provided by ProLion. §924 ABGB (Austrian Civil Code) shall not apply. Therefore, you bear the burden of proof of any covered defects. Abuse, misuse, unskilled operation, transport damage, modifications or unauthorized use or installation, as determined by ProLion, shall void any warranty hereunder. ProLion further warrants that its Customer Support will be performed in a professional and workmanlike manner. If you report an error in the Software within the 90-day period, ProLion shall, at its option, correct the error, provide you with a reasonable procedure to circumvent the error, or, upon return of the Software to ProLion, refund the Software License fees and Maintenance fees if applicable. ProLion will replace any defective media without charge if it is returned to ProLion within the 90-day period. THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Some jurisdictions restrict limitations on how long an implied warranty, guarantee or condition lasts and may grant you additional rights. To the extent that any such restrictions are applicable, the limitations of this Agreement affected by those restrictions (including, without limitation, the duration of express or implied warranties) shall not apply to you. To the extent applicable law requires a minimum warranty period of greater than 90 days, then such minimum period shall be controlling herein in lieu of the 90-day period stated above. You further acknowledge your understanding that if the Software is a Trial Version or an Unserialized Version, ProLion does not make any commitment to you to provide any support, and notwithstanding the foregoing provisions of this paragraph, such Software is provided "AS IS."

5.2. ProLion reserves the right to cease support of the Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability, or other characteristics of the Software.

5.3. THE SOFTWARE IS NOT INTENDED FOR USE IN OR IN CONNECTION WITH THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL EQUIPMENT, MEDICAL DEVICES OR LIFE SUPPORT SYSTEMS, MEDICAL OR HEALTH CARE APPLICATIONS, OR OTHER APPLICATIONS WHERE THE FAILURE OF THE SOFTWARE OR ERRORS IN DATA PROCESSING COULD LEAD TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. PROLION DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH USES AND SHALL NOT BE LIABLE FOR ANY COSTS, LIABILITIES OR DAMAGES RESULTING FROM THE USE OF THE SOFTWARE IN SUCH AN ENVIRONMENT. CUSTOMER AGREES AND REPRESENTS THAT IT WILL NOT USE OR PERMIT OTHERS TO USE THE HARDWARE OR SOFTWARE FOR SUCH PURPOSES.

5.4. CUSTOMER IS SOLELY RESPONSIBLE FOR ITS USE OF THE SOFTWARE AND ANY DATA GENERATED OR PROCESSED BY THE SOFTWARE FOR THE INTENDED USE

5.5. CUSTOMER IS SOLELY RESPONSIBLE FOR DATA SECURITY AND FOR ITS OWN BACKUP POLICY. PROLION SHALL NOT BE LIABLE FOR ANY DATA LOSS DUE TO CUSTOMER'S FAILURE TO CREATE BACKUPS.

5.6. EXCEPT FOR THE LIMITED WARRANTIES DESCRIBED ABOVE, THE SOFTWARE AND ANY CUSTOMER SUPPORT ARE PROVIDED "AS IS", AND TO THE FULLEST EXTENT PERMITTED BY LAW, PROLION AND ITS SUPPLIERS DISCLAIM ANY AND ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE AND CUSTOMER SUPPORT, EXPRESS OR IMPLIED,

INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND/OR FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE OR THE RESULTS OF THE CUSTOMER SUPPORT.

5.7. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF A REMEDY FAILS ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL PROLION OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE PROVISION OF OR FAILURE TO PROVIDE CUSTOMER SUPPORT, EVEN IF PROLION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract, under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733

5.8. ANY LIABILITY FOR DAMAGES IS LIMITED TO INTENT OR GROSS NEGLIGENCE IF AND TO THE EXTENT PROVEN UNDER APPLICABLE LAW. YOU SHALL ASSUME THE BURDEN OF PROOF. PRO LION SHALL HAVE NO LIABILITY FOR SLIGHT NEGLIGENCE. PROLION'S LIABILITY FOR DAMAGES CAUSED BY GROSSLY NEGLIGENT OR INTENTIONAL ACTS BY ITS EMPLOYEES OR AGENTS IS LIMITED BY §1313a ABGB (AUSTRIAN CIVIL CODE) FOR CONDUCT THAT IS STRICTLY NECESSARY FOR PROLION'S PERFORMANCE UNDER THIS AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

5.9. IN ANY EVENT, PROLION'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE.

5.10. Some jurisdictions restrict the exclusion or limitation of warranties and liability, particularly but not limited to consumer protection laws or strict product liability laws, such as the Austrian Product Liability Act (*Produkthaftungsgesetz*). To the extent that such restrictions are applicable, ProLion's liability shall be limited to the greatest extent permitted by law.

ProLion will indemnify and hold you harmless and will have the right to intervene to defend or settle any claim, suit or proceeding brought against you by a third party that is based upon a claim that the content contained in the Software infringes a copyright or violates an intellectual or proprietary right protected by European Union or the Federal law of the United States ("Claim"), but only to the extent the Claim arises directly out of the use of the Software and subject to the limitations set forth in this Agreement except as otherwise expressly provided. You must notify ProLion in writing of any Claim within ten (10) business days after you first receive notice of the Claim, and you shall provide to ProLion at no cost such assistance and cooperation as ProLion may reasonably request from time to time in connection with the defense of the Claim. ProLion shall have control over any Claim (including, without limitation, the selection of counsel and the right to settle on your behalf on any terms ProLion deems desirable in the sole exercise of its discretion). You may, at your sole cost, retain separate counsel and participate in the defense or settlement negotiations. ProLion shall pay actual damages, costs, and attorney fees awarded against you (or payable by you pursuant to a settlement agreement) in connection with a Claim to the extent such direct damages and costs are not reimbursed to you by insurance or a third party, to an aggregate maximum equal to the purchase price of the Software. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If the Software or its use becomes the subject of a Claim or its use is enjoined, or if in ProLion's opinion the Software is likely to become the subject of a Claim, ProLion shall attempt to resolve the Claim by using commercially reasonable efforts to modify the Software or obtain a license to continue using the Software. If in the Claim, the injunction or potential Claim cannot be resolved through reasonable modification or licensing, ProLion, in its sole discretion, may terminate this Agreement without penalty, and will refund to you on a pro rata basis any fees paid in advance by you to ProLion. THE FOREGOING CONSTITUTES PRO LION'S SOLE AND EXCLUSIVE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT. This indemnity does not apply to any infringing combinations arising from the integration or combination of ProLion's Software with other products provided by Customer or any third party.

## 6. DATA PROTECTION

6.1. The Parties shall comply with all applicable data protection laws, in particular the EU General Data Protection Regulation 2016/679 (hereinafter "GDPR"). If requested by ProLion, you will conclude a data processing agreement in accordance with Art. 28 GDPR or any other applicable data protection law.

6.2. You agree that you shall be the responsible person for data processing and the retention of data incidental to your use of the Software within the meaning of any laws or regulations, including but not limited to data protection laws.

6.3. You agree that ProLion may collect and use information provided by you for its performance under this Agreement. You further agree that ProLion may transfer such information to the United States of America or other countries. ProLion agrees not to use such information except as it is necessary for its performance under this Agreement.



## 7. TERMINATION

In the event of any expiration or termination of the License grant herein, you must discontinue any use of the Software and destroy any and all copies of the Software and all of its component parts, except insofar as such parts remain in archival copies made in accordance with Section 2.5., provided that no Production Use shall thereafter be made of such parts and that such parts shall otherwise remain subject to this Agreement for so long as they shall continue to exist. The obligations imposed by Sections 1.4., 1.5., 2.1., 2.6., 3, 4, 6-12, and all other provisions which by their nature are intended to survive termination or expiration of this Agreement shall survive and continue in full force and effect.

## 8. SEVERABILITY, CUMULATIVE REMEDIES

If any provision, or portion thereof, of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted; provided, that notwithstanding such omission, the remaining provisions of this Agreement shall continue in effect and the omitted term shall be replaced with a term consistent with the purpose and intent of this Agreement. Except as otherwise expressly herein provided, the remedies provided hereunder are cumulative and not exclusive, and the fact that this constitutes a binding contractual agreement shall not preclude enforcement of ProLion's legal rights under applicable law, including, but not limited to, intellectual property laws.

## 9. APPLICABLE LAW AND JURISDICTION

9.1. This Agreement shall be governed and construed in accordance with the Federal Laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

9.2. The Parties shall endeavor to amicably settle any disputes arising out of or in connection with the performance of this Agreement. Any disputes shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, and the Contract Disputes Act.

## 10. EXPORT RESTRICTIONS

ProLion's Software is subject to European Union (EU) export control laws and may be subject to export or import regulations in other countries. Customer must comply with all applicable regulations and obtain licenses to export, re-export, or import the Software. Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of ProLion Products and technology and will obtain all required EU and local authorizations, permits, or licenses. ProLion and Customer each agree to provide information, support documents, and assistance as may reasonably be required by the other party in connection with securing authorizations or licenses. Information regarding compliance with EU use, export, re-export, and transfer laws may be located at the following URL: <http://ec.europa.eu/trade/>. Any failure by Customer to comply with its obligations under Section 9.1. shall be deemed a material breach of this Agreement.

## 11. RIGHT TO AUDIT

ProLion has the right to audit your compliance with the authorized use of the Software, the licensed configuration and the licensing terms authorized by ProLion. The audit may include site visits by a ProLion representative. ProLion will provide commercially reasonable notice of any such audit and shall conduct any audit during commercially reasonable business hours, and you agree to provide reasonable cooperation to allow the audit to be properly completed. ProLion shall bear the expense incurred by its representative in conducting the audit.

## 12. Force Majeure

Excusable delays shall be governed by FAR 52.212-4(f).

## 13. INTERPRETATION

The headings provided herein are for convenience only and shall not be considered in the interpretation of this Agreement.

**PROOFPOINT, INC.**  
892 ROSS DRIVE  
SUNNYVALE, CA 94089-1443

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Proofpoint, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**PROOFPOINT, INC.**

**PROOFPOINT, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

The following terms apply to each GSA Customer ("Customer") license of Proofpoint Products from Vinitech Inc, ("Reseller") under the GSA Schedule Contract, "License":

**"Proofpoint Products"** means the appliance, service or software listed in the GSA Schedule Price List by Vinitech Inc., on June 15, 2014, and licensed by Customer from Vinitech pursuant to a GSA Customer Purchase Order ("Order").

**“Documentation”** means the description of the Proofpoint Product(s) contained in the then current Proofpoint Product descriptions provided by Proofpoint to Customer upon purchase or License of the Proofpoint Product(s), and the user manuals relating to the use of the Proofpoint Products that are either provided on-line at the time of Customer’s purchase of the Proofpoint Product, embedded in the Proofpoint Product(s) or delivered with the Proofpoint Product. The Documentation does not contain additional legal terms and conditions, but serves to provide the Customer with user manuals and specifications applicable to the Proofpoint Product.

**“Mailbox”** means a separate account on Customer’s e-mail server for sending or receiving messages or data within Customer’s e-mail system or network. Aliases and distribution lists shall not be counted as separate mailboxes provided each person who has access to such aliases and distribution lists has a separate account on Customer’s email server for the receipt of messages or data within Customer’s e-mail system or network. For Proofpoint Product Social Archive and/or Governance, “Mailbox” hereunder shall be deleted and replaced with **“Named User”**.

**License.** Customer is granted a limited term, non-sublicensable, non-transferable, and nonexclusive license to access or use the Proofpoint Products licensed by Customer from Reseller during the applicable subscription term, for its intended purposes, solely for Customer’s internal business purposes and not for further use by or disclosure to third parties and in accordance with the Proofpoint Products Documentation and any applicable federal laws or regulations. Customer’s right to access or use Proofpoint Products is limited to those parameters set forth in the applicable GSA Customer Purchase Order (“Order”) provided to Proofpoint including, but not limited to the maximum number of Mailboxes (“Licensed Mailbox Count”) (and storage if applicable) for each module and the type of deployment (i.e., SaaS or appliance).

**License Restrictions.**

Customer will not and will not allow any third party to:

copy, modify, or create derivative works of the Proofpoint Products or Proofpoint Products Documentation;

reverse engineer, decompile, translate, disassemble, or discover the source code of all or any portion of the Proofpoint Products except and only to the extent permitted by applicable federal law notwithstanding this limitation, provided however, that in any case, Customer shall notify Proofpoint in writing prior to any such action and give Proofpoint reasonable time to adequately understand and meet the requested need without such action being taken by Customer;

remove, alter, cover or obscure any notice or mark that appears on the Proofpoint Products or on any copies or media;

sublicense, distribute, disclose, rent, lease or transfer to any third party any Proofpoint Products;

export any Proofpoint Products in violation of U.S. laws and regulations;

attempt to gain unauthorized access to, or disrupt the integrity or performance of, a Proofpoint Product or the data contained therein;

access a Proofpoint Product for the purpose of building a competitive product or service or copying its features or user interface;

use a Proofpoint Product, or permit it to be used, for purposes of: (a) product evaluation, benchmarking or other comparative analysis intended for publication outside the Customer’s organization without Proofpoint’s prior written consent; (b) infringement or misappropriation of the intellectual property rights of any third party or any rights of publicity (e.g. a person’s image, identity, and likeness) or privacy; (c) violation of any federal law, statute, ordinance, or regulation (including, but not limited to, the laws and regulations governing export/import control, unfair competition, antidiscrimination, and/or false advertising); (d) propagation of any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; and/or (e) filing copyright or patent applications that include the Proofpoint Product and/or

Documentation or any portion thereof; or  
upload or download, post, publish, retrieve, transmit, or otherwise reproduce, distribute or provide access to information, software or other material which: (i) is confidential or is protected by copyright or other intellectual property rights, without prior authorization from the rights holder(s); (ii) is defamatory, obscene, contains child pornography or hate literature; or (iii) constitutes invasion of privacy, appropriation of personality (e.g. image, identity, likeness), or unauthorized linking or framing.

Proofpoint Products are for use with normal business messaging traffic only, and Customer shall not use the Proofpoint Products for the machine generated message delivery of bulk, unsolicited emails or in any other manner not prescribed by the applicable Proofpoint Products Documentation.

**Customer Responsibilities.** Customer is responsible for (i) all activities conducted under its user logins; (ii) obtaining and maintaining any Customer equipment and any ancillary services needed to connect to, access or otherwise use the Proofpoint Products and ensuring that the Customer equipment and any ancillary services are (a) compatible with the Proofpoint Products and (b) comply with all configuration requirements set forth in the applicable Proofpoint Product Documentation; and (iii) complying with all federal laws, rules and regulations regarding the management and administration of its electronic messaging system, including but not limited to, obtaining any required consents and/or acknowledgements from its employees, agents, consultants and/or independent contractors (collectively referred to as “personnel,” hereinafter) and service providers (if applicable) in managing its electronic messaging system and/or social media systems (as applicable). Customer shall be solely responsible for any damage or loss to a third party resulting from the Customer’s data, or where Customer’s use of the Proofpoint Products are in violation of federal law, or of this Agreement, or infringe the intellectual property rights of, or has otherwise harmed, such third party.

Customer shall (i) take all necessary measures to ensure that its users use Proofpoint Products in accordance with the terms and conditions of this Agreement; and (ii) in the case of any purchase of Proofpoint Secure Share, users of the Proofpoint Product will need to resister to use the Secure Share. For the purposes of Proofpoint’s compliance with its obligations under this Agreement, Customer consents to and authorizes Proofpoint (and its authorized subcontractors, subject to approval by the Contracting Officer) to retain, store and transmit any Customer information and data, subject to Government security requirements that Customer discloses to Proofpoint and pursuant to the normal functioning of Proofpoint Products. Customer information and data includes, but is not limited to (i) all configuration, rules and policies executed at Customer’s direction; (ii) any document management or retention protocols that would delete, track, transmit or route documents or other data; (iii) any requests by Customer or required hereunder for log, access, support-related or other transmissions under this Agreement.

If Customer has elected to route outbound email through the Proofpoint Product via the Software as a Service deployment, such as Proofpoint Security Services or MTA, Customer is responsible for maintaining the outbound email filtering applicable Proofpoint Product configuration settings established by Proofpoint to filter and block emails identified by Proofpoint as either containing a virus or having a spam score of ninety-five (95) or higher.

**Support and Service Levels.** For Customer who purchase Support Services, Proofpoint shall provide Support Services in accordance with Proofpoint's standard support terms which are currently described on Exhibit A.

**Reporting.** Customer is under no obligation to increase the number of Mailboxes its uses for subscription based Proofpoint Products based on Mailbox count. However, Customer understands and agrees that if Customer adds Mailboxes to the Licensed Mailbox Count for such Proofpoint Products that exceed 10 percent of the Licensed Mailbox Count, it will execute a new or modified Order for the additional mailboxes.

Customer shall also audit its Mailbox count on the thirtieth (30th) day preceding each anniversary of the Effective Date. Proofpoint may also itself at any time produce a count of the actual Mailbox Count for verification by Customer. If such number exceeds the Licensed Mailbox Count then Customer will execute a new or modified Order for the additional mailboxes.

**Warranty Disclaimer.** PROOFPOINT DISCLAIMS (AND PROOFPOINT IS ALSO REQUIRED UNDER ITS CONTRACTS WITH ITS SUPPLIERS AND LICENSORS TO STATE THAT SUCH SUPPLIERS AND LICENSORS ALSO DISCLAIM) ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INCLUDING WITHOUT LIMITATION REGULATORY COMPLIANCE, PERFORMANCE, ACCURACY, RELIABILITY, AND NONINFRINGEMENT. PROOFPOINT DOES NOT WARRANT THAT THE ACCURACY OF THE PROOFPOINT PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT NO EMAIL WILL BE LOST OR THAT THE PROOFPOINT PRODUCTS WILL NOT GIVE FALSE POSITIVE OR FALSE NEGATIVE RESULTS OR THAT ALL SPAM AND VIRUSES WILL BE ELIMINATED OR THAT LEGITIMATE MESSAGES WILL NOT BE OCCASIONALLY QUARANTINED AS SPAM. PROOFPOINT DOES NOT WARRANT THE OPERATION OF THE PROOFPOINT PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. PROOFPOINT DOES NOT WARRANT THE ACCURACY OF MANAGEMENT OF ANY DOCUMENT, OR THAT NO DOCUMENT WILL BE LOST. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

**Disclaimer of Liability.** All direct, consequential, incidental, special, punitive, exemplary, and indirect damages (including lost profits and loss of data) are disclaimed on behalf of Proofpoint (and Proofpoint is also required under its contracts with its suppliers and licensors to state in this Agreement that such suppliers and licensors also disclaim such damages herein): the foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Proofpoint's negligence; (2) for fraud; (3) for express remedies requiring the specific type of relief under the law or the contract; or (4) for any other matter for which liability cannot be excluded by law.

**Proofpoint Contract Rights.** Customer agrees that Proofpoint is a party to this Agreement with all rights to enforce such provisions to this Agreement, including but not limited to the right to monitor and reset harmful outbound email configuration settings impacting the Proofpoint platform.

**Law.** This Agreement shall be governed by the federal law of the United States. The Uniform Computer Information Transaction Act shall not apply to this Agreement.

**Force Majeure.** Pursuant to FAR 52.212-4(f), either party shall be liable to the other for any delay or failure to perform hereunder due to circumstances beyond such party's reasonable control, including, acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers, and other acts beyond a party's reasonable control or possession including acts, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees) or third party service disruptions involving hardware, software or power systems and denial of service attacks.

**Open Source Software: Proofpoint Appliance/Software for Customer On-Site Deployment.** Open Source Software may be a component of the Software provided to Customer for on-site deployment. Proofpoint is required by Open Source Software requirements to inform the end user of certain facts, including the following:

"Open Source Software" means various open source software, including GPL software which is software licensed under the GNU General Public License as published by the Free Software Foundation, and components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. Customer may obtain information, (including, if applicable, the source code) regarding the inclusion of Open Source Software in the Software by sending a request, with Customer's name and address to Proofpoint at the address specified in the Order. Customer may redistribute and/or modify the GPL software under the terms of the GPL. A copy of the GPL is included on the media on which Customer receives the Software or included in the files if the Software is electronically downloaded by Customer. This offer to obtain a copy of the source files for GPL software is valid for three (3) years from the date Customer acquired the Appliance Software.

**Proofpoint Product - Email Archive.** Proofpoint has third party technology included in the Proofpoint Product Email Archiving Service for the purpose of extracting text from email attachments. Proofpoint or its reseller or distributor will negotiate third party rights, if any, with the GSA Customer at the time it enters into an Order for the Proofpoint Product Email Archiving Service.

**Termination.** When the end user is an instrumentality of the U.S., recourse against the United



States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Proofpoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Within thirty (30) days after expiration or termination of the License to use the Proofpoint Product, Customer shall: (i) certify in writing to Proofpoint that all copies of the Software, Software Updates, and Documentation in any form, including partial copies or extracts thereof, have been destroyed or returned to Proofpoint, and (ii) retrieve or dispose of Customer data from or within the Proofpoint Products and/or systems. Upon 30 days of termination of the License to use the Proofpoint Product, Customer data in the Proofpoint Product and/or systems may be rendered illegible, deleted or written over, including any back-up Customer data.

**Exhibit A**

**SUPPORT SERVICES PROGRAM FOR PROOFPOINT CUSTOMERS**

**Overview:** The support services described herein are provided by Proofpoint to each GSA Customer (“Customer”) pursuant to the terms and conditions of the applicable license agreement (“Agreement”) between each Customer and Proofpoint or between a Customer and an authorized Proofpoint partner. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement. Subject to customer paying the applicable support related fees, Proofpoint will provide the support described herein.

**Bronze Support** services consist of the following:

**Error Corrections.** Proofpoint shall use commercially reasonable efforts to correct and/or provide a work-around for any error reported by Customer in the current unmodified release of the Software in accordance with the priority level reasonably assigned to such error by Customer.

**Software and Documentation Updates.** Proofpoint shall provide to Customer one (1) electronic copy of all updated revisions to the Documentation and one (1) electronic copy of generally released bug fixes, maintenance releases and updates of the Software (collectively, “Updates”). Updates do not include products or options that are designated by Proofpoint as new products or options which are subject to the execution of a new or modified Order. Software releases are supported for the current and prior release that are designated by a change to the right of the decimal (e.g. 1.1 to 1.2). Prior to discontinuing support services for any Software product line, Proofpoint shall provide at least six (6) months advance notice on the customer support portal.

**Support Requests and Named Support Contacts.** Technical support is available during the technical support hours for the primary support center specified in the an applicable Order. Technical support hours for the Americas are Monday through Friday, 12:00 UTC to 03:00 UTC the following day (e.g. 07:00am to 10:00pm EST during standard time and excluding Proofpoint holidays). Customer may initiate electronic Support requests through Proofpoint’s web-based call submission and tracking system (“CTS”) at any time. Support requests submitted via CTS will be addressed by Proofpoint during the Support hours listed above. Customer will promptly identify two internal resources who are knowledgeable about Customer’s operating environment and operation of the Proofpoint Products (collectively, “Named Support Contacts”). Named Support Contacts will serve as primary contacts between Customer and Proofpoint and are the only persons authorized to interact with Proofpoint Technical Support, including accessing CTS to submit and track cases. All Support requests will be tracked in CTS and Customer can view the status of Customer’s cases on CTS at any time.

**Platinum Support.** In addition to the Bronze support services defined above, , Customer shall receive (i) two additional Named Support Contacts (for a total of four) and Proofpoint shall provide assistance for Priority I errors, as reasonably determined by Proofpoint, 24 hours per day x7 days per week, 365 days per year; (24x4x365) and (ii) a dedicated phone line for submitting cases. Handling of non-Priority I errors will take place during the support

hours specified in Section 1.3 above.

**Premium Support.** In addition to the Bronze and Platinum support services defined above, Customer shall receive (i) two additional Named

<b>GSA CUSTOMER:</b>	<b>PROOFPOINT, INC.:</b>
<b>Individual Signing:</b> [print name]	<b>Individual Signing:</b> [print name]
<b>Signature:</b>	<b>Signature:</b>
<b>Title:</b>	<b>Title:</b>
<b>Signing Date:</b>	<b>Signing Date:</b>
	<b>PROOFPOINT, INC. ADDRESS:</b> 892 Ross Drive Sunnyvale, CA 94089 USA <b>Attn: General Counsel</b>

Support Contacts (for a total of six) and (ii) Proofpoint will assign a designated Technical Account Manager to Customer’s account.

**Global Time Zone Add On.** Any Customer that has purchased support at the Platinum level or higher, may purchase the Global Time Zone Add On. Customer may submit a new Order to receive six additional Named Support Contacts (for a total of twelve) and Proofpoint shall provide assistance for errors of any priority, as reasonably determined by Proofpoint, 24x7, 365 and (ii) a dedicated phone line.

**Named Support Contact Training.** In order to receive support in accordance with the foregoing, within ninety days of the Effective Date, all Named Support Contacts must take and pass exam(s), as applicable and available, to become an "Accredited Engineer" (<http://www.training.proofpoint.com/accruited-engineer/>) for each Proofpoint Product licensed by Customer. If any Named Support Contact fails to pass the exam, Proofpoint may reasonably request that such Named Support Contact be replaced by Customer. Failure to pass the applicable exam(s) may result in limited access to CTS.

### Priority Levels of Errors and Responses

In the performance of Support services, Proofpoint will apply the following priority ratings.

#### Priority I Errors.

A "Priority I Error" means a Software program error which both (i) prevents some critical function or process from substantially meeting the Documentation and (ii) seriously degrades the overall performance of such function or process such that no useful work can be done and/or some primary major function of the Software or Appliance is disabled. Priority I Errors shall receive an initial response within one (1) hour (during standard Support hours referenced above), of the case being submitted to Proofpoint. In addressing a Priority I Error, Proofpoint shall use all reasonable efforts to develop suitable workaround, patch, or other temporary correction to restore operation as soon as possible. Proofpoint's efforts to resolve a Priority 1 Error will include the following: (1) assigning one or more senior Proofpoint engineers on a dedicated basis to develop a suitable workaround, patch, or other temporary correction; (2) notifying senior Proofpoint management that such P1 Error has been reported; (3) providing Customer with periodic reports on the status of corrections; and (4) providing a final solution to Customer as soon as it is available.

#### 2.2 Priority II Errors.

A "Priority II Error" means a Software program error which both (i) degrades some critical function or process from substantially meeting the Documentation and (ii) degrades the overall performance of such function or process such that useful work is hindered and/or some major function of the Software or Appliance is not operating as expected but can be worked-around. Priority II Errors shall receive an initial response within four (4) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

**2.3 Priority III Errors. Description:** A "Priority III Error" means a Software program error which both (i) prevents some non-essential function or process from substantially meeting the Documentation and (ii) significantly degrades the overall performance of the Software or Appliance. Priority III Errors shall receive an initial response within eight (8) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

#### 2.4 Priority IV Errors.

A "Priority IV Error" means a Software program error which prevents some function or process from substantially meeting the Documentation, but does not significantly degrade the overall performance of the Software or Appliance. Priority IV Errors shall receive an initial response within sixteen (16) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to include a workaround, patch, or other temporary correction in the next Software update.

### 3 Customer's Cooperation.

Proofpoint's obligation to provide Support services is conditioned upon the following: (i) Customer's reasonable effort to resolve the problem after communication with Proofpoint; (ii) Customer's provision to Proofpoint of sufficient information and resources to correct the problem, including, subject to Government security requirements, remote access as further discussed in these policies, (iii) Customer's prompt installation of all Software maintenance releases, bug fixes and/or work-arounds supplied by Proofpoint, and (iv) Customer's procurement, installation and maintenance of all hardware necessary to operate the Software. As related to Priority I Errors, Customer shall provide continuous access to appropriate Customer personnel and the Appliance (if applicable) during Proofpoint's response related to the Priority I Error or Proofpoint shall be permitted to change the Priority of the error. During the term of the Support services, for purposes relating to providing Support to Customer and subject to Government security requirements, Proofpoint may obtain information regarding Customer's e-mail communications. Customer agrees that Proofpoint may use any statistical data generated relating to Customer's e-mail subject to Government security requirements. Notwithstanding the foregoing, Proofpoint shall not disclose the source and content of any such e-mail.

### Reproducing Problems; Remote Access.

Support services assistance is limited to Software on platforms that are fully supported, running unaltered on the proper hardware configuration. For a reported error, Proofpoint will use commercially reasonable efforts to reproduce the problem so that the results can be analyzed. Proofpoint's obligation to provide the Support services described herein, including without limitation meeting the response times set forth in Section 2 above, is subject to Customer providing shell or Web-based remote access to Customer's computer system(s) and network subject to Government security requirements. Any such remote access by Proofpoint shall be subject to Proofpoint's compliance with Customer's security and anti-virus procedures and the confidentiality requirements set forth in the license agreement between Proofpoint and Customer. Any delay occasioned by Customer's failure to provide the foregoing remote access shall extend the response time periods set forth in Section 2 accordingly. Proofpoint will notify Customer of any additional work required by the GSA Customer's failure to provide access and will afford the GSA Customer an opportunity to execute a new or modified Order. If Customer fails to provide remote access to its computer system(s) and network and Proofpoint and Customer cannot agree on a mutually satisfactory alternative method of reproducing the problem, Proofpoint shall not be obligated to resolve the problem.

### Support Services Conditions.

**Support Issues Not Attributable to Proofpoint.** Proofpoint is not obligated to provide Support services for problems related to: (i) unauthorized modifications and/or alterations of the Software, (ii) improper installation of the Software by non-Proofpoint personnel, use of the Software on a platform or hardware configuration other than those specified in the Documentation or in manner not specified in the Documentation, or (iii) problems caused by the Customer's negligence, hardware malfunction, or thirdparty software. Proofpoint may offer Support services for problems caused by any of the above pursuant to the execution of a new or modified Order.

### Exclusions from Support services.

The following items are excluded from Support services:



- (a) In-depth training. If a Support request is deemed to be training in nature, and will require an extended amount of time, Customer will be referred to Proofpoint's training or consulting departments.
- (b). Assistance in the customization of an application. Support services do not include providing assistance in developing, debugging, testing or any other application or customization.
- (c). Information and assistance on third party products. Issues related to the installation, administration, and use of enabling technologies such as databases, computer networks, and communications (except an Appliance) are not provided under Proofpoint Support services.
- (d) Assistance in the identification of defects in user environment. If Proofpoint concludes that a problem being reported by a Customer is due to defects in Customer's environment, Proofpoint will notify the Customer. Additional support by Proofpoint personnel to remedy performance issues due to the user environment are categorized as consulting services, which are provided pursuant to the execution of a new or modified Order.
- (e). Installation. Support Services provided herein do not include the use of Proofpoint Support services resources to perform installation of updates or Customer-specific fixes. If Customer wishes to have Proofpoint perform services related to any of the above items, such services will be performed pursuant to a mutually executed Order and a SOW, if required by the Contracting Officer.

**Description of Appliance Support Services.****Services.**

For as long as the Appliance purchased by Customer is under Proofpoint's Appliance warranty Customer shall contact Proofpoint for any and all maintenance and support related to the Appliance. If support for the Appliance purchased by Customer includes on-site support, Proofpoint shall provide or cause to be provided 8-hour response service during the support hours specified in Section 1.3. A technician will arrive on-site subject to Government security requirements, depending on Customer's location and the availability of necessary parts, as soon as practicable (within the business hours specified in Section 1.3) after problem determination. Optional 24x7 service is available subject to Section 1.4.

**Customer Obligations.**

Customer must also install remedial replacement parts, patches, software updates or subsequent releases as directed by Proofpoint in order to keep Customer's Appliance eligible for Support services. Customer agrees to give Proofpoint at least thirty (30) days written notice prior to relocating an Appliance. It is Customer's responsibility to back up the data on Customer's system, and to provide adequate security for Customer's system. Proofpoint shall not be responsible for loss of or damage to data or loss of use of any of Customer's computer or network systems. Subject to Government security requirements, Customer agrees to provide the personnel of Proofpoint or its designee with sufficient, free, and safe access to Customer's facilities necessary for Proofpoint to fulfill its obligations.

**Exclusions.**

Appliance Support services do not cover parts such as batteries, frames, and covers or service of equipment damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by Customer, removal or alteration of equipment or parts identification labels, or failure caused by a product for which Proofpoint is not responsible.

PROSOFT SYSTEMS  
4000 LEGATO RD. SUITE 1100  
FAIRFAX, VA 22033

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Prosoft Systems ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

#### ATTACHMENT A - PROSOFT SYSTEMS

##### 1 PROSOFT SYSTEMS INTERNATIONAL SOFTWARE LICENSE

1.01 SCOPE OF LICENSE. The Software Product is licensed, not sold. This Agreement only gives Ordering Activity some rights to use the Software Product. Prosoft reserves all other rights. Unless applicable law gives Ordering Activity more rights despite this limitation, Ordering Activity may use the Software Product only as expressly permitted in this Agreement. In doing so, Ordering Activity must comply with any technical limitations in the Software Product that only allow Ordering Activity to use it in certain ways. Ordering Activity may not:

work around any technical limitations in the Software Product;

reverse engineer, decompile or disassemble the Software Product, except and only to the extent that applicable law expressly permits, despite this limitation;

remove, minimize, block or modify any notices of Prosoft or its Affiliates or suppliers in the Software Product;

use the Software Product in any way that is against the law;

share, publish or lend the Software Product, or provide the Software Product as a stand-alone hosted as solution for others to use, or transfer the Software Product or this Agreement to any third party; or

License Types:

The scope and term of Ordering Activity's license is limited to the exact license type listed in the Ordering Activity's license certificate, order form, or other documentation provided upon purchase of Software Product.

#### CRM Licensing Requirements

Access to Microsoft Dynamics CRM Organization(s) via a Software Product does not remove or substitute baseline Microsoft Dynamics CRM licensing requirements.

Reserved.

#### 2 RESERVED

#### 3 SUPPORT SERVICES

3.01 Prosoft may, in its sole discretion, provide Ordering Activity with support services related to the Software Product ("Support Services"), as set forth in the applicable ordering document. Any supplemental software code provided as part of the Support Services shall be considered part of the Software Product and subject to the terms and conditions of this Agreement. With respect to technical information Ordering Activity provides to Prosoft as part of the Support Services, Prosoft may use such information for its business purposes, including for product support and development. Prosoft will not utilize such technical information in a form that identifies Ordering Activity. Prosoft will not utilize such information in a manner that discloses Ordering Activity's confidential information to any third party.

#### 4 UPGRADES

4.01 Software Products labeled as upgrades will be available to Ordering Activity upon the purchase of Prosoft annual software maintenance offering as set forth in the applicable ordering document. A Software Product labeled as an upgrade replaces and/or supplements the product that formed the basis for Ordering Activity's eligibility for the upgrade. Any such upgrade shall be considered part of the Software Product subject to the then-current terms and conditions of this Agreement.

#### 5 RESERVED

#### 6 INTELLECTUAL PROPERTY

6.01 Software Products and other deliverables are protected by copyright and other intellectual property rights laws and international treaties. Prosoft (1) does not transfer any ownership rights in any Software Products and (2) reserves all rights not expressly granted to Ordering Activity under this Agreement.

#### 7 WARRANTY & REMEDIES

7.01 Prosoft warrants that the Software Product will perform substantially as described in the applicable Software Product documentation for ninety (90) days from the date it is delivered to Ordering Activity. If it does not and Ordering Activity notifies Prosoft within the warranty term, then Prosoft will, at its option and sole discretion, (1) repair or replace the Software Product or (2) return the price Ordering Activity paid for the Software Product license, and Ordering Activity must uninstall and destroy all copies of the Software Product in its possession.

7.02 The remedies above are Ordering Activity's remedies for breach of the warranties in this section. Ordering Activity waives any breach of warranty claims not made during the warranty period.

7.03 Exclusions. The warranties in this Agreement do not apply to problems caused by accident, abuse or use inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, preview, evaluation, pre-release or beta products, or to components of Software Product that Ordering Activity is permitted to redistribute.

7.04 Disclaimer. Except for the limited warranties above, Prosoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.

7.05 Ordering Activity represents and warrants that it has the legal right and power to enter into this Agreement and that it will not use the Software Product in a way or for any purpose that infringes or misappropriates any third party's intellectual property or personal rights.

**PUPPET LABS**  
**926 NW 13TH AVENUE, #210**  
**PORTLAND, OR 97209**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Puppet Labs** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.



**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

### PUPPET LABS

#### PUPPET LABS LICENSE, WARRANTY AND SUPPORT TERMS

This Software License Agreement ("Agreement") is between Puppet Labs, Inc., a Delaware corporation, ("Puppet Labs") and the Ordering Activity, as defined by GSA Order ADM4800.2H and as revised from time to time ("Customer").

This Agreement includes the terms and conditions of the GSA Schedule Contract, the Order, and the terms and conditions below. It constitutes the complete agreement between the parties regarding the license, support and maintenance of Puppet Enterprise™ software (the "Software"), and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning that same subject matter. Any modifications to this Agreement must be in writing signed by a duly authorized representative of both parties. SHOULD A CONFLICT EXIST BETWEEN THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE TERMS AND CONDITIONS OF THE SCHEDULE CONTRACT, THE SCHEDULE CONTRACT SHALL PREVAIL.

## TERMS AND CONDITIONS

**ORDERS.** "Order" means an order placed by an Ordering Activity under the GSA Schedule Contract.

**LICENSE.** Subject to Customer's compliance with this Agreement, Puppet Labs grants to Customer a worldwide, limited, non-transferrable, revocable license to use the Software for the purpose of managing Customer's IT infrastructure (whether on premises or in the cloud). Customer may reproduce the Software and use multiple copies concurrently, subject to the pricing terms of Section 0.

**SOURCE CODE.** The source code for the Software is available through [www.puppetlabs.com](http://www.puppetlabs.com).

**THIRD PARTY SOFTWARE.** The Software includes components that included under open source licenses from third parties (the "Third Party Software"). The components are listed at <http://www.puppetlabs.com/puppet-enterprise-components-licenses/>.

**RESTRICTIONS.** The Software is licensed, not sold. Customer may not use the Software other than for Customer's internal business purposes, and not for the purposes of any third party nor for any timesharing, rental, Internet, or application service provider, commercial hosting services, or service bureau basis. Other than as granted in Section 0, Puppet Labs and its licensors retain all right, title and interest in and to the Software, including all intellectual property rights, registered or unregistered, and wherever in the world those rights may exist (collectively, the "Puppet Labs Rights"). The Puppet Labs Rights include graphics, user and visual interfaces, design, structure, selection, coordination, expression, "look and feel", arrangement, trademark, logo and other distinctive brand features of the Software (collectively, the "Puppet Labs Marks"). This Agreement does not permit Customer to distribute any product or service using the Puppet Labs Marks, including in connection with any Open Source Components. Puppet Labs shall retain title to all copies of the Software provided to Customer or made by Customer. There are no implied rights or licenses in this Agreement. All rights are expressly reserved by Puppet Labs.

**FEES AND PAYMENT.** Customer will pay a fee for a license subscription and for support and maintenance (per Section 0) based on the number of "Nodes" managed by the Software. A "Node" is a single network-connected device such as a server, desktop, or laptop (virtual machines that have a unique IP address are a separate Node from the physical machine on which they reside).

**SUPPORT; CHANGES.**

**Support and Maintenance.** In connection with any Paid License, Puppet Labs will provide Customer the support and maintenance services ("Support Services") listed on Exhibit A, at either the "Standard" or the "Premium" level, as indicated in the Order. There is no support or maintenance available in connection with a Free License. If Support Services are terminated for any reason, any later reinstatement is at Puppet Labs' sole option, including without limitation the condition that Puppet Labs offers Support Services to its customers generally for the Software in question.

**Modules and Customer Changes.** Puppet Labs makes available certain modules ("Modules") that may be used in connection with the Software, either bundled with the Software (including in an update or upgrade later provided) or through its web site [forge.puppetlabs.com](http://forge.puppetlabs.com) ("Puppet Forge"). Any Modules bundled with the Software are licensed under this Agreement, and any Modules obtained through the Puppet Forge are subject to their accompanying license. Except for Modules that are bundled with the Software or where otherwise indicated by Puppet Labs on the Puppet Forge, Puppet Labs is not liable to support any Module, nor are such Modules covered by the warranty and indemnity terms of this Agreement. Furthermore, to the extent permitted by law, Puppet Labs is not responsible to support, and is not liable under this Agreement in any way (including warranty and indemnity) for, any changes made by Customer to the Software.

**WARRANTY; DISCLAIMER**

**General Warranties.** Puppet Labs represents and warrants that it has sufficient ownership or authority to grant to Customer the license stated in Section 0. Each party represents and warrants that: (a) it has the full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; and (b) it has complied, and will in the future comply, with all applicable laws in connection with the execution, delivery and performance of this Agreement.

**Product Warranty.** Puppet Labs warrants to the Customer that the Software will perform in all material respects as specified in its accompanying documentation under normal use for a period of thirty (30) calendar days from initial receipt or access. Customer's exclusive remedy for a breach of this limited warranty is to return any allegedly defective Software and Puppet Labs, at its option, will replace it or refund any fee paid for the Software. This warranty applies to Third Party Software only to the extent its failure to operate causes the Software to fail to conform to this warranty.

**Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 0, PUPPET LABS DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS WITH RESPECT TO THE SOFTWARE, INCLUDING THE WARRANTIES OF NON-INFRINGEMENT, TITLE, AND THOSE THAT MAY ARISE FROM ANY COURSE OF DEALING OR PERFORMANCE. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 USC 7101-7109.

**LIMITATION OF LIABILITY.** EXCEPT AS STATED BELOW, EACH PARTY'S LIABILITY TO THE OTHER UNDER THIS AGREEMENT IS LIMITED AS FOLLOWS: (A) NEITHER SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS, LOST DATA OR LOST SAVINGS); AND (B) NEITHER SHALL BE LIABLE TO THE OTHER FOR ANY AMOUNTS IN EXCESS OF THE GREATER OF FIVE HUNDRED DOLLARS (\$500) OR THE AMOUNTS PAID BY CUSTOMER TO PUPPET LABS IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. THESE LIMITS DO NOT APPLY TO ANY LIABILITY THAT ARISES FROM ANY CLAIM FOR UNPAID FEES OR THE UNLICENSED USE OF THE SOFTWARE. THESE LIMITS APPLY REGARDLESS OF THE FORM OF CLAIM (CONTRACT, TORT OR OTHERWISE) AND EVEN IF THIS SECTION 0 IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY. IN SUCH EVENT, LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 USC 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75—PRICE REDUCTIONS, CLAUSE 52.212-4(H)—PATENT INDEMNIFICATION, AND GSAR 552.215-72—PRICE ADJUSTMENT—FAILURE TO PROVIDE ACCURATE INFORMATION).

**EXPORT CONTROL.** As required by the laws of the United States and other countries, Customer represents and warrants that Customer: (a) understands that the Software and its components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (b) is not located in a prohibited destination country under the EAR or U.S. sanctions regulations; (c) will not export, re-export, or transfer the Software to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (d) will not use or transfer the Software for use in connection with any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by an applicable arms embargo, unless authorized by the relevant government agency by regulation or specific license; and (e) understands that countries including the United States may restrict the import, use, or



export of encryption products (which may include the Software and the components) and agrees that Customer shall be solely responsible for compliance with any such import, use, or export restrictions.

**GOVERNMENT USERS.** The Software contains "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations and its successors. If acquired by or on behalf of any agency within the Department of Defense, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

**GENERAL.** The laws of the United States govern this Agreement. Customer and Puppet Labs may only amend or modify this Agreement, or waive any right under this Agreement, in a writing that is signed by both parties and that expressly references this Agreement. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions. Headings are used in this Agreement for reference only and will not be considered when interpreting this Agreement. As used in this Agreement, "includes" (or "including") means without limitation.

**Exhibit A**  
**Support and Maintenance Terms**  
 Last Updated on January 15, 2014

These Support Services Terms describe the Support Services which current, compliant subscribers of Support Services are entitled to receive pursuant to the Software License Agreement between Puppet Labs and Customer ("Master Agreement"). These Support Services Terms form an integral part of, and are incorporated by reference into, the Master Agreement. Capitalized terms used in these Support Services Terms without definition have the meaning defined in the Master Agreement.

**1. Definitions.**

"Error" means a malfunction in the Software that can be duplicated by Puppet Labs that materially degrades the use or performance of the Customer business system the Software manages ("Business System").

"Fix" means the repair or replacement of object code versions of the Software to remedy an Error.

"Priority 1 Error" means an Error that renders the Software inoperative or materially degraded with respect to the Business System, such that: (i) the Business System's production system is severely impacted or completely shut down, or (ii) the Business System's system operations or mission-critical applications are down."Priority 2 Error" means an Error that degrades Software performance with respect to the Business System.

"Priority 3 Error" means an Error that affects Customer's use of the Software, but does not materially degrade Software performance with respect to the Business System.

"Technical Contact" means a Customer employee technically familiar and competent with Customer's systems (including the Business System), infrastructure and use of the Software, who: (i) has "read, write and execute" access to the necessary files, English language communication skills and relevant technical knowledge; and (ii) is the designated Customer contact to receive Support Services, and to resolve Customer technical issues related to the Software. The permitted number of Technical Contacts is based on the level of Support Services purchased by Customer, and is set forth in the table below. The first two (2) Technical Contacts are set forth in the applicable Order Form, and may be changed by Customer upon five (5) business days prior written notice to Puppet Labs.

"Update" means subsequent releases of the Software that are generally made available by Puppet Labs to those of its customers using the Software as part of Support Services at no additional charge, other than media and handling charges. Updates may include updated code to accommodate changes in applicable industry standards. Updates shall not include any releases, enhancements, functionality or products which Puppet Labs licenses separately or provides at a fee separate from the Support Services fee. Updates are delivered only on an as if and when available basis.

**2. Support Services Coverage.** Subject to these Support Services Terms, including the table set forth below, and the other terms of the Master Agreement (including, without limitation, Customer's payment of the applicable Support Services fees to Puppet Labs), Puppet Labs will provide Customer with the Support Services described herein for the applicable Software, exclusive of any integration issues between the Software and applicable Third Party Software. Customer shall designate the permitted number of Technical Contacts who are responsible for resolving user issues, and only such Technical Contacts may contact Puppet Labs for the provision of Support Services. Support Services do not include anything not set forth in these Support Services Terms, and specifically excludes support of any hardware or any software other than the Software, including without limitation, any integration with Third Party Software. The Support Services telephone numbers, email address and Puppet Labs Support Portal are located at <http://puppetlabs.com/services/customer-support>.

**3. Software Maintenance.** Puppet Labs will periodically, and in its sole discretion, provide Customer with Fixes to Errors and Updates to Software.

**4. Customer Obligations.** Customer and its Technical Contacts shall: (i) make reasonable efforts to resolve Customer issues or identify issues as relating to the Software prior to contacting Puppet Labs for Support Services; and (ii) provide Puppet Labs with sufficient information and resources to address the Error, and access to the personnel, hardware, and any additional software as reasonably necessary to enable Puppet Labs to reproduce, analyze and address the Error.

**5. Exclusions.** Puppet Labs is not obligated to provide Support Services when: (i) the Software has been changed, modified or damaged; (ii) the issue is caused by Customer's negligence, misuse of software or hardware, hardware malfunction or other causes other than the Software; (iii) the issue is caused by hardware, third party software or infrastructure; or (iv) the version of the Software is not a currently supported version, as determined by Puppet Labs' announced policies regarding the support of such versions.

**6. Free Public Training.** For Premium Support Services customers, during each yearly term of Premium Support Services, Puppet Labs offers upto four (4) placements per Support Services term in public classes offered by Puppet Labs at no additional cost to Customer. These free classes (i) are only offered to current Premium Support Services customers, (ii) must be given directly by Puppet Labs (and not a Puppet Labs training partner), (iii) must be taken during the current Support Services term, and (iv) expire at the end of the current Support Services term and Customer is not entitled to any compensation if the classes are not used. The four (4) class sessions may be taken by up to four individuals, but in no event will Customer receive more than four (4) individual free class sessions per Support Services term (e.g. one individual may take four class sessions or four individuals may each take one class session).

<b>Support Services</b>		
	<b>Standard</b>	<b>Premium</b>
Hours of Coverage	Business Hours (6AM – 6PM, Pacific Standard Time, Monday through Friday, excluding federal US holidays)	24 x 7 x 365 for Priority 1 issues. All other issues: 6AM – 6PM, Pacific Standard Time, Monday through Friday, excluding federal US holidays
Email Support	Yes	Yes
Puppet Labs Support Portal	Yes	Yes

Phone Support	No	Yes
Support Channel	Email support, access to Puppet Labs Support Portal	Email support, phone support, access to Puppet Labs
Number of Cases or Incidents/month	5	Unlimited
Technical Contacts	Up to 4	Unlimited
Feature Request Priority	No	Yes
Updates to the Software	Yes	Yes
Free Public Training	None	For up to 4 Engineers
<b>Response Guidelines</b>		
Priority 1 Error Priority 2 Error	1 Business Hour 4 Business Hours	1 Clock Hour (Initial Contact must be via Phone) 4 Business Hours
Priority 3 Error	12 Business Hours	12 Business Hours

**QlikTech**  
**150 N Radnor Chester Rd**  
**Suite E220**  
**Radnor, PA 19087**

**MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT**  
**GENERAL TERMS AND CONDITIONS**

**Grant of License**

License Grant. Subject to the terms and conditions of this Agreement, the restrictions set forth in the terms of any Applicable Order, and the payment of all applicable license fees, Licensee is hereby granted a perpetual (but subject to termination as provided in Section 6 below), limited, royalty-free, non-exclusive, non-transferable (except as expressly permitted under Section 9.2) license to the Software: (i) to Use, and to permit Authorized Affiliates to Use, the Software solely for their respective internal business operations; and (ii) to reproduce and use, and to permit Authorized Affiliates to reproduce and use, the Documentation in conformity with the Use of the Software. Licensee shall not allow access to the Software (whether through the distribution of copies of Client software or otherwise) by more than the number of customer access licenses specified in the terms of the Applicable Order or Use (or permit the Use of) the Software for any purpose other than for the type of customer access license specified in the terms of the Applicable Order.

Extranet Server. Without limiting any of the terms of Section 1.1, if Licensee purchases a license to the

“QlikView® Extranet Server” Software, Licensee may permit Authorized Third Parties to View the output of the QlikView® Extranet Server, on a remote basis, solely for the purpose of Viewing: (i) information developed by or for Licensee; or (ii) information generated by Licensee on behalf of the Authorized Third Party based on information supplied to Licensee by such Authorized Third Party. Authorized Third Parties shall not be permitted to create, upload, or modify any of the information which they are permitted to View and shall not be granted any rights or licenses in or to the Software in connection therewith.

QlikView® Server. Without limiting any of the terms of Section 1.1, if Licensee purchases a license to the

“QlikView® Server” Software, Licensee may only install QlikView® Server in the geographic territory identified in the terms of the Applicable Order.

Authorized Third Parties; Authorized Affiliates.

In connection with the Use of the Software by any Authorized Third Party or Authorized Affiliate pursuant to

Section 1.1 which are approved in advance in writing by QlikTech, Licensee hereby agrees to: (i) make each such Authorized Third Party and Authorized Affiliate aware of the terms of this Agreement and the Documentation, including, without limitation, the use limitations contained in Sections 1.1.1, 1.1.2 and 1.3; and (ii) monitor and ensure each such Authorized Third Party's and/or Authorized Affiliate's compliance with the terms contained in this Agreement and the Documentation. Any claim for breach by QlikTech of this Agreement based on Use by an Authorized Third Party and/or Authorized Affiliate shall be brought solely by Licensee.

License Restrictions. Except as otherwise expressly permitted in this Agreement (including but not limited to Sections 1.1 and 1.2 above) and except as otherwise permitted by law, Licensee will not, directly or through others including, without limitation, Users: (i) use, copy, maintain, distribute, sell, transfer, market, sublicense, dispose of or rent the QlikTech Materials (except for transfers of the QlikTech Materials to any third party in connection with an assignment by Licensee as expressly permitted under Section 9.2); (ii) reverse assemble, reverse compile, decompile, disassemble or reverse engineer (except to the extent any such restriction is expressly prohibited by applicable law) or attempt to derive the source code for any of the QlikTech Materials or Third Party Materials; (iii) modify, adapt, create derivative works, translate or port any of the QlikTech Materials or combine or merge any part of the QlikTech Materials with or into any other software or documentation; (iv) offer, use, sublicense or otherwise commercially exploit any of the QlikTech Materials as a revenue-generating product or service to any third party, including without limitation for third party training, nor may it use the Software to provide hosting service bureau, commercial time-sharing, rental, or software as a service (SaaS)

services to third parties who are not Users for the purposes of providing those persons or entities with use of the Software; (v) permit the use of the Software or Documentation by third parties, except that Licensee may permit Licensee's Authorized Contractors to Use the Software for Licensee's internal business operations only as described in Section 1.1 above, subject to the limitations on the number and types of customer access licenses specified in the terms of the Applicable Order, so long as Licensee ensures that its Authorized Contractors are bound by appropriate restrictions on nondisclosure of QlikTech's Confidential Information and will Use the Software only in accordance with the Documentation and the terms of this Agreement; (vi) use any Third Party Materials independent of or separated from the QlikTech Materials or (vii) reproduce the Software or Documentation without QlikTech's copyright and trademark notices.

Without limiting any of the foregoing, if a serial number, password, license key or other security device is provided to Licensee for use with the Software, Licensee shall not, and will not permit any of its Authorized Affiliates, Authorized Third Parties and/or Authorized Contractors to, share or transfer such security device with or to any other User of the Software or any other third party.

**Third Party Materials.** The QlikTech Materials may contain or may be distributed or bundled with certain third party software, data, or other materials (collectively, "**Third Party Materials**"). A list of the Third Party Materials, is included in Appendix A of this Agreement.

**1.5. Data Security.** If any QlikTech Materials are accessible through the internet or other networked environment, Licensee shall maintain adequate technical and procedural **access controls and** system security requirements and devices, in connection with the QlikTech Materials, necessary for confidentiality, authorization, authentication and virus detection and eradication.

**1.6. Retention of Rights.** The Software is licensed, not sold. QlikTech and its Affiliates, or their respective suppliers or licensors where applicable, own and retain all right, title and interest in and to the QlikTech Materials, and all of QlikTech's and its Affiliates', or their respective suppliers' or licensors', patents, trademarks (registered or unregistered), trade names, copyrights, trade secrets and QlikTech Confidential Information. Licensee does not acquire any right, title or interest in or to the QlikTech Materials, except as expressly set forth herein, and all such rights are hereby reserved. Licensee will not register, nor attempt to register, any patent or copyright which, in whole or in part, incorporates any QlikTech technology or Intellectual Property Right. In the event that Licensee makes suggestions, improvements or modifications to QlikTech regarding new features, functionality or performance that QlikTech adopts for the QlikTech Materials, such new features, functionality or performance shall be deemed to be automatically assigned and fully paid under this Agreement to, and shall become the sole and exclusive property of QlikTech.

## Services

**Maintenance Services.** Licensee may purchase Maintenance Services specified in the terms of the Applicable Order for Software licensed in accordance with this Agreement for the fees set forth in the terms of the Applicable Order.

**Implementation Services.** Licensee may purchase Implementation Services specified in the terms of the Applicable Order for Software licensed in accordance with this Agreement for the fees set forth in the terms of the Applicable Order.

**Training.** Licensee may purchase Training specified in the terms of the Applicable Order for Software licensed in accordance with this Agreement for the fees set forth in the terms of the Applicable Order.

## Fees and Payment Terms

In consideration of QlikTech's provision of Maintenance Services, Implementation Services or Training, Licensee agrees to pay to the applicable partner, the Maintenance Fees set forth in the terms of the Applicable Order, which payments shall be non-refundable, except as otherwise expressly provided in this Agreement, non-creditable and not subject to any right of offset or suspension.

## Limited Warranty and Disclaimers

**Limited Performance Warranty.** Licensee receives a warranty for a period of one hundred twenty (120) days following the Delivery Date (the "**Warranty Period**"), the initial Version of the Software provided to Licensee hereunder (excluding any subsequent Updates thereto) will perform substantially in accordance with the specifications in the applicable Documentation in effect when such Software is first delivered to Licensee, provided that the Software is operated in accordance with the Documentation. Licensee is deemed to accept the Software on the Delivery Date.

**Exceptions.** Licensee will have no warranty claim made pursuant to Section 4.1 for alleged any defect or problem with the Software, to the extent that the alleged defect or problem: (i) arises out of any use of the Software by Licensee or its Authorized Affiliates not in accordance with the Documentation; (ii) arises out of any modification or alteration of the Software by anyone other than QlikTech or its authorized contractors; or (iii) arises out of the use of the Software in combination with any other software or equipment not specified in the Documentation as supported by QlikTech. If, notwithstanding the foregoing exceptions, QlikTech chooses in its discretion to correct such a defect or problem with the Software, or otherwise provides Software support not covered by the terms and conditions contained in this Section, such defect resolution or

Software support shall be provided only following Licensee's written request and Licensee's approval of all charges, and Licensee shall be invoiced for such support at the rates set forth in the Applicable Order.

**Disclaimers.** Licensee agrees that neither the QlikTech Materials nor QlikTech Services nor the QlikTech Software are warranted to: (i) meet the Licensee's or its Authorized Affiliates' requirements; (ii) operate in combination with other hardware or software, except as expressly specified in the Documentation; (iii) operate without interruption or error; or (iv) will fully resolve any particular request for Maintenance of the Software or that such resolution will meet Licensee's or its Authorized Affiliates' requirements or expectations. THE LIMITED WARRANTIES STATED IN SECTION 4.1 SET FORTH THE ONLY

REPRESENTATIONS AND WARRANTIES CONCERNING THE QLIKTECH MATERIALS AND THE SERVICES. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 4.1 AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE QLIKTECH MATERIALS AND SERVICES AND THIRD PARTY MATERIALS ARE PROVIDED "AS IS", AND QLIKTECH AND ITS AFFILIATES AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED (BY STATUTE, COMMON LAW OR OTHERWISE) INCLUDING, WITHOUT LIMITATION, AS TO THEIR ACCURACY, TIMELINESS, COMPLETENESS, RESULTS, PERFORMANCE, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF QLIKTECH HAS BEEN INFORMED OF SUCH PURPOSE, AND ANY REPRESENTATIONS, EXPRESS OR IMPLIED WARRANTIES OR OTHER TERMS ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE QLIKTECH MATERIALS, INCLUDING, WITHOUT LIMITATION, THEIR FEATURES OR FUNCTIONALITY, THE SERVICES OR ANY THIRD PARTY MATERIALS IN ANY COMMUNICATION WITH LICENSEE ARE FOR INFORMATION PURPOSES ONLY AND DO NOT CONSTITUTE A WARRANTY, REPRESENTATION OR CONDITION.

## Limitation of Liability

### Limitations of Liability.

Except for claims relating to death or bodily injury caused by QlikTech's negligence, QlikTech's and its suppliers' and Affiliates' maximum, cumulative liability for any damages arising under this Agreement, regardless of the form of action, whether in contract, tort (including but not limited to negligence or strict liability) or otherwise, shall in no event exceed the amount of fees received by QlikTech for Licensee's Use of the Software during the twelve (12) months preceding such claim.

Except for Licensee's: (i) non-compliance with the use restrictions contained within this Agreement or violation of any of QlikTech's Intellectual Property Rights; (ii) breach of its obligations under Section 7 (Confidentiality); (iii) breach of its obligations under Section 9.4 (Export Controls); (iv) negligence resulting in death or bodily injury; and/or (v) obligation to pay amounts owed to QlikTech hereunder, Licensee's maximum, cumulative liability for damages arising under this Agreement, regardless of the form of action, whether in contract, tort (including but not limited to negligence or strict liability) or otherwise, shall in no event exceed the amount of fees paid or payable by Licensee set forth in the terms of the Applicable Order.

No Consequential Damages. EXCEPT FOR LICENSEE'S: (I) NON-COMPLIANCE WITH THE USE

RESTRICTIONS CONTAINED WITHIN THIS AGREEMENT OR VIOLATION OF ANY OF QLIKTECH'S INTELLECTUAL PROPERTY RIGHTS; AND/OR (II) BREACH OF LICENSEE'S OBLIGATIONS PURSUANT TO SECTION 7 (CONFIDENTIALITY) OR SECTION 9.4 (EXPORT CONTROLS), IN NO EVENT SHALL EITHER PARTY OR ITS RESPECTIVE LICENSORS OR AFFILIATES BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUES, LOSS OF SAVINGS, GOODWILL, REPUTATION OR DATA, INACCURACY OF ANY DATA, THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR SOFTWARE, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWSOEVER ARISING AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

Nothing herein shall operate to impair or prejudice the U.S. Government's right (a) to recover for fraud or crimes arising out of or relating to this Agreement under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733) or (b) for any other matter for which liability cannot be excluded by law or (c) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

Third Party Beneficiaries. Under no circumstances shall any Affiliate of Licensee, Authorized Third Party, Authorized Contractor, or any other person be considered a third party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement even if such Affiliates of Licensee, Authorized Third Party, Authorized Contractor or other persons are provided access to the QlikTech Materials pursuant to this Agreement.

THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THIS AGREEMENT SHALL

APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. EACH PARTY HEREBY DISCLAIMS ALL LIABILITY OF ANY KIND ON BEHALF OF ITS LICENSORS AND SUPPLIERS.

### **Term and Termination**

Term. This Agreement is effective as of the date specified by the terms of the Applicable Order and shall continue until terminated pursuant to this Section 6 or the terms of the Applicable Order.

Effect of Termination. Upon the effective date of termination of this Agreement according to this Section 6, all rights of Licensee, its Authorized Affiliates, Authorized Contractors and/or Authorized Third Parties with respect to the QlikTech

Materials shall immediately cease to be of any further force or effect. In addition, Licensee shall certify to QlikTech within ten (10) days following the effective date of such termination that Licensee has destroyed or has returned said materials and all copies thereof. Upon termination of this Agreement, each Party shall certify to the other Party within ten (10) days following the effective date of such termination that it has destroyed or returned all Confidential Information of the other Party. Termination of this Agreement shall not limit either Party from pursuing other remedies available to it nor shall such termination relieve Licensee of its obligation to pay all fees that have accrued prior to the effective date of such termination.



## Confidentiality

Each Party will protect the other's Confidential Information from unauthorized distribution and use with the same degree of care that each Party uses to protect its own like information, but in no event less than a reasonable degree of care. Neither Party will make the other Party's Confidential Information available in any form to third parties nor use the other Party's Confidential Information except as necessary to exercise its express rights or perform its express obligations under this Agreement. The receiving Party shall not circulate Confidential Information within its own organization or that of its Affiliates except to those employees or consultants who need to know such information in connection with the business relationship between the Parties. Notwithstanding the foregoing, the receiving Party may disclose Confidential Information of the disclosing Party to the extent that such information is required to be disclosed by the receiving Party as a matter of law; provided that the receiving Party uses all reasonable efforts to provide the disclosing Party with prior notice of such disclosure and to obtain a protective order therefore. The Parties agree to hold each other's Confidential Information in confidence during the term of this Agreement and for a period of five (5) years following any termination of this Agreement, provided, however, that Licensee's obligations hereunder shall survive and continue in effect thereafter with respect to any of QlikTech's Confidential Information that continues to be a trade secret under applicable law. All tangible Confidential Information shall be so marked.

## Audit

During the term of this Agreement and for a period of one (1) year thereafter, upon QlikTech's written request, but no more frequently than once annually, QlikTech or an independent and reputable agent or accounting firm chosen by QlikTech will be provided reasonable access during Licensee's normal business hours to examine Licensee's records and computer equipment as long as all security requirements are met, at QlikTech's expense, for the purpose of auditing Licensee's obligations under this Agreement. QlikTech's written request for audit will be submitted to Licensee at least fifteen (15) days prior to the specified audit date.

## General Provisions

Definitions. Unless otherwise defined herein, all capitalized terms used in this Agreement shall have the meanings given to them in this Section 9.1.

**"Affiliate"** means any entity which controls, is controlled by, or is under common control with QlikTech or Licensee, as applicable, where "control" means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests in such entity, but only for so long as such control exists.

**"Authorized Affiliate"** means any Affiliate, Agency, or Department of Licensee that is authorized by Licensee to Use the Software, but only for so long as it constitutes and Affiliate of Licensee pursuant to Section 9.1.1. Upon request by QlikTech, Licensee agrees to confirm the Affiliate status of any particular entity and/or their authorization to Use the Software.

**"Authorized Contractor"** means any third party contractor(s) or service provider(s) authorized by Licensee to perform services for Licensee.

**"Authorized Third Party"** means any non-employee external third party of Licensee located outside of Licensee's firewall that is authorized by Licensee to Use the QlikView® Extranet Server in accordance with Section 1.1.1.

“**Client**” means a software application that invokes, typically via a network protocol, the software functions provided by one or more Servers.

“**Confidential Information**” means all business information disclosed by one Party to the other in connection with this Agreement. Without limiting the generality of the foregoing, Confidential Information shall include QlikTech Confidential Information. Confidential Information does not include information that: (i) enters the public domain through no fault of the receiving Party; (ii) is communicated to the receiving Party by

a third party under no obligation of confidentiality; (iii) has been independently developed by the receiving Party without reference or access to or use of any Confidential Information of the disclosing Party; or (iv) was in the receiving Party’s lawful possession prior to disclosure and had not been obtained either directly or indirectly from the disclosing Party.

9.1.7. “**Covered Jurisdiction**” means the United States of America.

9.1.8. “**Delivery Date**” means the date on which both the Software specified in the relevant Order Form is available for download by Licensee from QlikTech’s website and QlikTech delivers to Licensee the license keys therefor.

9.1.9. “**Initial Maintenance Period**” means the initial period of Maintenance purchased by Licensee for Software licensed pursuant to this Agreement, which shall commence on the Delivery Date and CONTINUE FOR AN INITIAL PERIOD OF TWELVE (12) MONTHS THEREAFTER.

9.1.10. “**INTELLECTUAL PROPERTY RIGHTS**” MEANS PATENT APPLICATIONS, PATENTS, DESIGN RIGHTS, COPYRIGHTS, TRADEMARKS, SERVICE MARKS, TRADE NAMES, DOMAIN NAME RIGHTS, MASK WORK RIGHTS, SUI GENERIS DATABASE RIGHTS, Rights in know-how and other trade secret rights, and all other intellectual property rights and forms of protection of a similar nature anywhere in the world.

9.1.11. “**Maintenance**” means the maintenance and support services and Updates provided by QlikTech pursuant to its then-current Maintenance policy.

9.1.12. “**QlikTech Confidential Information**” means any confidential or proprietary information which relates to QlikTech’s trade secrets, Software, source code for the Software, the Documentation, services, deliverables, training materials, technology, research, development, pricing, product plans, marketing plans, business information, proprietary materials visual expressions, screen formats, report formats, design features, ideas, methods, algorithms, formulae, and concepts used in the design and all future modifications and enhancements. QlikTech Confidential Information shall also include third party data or information that was disclosed to Licensee under a duty of confidentiality and any information, in whatever form, disclosed or made available by QlikTech to Licensee that relates to or is contained within QlikTech Materials that is not publicly known. All tangible Confidential Information shall be so marked.

9.1.13. “**QlikTech Materials**” means any proprietary materials distributed or made available by QlikTech to Licensee under this Agreement, including but not limited to Software, Documentation, training materials, QlikView® Applications any other deliverables related to Professional Services, but expressly excluding any Third Party Materials.

9.1.14. “**QlikView® Application**” means any program or other application (e.g., script) that is designed to integrate and be used with the Software and that allows Users to request, update and manipulate data which is displayed via the Software and to generate reports and other information from such data.

9.1.15. “**Server**” means the specific installed instance of the Software in execution on a given hardware/operating system combination (e.g., Sun/Solaris).

9.1.16. “**Service Release**” means an accumulation of error corrections (patches) to a current Version of the Software that QlikTech elects to make generally available to its customers who have purchased Maintenance. Service Releases are denoted by the numeral to the right of the decimal point (e.g., Version 11, Service Release 2 (or Version 11.2) compared to Version 11, Service Release 3 (or Version 11.3).

9.1.17. “**Services**” means Maintenance Services, which are provided or made available by QlikTech to Licensee.

9.1.18. “**Software**” means: (i) the initial Version(s) of QlikTech’s proprietary QlikView® software in object code form licensed in accordance with this Agreement; and (ii) subject to Licensee’s payment of Maintenance Fees, any Updates thereto made available to Licensee under this Agreement.

9.1.19. “**Update**” means any error corrections (patches), Service Releases and/or Versions, as the context requires, which QlikTech elects to make generally available to its customers at no additional charge who have a current Maintenance contract with QlikTech.

Updates do not include new or separate products, including, without limitation, any Versions, which QlikTech offers only for an additional fee to its customers generally, including, without limitation, those customers who have purchased Maintenance.

9.1.20. **“Use”** means to install and execute the Software (in object code form only) to request data, update data, administer any field changes to, or in connection with, the Software, as well as to View the number and types of documents specified in the terms of any Applicable Order, including, without limitation, reports and data as displayed via a QlikView® Application within the Software, all subject to the Documentation, license restriction, non-disclosure and other applicable terms of this Agreement.

9.1.21. **“User”** means any individual employee of Licensee, Authorized Contractor, Authorized Affiliate and/or Authorized Third Party, as the context requires.

9.1.22. **“Version”** means an entirely new version of the Software, which includes new as well as improved features and functionalities from the immediately preceding version of the Software, that QlikTech elects to make generally available to its customers who have purchased Maintenance. Versions are denoted by the numeral to the left of the decimal point (e.g. Version 10.0 compared to Version 9.0).

9.1.23. **“View”** means to view reports, data and other information as displayed via a QlikView® Application within the Software, but not to create, update or share any data, or administer any field changes to or in connection with the Software.

9.2. **Assignment.** Licensee will not assign or transfer this Agreement or its rights and obligations under this Agreement to any third party. Any attempt by Licensee to assign this Agreement or its rights and obligations hereunder in violation of this Section 9.2 will be null and void.

9.3. **Entire Agreement.** To the extent permitted by law, this Agreement supersedes all prior or contemporaneous Agreements or representations including, without limitation, all non-disclosure or confidentiality agreements, whether written or oral, concerning the rights and duties of QlikTech and the Licensee of the QlikTech Materials with respect to the Software License. No addition to, or modification of, any provision of this Agreement shall be binding upon QlikTech or the Licensee of the QlikTech Materials unless expressly stated in writing to amend the terms hereof and approved by a duly authorized representative of each Party. Licensee represents and acknowledges that in entering into this Agreement it did not rely on any representations (whether innocent or negligent), warranties, or terms other than those expressly set forth in the Documentation and this Agreement.

#### 9.4. **Export Controls.**

9.4.1. Licensee acknowledges that the license to use the Software hereunder may be subject to the export control laws of the United States which may include, without limitation, the United States Export Administration Regulations, the Trading With the Enemy Act, the International Emergency Economic Powers Act, the Arms Export Control Act and regulations promulgated by the United States Department of the Treasury's Office of Foreign Assets Control (**“OFAC”**), as amended from time to time (collectively, the **“Export Control Laws”**). Licensee agrees that all actions taken by Licensee in furtherance of fulfillment of this Agreement will be in compliance with applicable Export Control Laws. Licensee agrees to comply with all applicable Export Control Laws. In addition, Licensee agrees that it will not export, re-export, transfer or license any Software to any third parties that are named as a “Specially Designated National” or “Blocked Person” as designated by the OFAC (which is currently published under the Internet address <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

9.4.2. If Licensee knows, or if acting reasonably, should know, that the Software could be exported, transferred or licensed in a manner violating applicable Export Control Laws, Licensee shall immediately notify QlikTech. Furthermore, if QlikTech suspects or determines, in its sole and absolute discretion, that any sale of the Software to Licensee may violate applicable Export Control Laws, Licensee acknowledges and agrees that QlikTech may refuse to accept such order for the Software and such refusal will not be a breach of this Agreement.

9.5. **Compliance with Laws.** Licensee agrees at all times to comply with applicable laws and regulations in its performance of this Agreement, including, without limitation, the provisions of the United States' Foreign Corrupt Practices Act (**“FCPA”**).

9.6. **Governing Law and Jurisdiction.** This Agreement is governed by and construed in accordance with U.S. Federal law. Any suit, action or proceeding arising out of or relating to this Agreement shall be resolved by a court or administrative tribunal of competent jurisdiction.

9.7. **Notices.** All notices and other communications given or made pursuant to this Agreement, whether concerning a breach, violation or termination hereof or otherwise will be in writing and will be delivered: (i) by certified or registered mail; or (ii) by an internationally recognized express courier. All notices or other communications to QlikTech shall be addressed to: QlikTech Inc., 150 N. Radnor Chester Road, Suite E220, Radnor, PA 19087; Attention: Legal Department. All notices to Licensee shall be sent to the address specified in the Applicable Order.

9.8. **Relationship between the Parties.** QlikTech is an independent contractor. Nothing in this Agreement shall be construed to create an agency, joint venture, partnership, fiduciary relationship, joint venture or similar relationship between the Parties.

9.9. **Severability.** If any provision of this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect. Any term which refers to a legal concept or process which exists in one jurisdiction

shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this Agreement may apply or to the laws of which a Party may be or become subject.

9.10. Successors. All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and permitted assigns of QlikTech and Licensee.

9.11. Waiver. No term of this Agreement shall be deemed waived and no breach or default excused unless such waiver or excuse shall be in writing and signed by the Party issuing the same.

9.12. Limitation. To the extent permitted by law, no action, regardless of form, arising out of this Agreement may be brought by Licensee more than one (1) year after the cause of action arose.

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Vendor may assign all or part of the Services to be performed hereunder to an affiliate or third party. Vendor retains the right to assign, reassign and substitute personnel at any time.

If the Services are to be performed at Licensee’s location: (i) Licensee will provide, and shall ensure it has all rights to provide, all necessary working facilities (including, but not limited to, meeting facilities, desks, computers, software, hardware, equipment, telephone, facsimile, internet access, and access to the applicable locations, computers and systems of Licensee) to enable Vendor to perform the Services at Licensee’s premises; (ii) Licensee shall ensure that the premises at which the Services are to be carried out comply at all times with all applicable legislation, including but not limited to, any applicable health or safety laws, rules and regulations; and (iii) ensure that its employees and contractors cooperate fully with Vendor in relation to the provision of the

Services;

Only upon agreement by the parties, Licensee may be responsible for all reasonable travel and living expenses incurred in connection with the Services, as per the then current US Government per diem rates.

Services are conducted and billed on an hourly basis. Any reference to Days or Daily is equal to eight (8) hours of service.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CONSULTING SERVICES ARE PROVIDED “AS IS”, AND

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exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from vendor's negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

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Licensee acknowledges and agrees that any Services to be held at Licensee's location have been reserved specifically for Licensee. Any cancellation or rescheduling of any such on-site Services requires at least ten (10) business days' written notice prior to the date of the scheduled Consulting Services. No refunds of any Consulting Services fees will be given for any cancellation made less than ten (10) business days prior to the scheduled Consulting Services date.

### **Exhibit Training Terms**

All Training is subject to space availability and Vendor or its suppliers or subcontractors scheduling requirements. Licensee shall promptly complete all registration or information forms required for any Training. Prior to the start date of any Private or Onsite Training, Licensee shall provide to Vendor the list of participants scheduled to attend such Training. In the event that a scheduled participant is unable to attend a Training Course due to illness or a new role at Licensee, or if such participant is no longer employed by Licensee, Licensee may substitute another participant for such Training Course upon prior written notice to Vendor of such new participant's contact details.

Cancellations and requests by Licensee to reschedule Public Classroom, Private Classroom, Onsite Classroom, Virtual Private or Virtual Public Classroom Training must be made at least ten (10) business days prior to the applicable Training start date in order to receive a full refund (excluding any nonrefundable Vendor expenses). If Licensee has paid by Training Credit Voucher, such refund shall be credited to Licensee's applicable Voucher number. No refunds or credits whatsoever shall be granted in the event such cancellation or rescheduling request is made less than ten (10) business days prior to the start date of the Training.

Each purchased Voucher entitles Licensee to a specific number of training credits ("Training Credit(s)"). Training Credit values are calculated based on the currency and location in which they are purchased, and may only be used by the Licensee entity that purchased such Voucher. Vouchers and Training Credits are non-refundable, and cannot be exchanged for cash or other credits. A Voucher shall be activated by Vendor or its subcontractor upon purchase thereof by Licensee, and shall be identified by a specific Voucher number. Each Training course shall have a cost denominated in Training Credits. All Training ordered, registered for, or attended on Licensee's behalf that are paid for via a Voucher will incur the applicable reduction in the Training Credit value of such Voucher equal to the value of Training courses ordered at the time of registration or payment. If the applicable charge for a Training course is greater than the unused Training Credits connected with Licensee's Voucher, such Training Credits may be applied against such Training course, and Licensee shall be responsible for payment of the additional charges for such Training Course. If Licensee's proposed Private and/or Onsite Classroom Training Course exceeds the maximum number of participants, and Vendor agrees to accommodate any additional participants, an additional amount of Training Credits may be required to be redeemed for such course. Licensee's order of such training constitutes Licensee's acceptance to the use of additional Training Credits for any additional participants.

Voucher Training Credits are valid for a period of twelve (12) months from date of purchase ("Voucher Term"). All Training Credits must be used for Training Courses that occur during the Voucher Term. To the extent permitted by law, and except as otherwise expressly provided herein, at the end of the Voucher Term, any remaining, unused Training Credits under the applicable Voucher

number shall expire and shall be forfeited. No refunds shall be provided for any remaining, unused Training Credits following expiration of the Voucher Term. Vendor and its subcontractors are not responsible for a lost, expired, or invalid Voucher number. In order to obtain a replacement, Licensee must provide valid proof of purchase. Licensee shall have no right to transfer or assign any Voucher or Training Credits to any affiliate or third party.

Vendor reserves the right to reschedule or cancel a Training due to low enrollment or if necessitated by an emergency or other unforeseen circumstances. Licensee shall receive full credit for such course, which may be used before the expiration of the applicable Voucher Term or within ninety (90) days following the date of Vendor's notice of cancellation or rescheduling, whichever is later. Vendor and its subcontractors shall not be liable for non-refundable travel arrangements made by Licensee in the event of a course rescheduled or cancelled by Vendor.

If Licensee attends Training at a Vendor or its subcontractor location or training center, Licensee shall be responsible to comply with all of policies and procedures that have been identified to Licensee, including but not limited to health and safety, access to equipment and systems, and confidentiality (collectively, "Policies" or individually, a "Policy"). Vendor reserves the right to remove from any Training or refuse to admit to any Training any participant who is not in compliance with any Policy. Licensee agrees to provide timely feedback to Vendor following completion of each Training event, which may include satisfaction forms, customer surveys or evaluations (collectively,

"Feedback"). To the extent that Licensee provides any Feedback or any other suggestions, data, information, comments or ideas with respect to the products and services (individually and collectively "Contributions"), Licensee acknowledges and agrees that any and all Contributions made by Licensee or any of its participants shall be deemed the confidential and proprietary property of Vendor's licensor, QlikTech. . Licensee expressly assigns, transfers and conveys all right, title and interest in and to the Contributions to QlikTech. Licensee agrees that QlikTech and its designees will be free to use, copy, modify, create derivative works, publicly display, disclose, distribute, license and sublicense through multiple tiers of distribution and licensees, incorporate and otherwise use and exploit the Contributions, including derivative works thereto, for any and all commercial and non-commercial purposes, without any liability or obligation to Licensee whatsoever.

If required for any Training, Vendor shall provide the applicable participants with an evaluation version of QlikTech's proprietary QlikView software to use during a live public or private classroom Training Course for instructional purposes only (the "Training Software") and such right to use the Training Software shall automatically terminate upon conclusion of the applicable Training Course. Attendance at a Training does not entitle any Licensee or participant to any license whatsoever to any QlikView Software.

The QlikView On-Demand Technical Library is accessible only by the purchase of a twelve (12) month QlikView On-Demand Technical Library License (the "Technical Library License"). If Licensee has selected a Technical Library License, then subject to Licensee's compliance with these terms, Vendor grants to Licensee a personal, limited, non-assignable, time-limited, non-exclusive, and non-transferable license, without the right to sublicense, to use the Technical Library License solely for Licensee's personal training and education. The term of the Technical Library License shall commence on the date of Vendor's email confirmation of the purchase of such license and shall automatically terminate twelve (12) months following such date.



In connection with Training, Vendor may distribute to participants QlikTech-branded Training materials, in printed form or other medium

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**6.4 SOLE AND EXCLUSIVE REMEDY.** THIS SECTION 6 STATES QLIK'S SOLE AND ENTIRE OBLIGATION AND LIABILITY, AND LICENSEE'S AND ITS AFFILIATES' SOLE AND EXCLUSIVE RIGHT AND REMEDY, FOR INFRINGEMENT OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS.

## **7. CONFIDENTIALITY**

Each Party will hold in confidence the other Party's Confidential Information and will not disclose or use such Confidential Information except as necessary to exercise its express rights or perform its express obligations hereunder. Any Party's disclosure of the other Party's Confidential Information may be made only to those of its employees or consultants who need to know such information in connection herewith and who have agreed to maintain the Confidential Information as confidential as set forth herein. Notwithstanding the foregoing, a Party may disclose the other Party's Confidential Information to the extent that it is required to be disclosed in accordance with an order or requirement of a court, administrative agency or other governmental body, provided that such Party, to the extent permitted by law, provides the other Party with prompt notice of such order or requirement in order that it may seek a protective order. Each Party's confidentiality obligations hereunder will continue for a period of five (5) years following any termination of this Agreement, provided, however, that each Party's obligations will survive and continue in effect thereafter with respect to, and for so long as, any Confidential Information continues to be a trade secret under applicable law. The Parties acknowledge and agree that the Qlik Products and all pricing information shall be treated as the Confidential Information of Qlik. Qlik recognizes that U.S. Government agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which can result in certain information being released, despite being identified as "confidential," subject to procedural requirements of the Act which include notice, the right to present arguments, and the right to appeal a disclosure decision.

## **8. TERM AND TERMINATION**

**8.1. Term.** This Agreement shall become effective as of the date the Parties execute an Order Form and shall remain in effect until terminated (i) pursuant to a breach as set forth in Section 8.3, or (ii) automatically upon expiration of all rights to use any Qlik Products pursuant to one or more Order Forms.

**8.2.** Reserved.

**8.3. Termination for Breach or Insolvency.** (a) If the Licensee is not an agency of the U.S. Government, either Party may terminate this Agreement or any applicable Order Form, individual Software licenses, subscriptions or Statements of Work (without resort to court or other legal action) if the other Party: (i) fails to cure a material breach within thirty (30) days (ten (10) days in the case of non-payment by Licensee) after written notice of such breach, provided that Qlik may terminate this Agreement immediately upon any breach of Section 1.4; (ii) terminates or suspends its business without a successor; (iii) becomes insolvent, admits its inability to pay its debts as they become due, makes an assignment for the benefit of creditors, or becomes subject to control of a trustee, receiver or similar authority; or (iv) becomes subject to any bankruptcy or insolvency proceeding. (b) When the End User is an agency or instrumentality of the U.S. government, any alleged breach of this Agreement must be brought as a dispute under the Contract Disputes Act or pursuant to other federal laws or regulations conferring jurisdiction over the matter at issue. During any legal dispute, Qlik shall proceed diligently with performance of this Agreement, pending final resolution.

**8.4. Effect of Termination.** Upon termination of this Agreement or any Qlik Product license, Licensee shall: (i) immediately cease using the applicable Qlik Products, including the Software API and Documentation; and (ii) certify to Qlik within thirty (30) days after expiration or termination that Licensee has destroyed or has returned to Qlik all copies of the applicable Software, any associated license keys, the Documentation and all other Qlik Confidential Information in its possession. Termination of this Agreement or any licenses shall not prevent either Party from pursuing all available legal remedies, nor shall such termination relieve Licensee's obligation to pay all fees that are owed as of the effective date of termination. All provisions of this Agreement relating to Qlik's ownership of the Qlik Products, limitations of liability, disclaimers of warranties, confidentiality (for the time periods specified in this Agreement), waiver, audit and governing law and jurisdiction, will survive the termination of this Agreement.

## 9. GENERAL PROVISIONS

**9.1. Definitions.** Unless defined elsewhere in this Agreement, the capitalized terms utilized in this Agreement are defined below.

**9.1.1 "Affiliate"** means, with respect to a Party, any entity which controls, is controlled by, or is under common control with such Party, where "control" means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests in such entity, but only for so long as such control exists.

**9.1.2 "Agreement"** means this Qlik User License Agreement and any Order Form(s) and Statement(s) of Work between Qlik and Licensee that reference it.

**9.1.3 "Authorized User"** means an employee or independent contractor of the Licensee or Licensee's Affiliate, who has been authorized by Licensee to use the Qlik Products in accordance with the terms and conditions of this Agreement and has been allocated a license for which the applicable fees have been paid.

**9.1.4 "Confidential Information"** means non-public information that is disclosed by or on behalf of a Party under or in relation to this Agreement that is identified as confidential at the time of disclosure or should be reasonably understood to be confidential or proprietary due to the nature of the information and/or the circumstances surrounding its disclosure. Confidential Information does not include information which, and solely to the extent it: (i) is generally available to the public other than as a result of a disclosure by the receiving Party or any of its representatives; (ii) was known to the receiving Party prior to the date hereof on a non-confidential basis from a source other than disclosing Party or its representatives; (iii) is independently developed by the receiving Party without the benefit of any of the disclosing Party's Confidential Information; (iv) becomes lawfully known to the receiving Party on a non-confidential basis from a source (other than disclosing Party or its representatives) who is not prohibited from disclosing the information to the receiving Party by any contractual, legal, fiduciary or other obligation; or (v) was disclosed by the disclosing Party to a third party without an obligation of confidence. In any dispute concerning the applicability of these exclusions, the burden of proof will be on the receiving Party and such proof will be by clear and convincing evidence.

**9.1.5 "Consulting Services"** means any mutually agreed upon consulting services performed by Qlik under the terms of this Agreement and any applicable Order Form or Statement of Work.

**9.1.6 "Delivery Date"** means the date on which both the Qlik Products specified in the relevant Order Form and the license key(s) for such Products are initially made available (via download or otherwise) to the Licensee or to the authorized reseller as applicable.

**9.1.7 "Documentation"** means the then-current user documentation for the Qlik Products, including the license metrics. Documentation is available upon the request of Licensee at any time or upon Software download or service completion.

**9.1.8 "Education Services"** means any training or education services performed by Qlik under the terms of this Agreement and any applicable Order Form or Statement of Work.

**9.1.9 "IP Claim"** means a claim by a third party against Licensee or its Affiliates that the Software, as delivered by Qlik, infringes a third party copyright or trademark, infringes a patent issued by the United States, Canada, Australia, Japan, Switzerland, Singapore, Hong Kong, India, or any member country of the European Economic Area, or misappropriates a third party trade secret.

**9.1.10 "Order Form"** means a written document, executed by the Parties, pursuant to which Licensee orders Qlik Products, Education Services or Consulting Services. Where Qlik Products are procured through one of Qlik's authorized resellers, an Order Form shall also mean any terms governing the use of any of the foregoing in the ordering documentation existing between such authorized reseller and Licensee, which may include a purchase order.

**9.1.11 "Party" or "Parties"** means Qlik and Licensee, individually and collectively, as the case may be.

**9.1.12 "Software"** means the generally available release of the Qlik software, in object code form, initially provided or made available to Licensee as well as updates thereto that Qlik elects to make available at no additional charge to all of its customers that subscribe to Maintenance for the Software. Unless otherwise indicated, the Software, Software API and Documentation are referred to collectively herein as "Software."

**9.1.13 "Statement of Work"** means a document agreed to by the Parties that describes Consulting Services to be performed by Qlik pursuant to this Agreement.

**9.1.14 "Subscription Services"** shall have the meaning set forth in Section 2.5. Subscription Services excludes Consulting Services, Education Services, Maintenance, and Qlik Sense Cloud, which is subject to separate terms of service.

**9.2 Recordkeeping, Verification and Audit.** While this Agreement is in effect and for one (1) year after the effective date of its termination, upon request by Qlik but not more than once per calendar year, Licensee shall conduct a self-audit of its use of the Qlik Products and, within ten (10) business days after receipt of such request, submit a written statement to Qlik verifying that it is in compliance with the terms and conditions of this Agreement. Qlik shall have the right, on its own or through its designated agent or third party accounting firm, and subject to Government security requirements, to conduct an on-premises audit of Licensee's use and deployment of the Qlik Products for compliance with this Agreement. Qlik's written request for audit will be submitted to Licensee at least fifteen (15) days prior to the specified audit date, and such audit shall be conducted during regular business hours and with the goal of minimizing the disruption to Licensee's business. If such audit discloses that Licensee is not in material compliance with the terms of this Agreement, then Licensee shall be responsible for paying additional license fees sufficient to cover the unauthorized use revealed by the audit due 30 days after receipt of an invoice.

**9.3 Third Party Materials.** Qlik Products may include certain open source or other third party software, data, or other materials (the "Third Party Materials") that are separately licensed by their respective owners. License terms and other information relating to such Third Party Materials, including any availability of source code, may be found within the Documentation or at [www.qlik.com/license-terms](http://www.qlik.com/license-terms). QLIK MAKES NO REPRESENTATION, WARRANTY, OR OTHER COMMITMENT REGARDING THE THIRD PARTY MATERIALS, AND HEREBY DISCLAIMS ANY AND ALL LIABILITY RELATING TO LICENSEE'S USE THEREOF.

**9.4 Evaluation.** If Licensee is provided Qlik Products for evaluation purposes, use of the Qlik Products is only permitted in a non-production environment and for the period limited by the corresponding license key. Notwithstanding any other provision in this Agreement, evaluation licenses for the Qlik Products are provided "AS-IS" without indemnification, maintenance and support, or warranty of any kind, expressed or implied.

**9.5 Assignment.** Neither party will assign or transfer this Agreement or its rights and obligations hereunder to any third party without the prior written consent of the other party. For purposes of this Section, any change of control of Licensee, whether by merger, sale of equity interests or otherwise, will constitute an assignment requiring the prior written consent of Qlik. Any attempt by Licensee to assign this Agreement or its rights and obligations hereunder in violation of this Section will be null and void. All terms of this Agreement will be



binding upon, inure to the benefit of, and be enforceable by and against the respective successors and permitted assigns of Qlik and Licensee.

**9.6 Statistical Data Collection and Use.** Qlik may collect and use certain Statistical Data to enable, optimize, support, and improve performance of the Qlik Products. "Statistical Data" means non-personal statistical, demographic, or usage data or metadata generated in connection with any use of the Qlik Products. Statistical Data does not include any personally identifiable information or any personal data and is owned by Qlik.

**9.7 Compliance with Laws.** Licensee agrees at all times to comply with all applicable laws and regulations in its performance of this Agreement, which may include, without limitation, U.S. and E.U. export control laws and regulations, and regulations declared by the U.S. Department of the Treasury Office of Foreign Assets Control, the Council of the E.U. and their counterparts under applicable law ("Export Control Laws").

**9.8 Governing Law and Jurisdiction.** This Agreement is governed by and construed in accordance with U.S. Federal law. Any suit, action or proceeding arising out of or relating to this Agreement shall be resolved by a court or administrative tribunal of competent jurisdiction.

**9.9 Excusable Delay.** Qlik shall not be liable for delays caused by an occurrence beyond its reasonable control and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Qlik shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**9.10 Notices.** All notices and other communications given or made pursuant to this Agreement concerning a breach, violation or termination hereof will be in writing and will be delivered: (a) by certified or registered mail; or (b) by an internationally recognized express courier. All notices or other communications to Qlik shall be addressed to: QlikTech Inc., 211 South Gulph Road, Suite 500, King of Prussia, PA, 19406 Attention: Legal Department. Unless otherwise specified by the Licensee, all notices to Licensee shall be sent to the address provided by Licensee in the Order Form.

**9.11 Relationship between the Parties.** The Parties are independent contractors. Nothing in this Agreement will be construed to create an agency, joint venture, partnership, fiduciary relationship, joint venture or similar relationship between the Parties.

**9.12 Waiver.** No term of this Agreement will be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the Party issuing the same. Any additional or conflicting terms or conditions in any purchase order or other ordering documentation shall have no legal force or effect.

**9.13 Reserved.**

**9.14 Limitation.** Subject to applicable law, no action, regardless of form, arising out of this Agreement may be brought by Licensee more than six (6) years after the cause of action arose.

**9.15 Reserved.**

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

## Addendum A to the Qlik User License Agreement

### QLIK SUBSCRIPTION ADDENDUM FOR DATAMARKET SERVICES, WEB CONNECTORS, GEOANALYTICS AND THE SMART ANALYTICS ADAPTER

#### 2. SUBSCRIPTION SERVICES

DataMarket Services, Qlik Web Connectors ("Connectors"), Smart Analytics Adapter, and GeoAnalytics (collectively, "Subscription Services") are subject to and governed by the applicable Qlik User License Agreement ("Agreement") between the parties and this Subscription Addendum ("Addendum"). Any capitalized term not defined herein shall have the same meaning ascribed to such term in the Agreement. In the event of a conflict between any term or condition contained herein and any term or condition of the Agreement, the term or condition of this Addendum shall take precedence, but only to the extent of the conflict.

#### 3. DATAMARKET

**3.1. Permitted Use.** Qlik DataMarket is a cloud-based data service offering a large variety of external syndicated data sources (collectively, the "Data"). Subject to the terms of the Agreement and this Addendum, Licensee may (a) access, use, implement and integrate the Data, solely in conjunction with its authorized use of the Software in accordance with the Agreement, (b) store the Data on one or more desktop computers or servers, and (c) create Integrated Materials for Licensee's internal business operations and not to redistribute to third parties. Integrated

Materials may be distributed, transmitted and displayed only to Licensee's Affiliates and their respective Authorized Users and only as necessary to conduct Licensee's internal business operations. "Integrated Materials" are limited to those materials which (i) are developed by Licensee, Licensee's Affiliates or their respective Authorized Users for the benefit of Licensee or its Affiliates, (ii) result from the integration, manipulation and/or analysis of the Data through the Software and (iii) display the Data as an integrated component of the output of the Software in combination with other data provided by Licensee. If Licensee has licensed Software with external use rights as set forth in the Documentation, Licensee may distribute and display the Integrated Materials to third parties that have a then-current business relationship with Licensee subject to the restrictions below and further provided that such third party's access to the Integrated Materials is limited to viewing the Integrated Materials as part of its business relationship with Licensee. If the Qlik DataMarket Essentials Package is purchased as a stand-alone product, a Services subscription is required for each user license associated with the corresponding Software site.

**3.2. Prohibitions and Restrictions.** Except as expressly permitted in Section 2.1, Licensee will not, nor will it permit or authorize anyone to (a) use the Data for any purpose, (b) remove any copyright, trademark or other proprietary notice from the Data, (c) decompile (including, without limitation, to re-identify any personally identifiable information contained therein), modify or alter any part of the Data, (e) display, publish or perform any of the Data or (f) use the Data in any manner that violates applicable law.

**3.3. Attribution.** Licensee acknowledges that, as a condition of publishing, displaying, presenting or otherwise disclosing certain Data as permitted by this Addendum, Licensee shall be required to, and hereby agrees to, include notices attributing the source of the Data used in such publication, presentation, display or disclosure to the publisher of such Data, as set forth in the attached Qlik End User License Agreement.

**3.4. Data Updates.** During Licensee's Subscription, Qlik may provide Licensee with notice of updates to the Data ("Data Updates") from time to time as such Updates may be made available to Qlik by third parties. By accessing or downloading any Data Updates, Licensee agrees that such Data Updates shall be subject to, and used solely in accordance with, this Addendum.

**3.5. Disclaimer of Warranties and Limitation of Liability**

THE DATA IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, QLIK AND ITS DATA VENDORS HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE DATA, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TIMELINESS, ACCURACY, RESULTS OF USE, RELIABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, INTERFERENCE WITH QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. FURTHER, QLIK AND ITS DATA VENDORS DISCLAIM ANY WARRANTY THAT LICENSEE'S USE OF THE DATA WILL BE UNINTERRUPTED OR ERROR FREE. QLIK DOES NOT WARRANT OR GUARANTEE THAT IT WILL CORRECT ANY ERRORS OR INACCURACIES IN THE DATA. LICENSEE HEREBY ACKNOWLEDGES THAT QLIK RETRIEVES, AGGREGATES, NORMALIZES AND DELIVERS THE DATA FROM A WIDE VARIETY OF THIRD-PARTY SOURCES AND DOES NOT GENERATE OR CREATE THE DATA ITSELF. THIS DISCLAIMER SHALL APPLY NOTWITHSTANDING ANY WARRANTIES MADE WITH REGARD TO THE SOFTWARE OR ANY OTHER STATEMENTS TO THE CONTRARY CONTAINED IN THE AGREEMENT. USE OF THE DATA DOES NOT IMPLY ENDORSEMENT OR CERTIFICATION OF SUCH USE BY QLIK OR ANY OF ITS DATA VENDORS.

EXCEPT FOR LICENSEE'S UNAUTHORIZED USE OF THE DATA OR SERVICES, EACH PARTY'S MAXIMUM, CUMULATIVE LIABILITY FOR ANY CLAIMS, LOSSES, COSTS AND OTHER DAMAGES ARISING UNDER OR RELATED TO USE OF THE DATAMARKET SERVICES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL BE LIMITED TO ACTUAL DAMAGES INCURRED, WHICH WILL IN NO EVENT EXCEED THE GREATER OF THE CONTRACT PRICE PAID OR PAYABLE BY THE LICENSEE ATTRIBUTABLE TO THE DATAMARKET SERVICES GIVING RISE TO SUCH DAMAGES. IN NO EVENT WILL QLIK, ITS AFFILIATES, OR VENDORS BE LIABLE FOR ANY INACCURACY OF THE DATA, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWSOEVER ARISING AND REGARDLESS OF THE THEORY OF LIABILITY. THE LIMITATIONS AND DISCLAIMERS CONTAINED IN THIS ADDENDUM WILL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

**3.6. Free Services.** Certain Data may be made available to Licensee through the Software without a subscription fee ("No Fee Data"). Licensee is not required to use the No Fee Data and Licensee may cease to use the No Fee Data at any time. All use of the No Fee Data shall be subject to and governed by this Addendum. Qlik reserves the right to add or remove any No Fee Data or to discontinue or alter content, availability and other characteristics of the No Fee Data Service at any time

**4. QLIK WEB CONNECTORS**

**4.1. Support Services.** Support Services are included with any paid Connector subscription and shall be provided in accordance with the terms of the applicable maintenance and support policy for the Qlik Software. Licensee acknowledges and agrees that notwithstanding anything to the contrary in the Maintenance Policy or any Release Management Policy, Qlik shall provide Maintenance only with respect to the most current update of each Connector, and that Qlik shall have no obligation or liability under this Addendum to support any other version or update of any Connector.

**4.2. Access to Third-Party Sites.** Licensee acknowledges that use of the Connectors to access web-based applications or services may be governed by third-party terms and conditions. Licensee agrees it is solely responsible to comply with such third-party terms and that Qlik shall have no liability for any claims relating to third-party webbased applications, services or data sources. Qlik may terminate this Addendum upon written notice, if and only to the extent reasonably necessary to comply with any third-party restrictions. Licensee acknowledges that Qlik has no control over any third-party application programming interface ("API") or any third-party data which may be used in conjunction with the Connectors, and shall have no liability for the Connectors if any third-party APIs are changed or discontinued by the respective third parties. Qlik shall have no liability for the Connectors, if any third-party APIs are changed or discontinued by the respective third parties. Licensee shall promptly apply any updates to the Connectors, which are made available from time to time.

**3.3 Beta Connectors.** Certain Connectors may be made available to Licensee without a subscription fee ("Beta Connectors"). BETA CONNECTORS ARE PROVIDED WITHOUT WARRANTY OF ANY KIND AND QLIK DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING ANY WARRANTY THAT USE OF ANY BETA CONNECTOR WILL BE UNINTERRUPTED OR ERROR FREE. Notwithstanding any provision in this Addendum or the Agreement, Qlik reserves the right at any time to add, remove, discontinue or alter the content, availability and other characteristics of the Beta Connectors without any further obligation or liability.

## 5. SMART ANALYTICS ADAPTER BY QLIK

**5.1.** The SMART Analytics Adapter by Qlik allows for integration of Qlik Sense with Cerner Millennium, as further described in the Documentation. This integration requires that the "SMART on FHIR" feature be enabled within the Licensee's Cerner Millennium environment. Licensee assumes full responsibility for enabling SMART on FHIR, as well as implementing, and consulting with Cerner as necessary on, any other configuration changes that may be necessary within the Licensee's Cerner Millennium environment in order to enable the deployment of the Cerner Adapter.

**5.2.** Qlik is not responsible for any performance issues or other non-conformities whose root cause is determined to exist within Cerner Millennium and not within the SMART Analytics Adapter by Qlik.

## 6. QLIK GEOANALYTICS AND GEOCODING

**5.1.** Qlik GeoAnalytics is not intended for use with high risk activities such as operation of nuclear facilities or life support systems, where the use or failure of the product or its operations could lead to death, injury, or environmental damage. The product is used to perform analytic operations and enables access to third-party data and other content without additional service or access fees, unless otherwise indicated. Third-party content may not be used or shared outside of a licensed implementation of Qlik GeoAnalytics. Qlik does not guarantee the accuracy of third-party data it provides for use with Qlik GeoAnalytics and may remove, discontinue, or alter content, availability and other characteristics of such data at any time. Unless otherwise expressly stated, any thirdparty component embedded in or otherwise provided with the product may only be used in conjunction with the product. Qlik reserves the right to charge (in accordance with the GSA price list) for any usage of GeoAnalytics Base above 1 million Map Views per month.

**5.2.** Qlik Geocoding is an add-on package for Qlik GeoAnalytics that is used to provide geographical (GPS) coordinates corresponding to a location, such as a street address (or vice-versa). Where Qlik Geocoding has been purchased, the following terms shall additionally apply:

**5.2.1.** Qlik Geocoding requires a Qlik GeoAnalytics Base or Qlik GeoAnalytics Enterprise Server license.

**5.2.2.** Qlik may temporarily suspend access to Qlik Geocoding: (a) for Licensee's overuse or misuse of Qlik Geocoding; (b) for scheduled maintenance; (c) to prevent a threat or attack on its services; or (d) if Qlik Geocoding become prohibited by law, or supporting third-party services become unavailable to Qlik on commercially reasonable terms.

**5.2.4.** Licensee shall not, as a component of any Qlik Geocoding lookup request, transmit any data (a) that it does not have the right to use and transmit; or (b) that is unclassified controlled technical information (UCTI) under DFARS 204.73, or protected health information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA).

**5.2.5.** Certain third-party licensors of data used with Qlik Geocoding to return resultant geographical coordinates require Qlik to flow down additional attribution requirements and terms of use to Qlik's licensees. These terms are required by the applicable vendors as a condition of use and are attached as Attachment 1 to this Addendum A **Exhibit 1 to Addendum A – GeoAnalytics**

**EnviroNics Data:** Customers may use the data for non-commercial purposes or internal use only and may redistribute hardcopy or softcopy images of the data, reports, images and analysis for personal or internal use only.

**Michael Bauer Research International Boundaries Data ("MBR Data"):** Customer right to use data downloaded to the Customer's premises (e.g. MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates two years after download.

For informational purposes only: Travel Midwest Gateway Traveler Information System

<https://www.travelmidwest.com/Imiga/policies.jsp>

Neighborhood Boundaries in Transit and Pedestrian Data ©Maponics, LLC – Duplication is Strictly Prohibited.

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Toponymic information is based on the Geographic Names Database, containing official standard names approved by the United States Board on Geographic Names and maintained by the National Geospatial-Intelligence Agency. More information is available at the Maps and Geodata link at [www.nga.mil](http://www.nga.mil). The National Geospatial-Intelligence Agency name, initials, and seal are protected by 10 United States Code Section 425."

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This product uses the Zipcar API but is not endorsed or certified by Zipcar.

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Data delivered as part of Esri Data and Maps cannot be redistributed.

## Exhibit B

### MAINTENANCE TERMS

Maintenance shall be provided in accordance with the Maintenance policy attached as Attachment 1 to this Exhibit B ("Maintenance Policy").

Licensee shall pay any fees due in accordance with the payment terms set forth in the Order Form or Statement of Work entered into between Ordering Activity and the GSA Schedule holder in accordance with the GSA Pricelist

Reinstatement of lapsed Maintenance (whether the lapse is due to termination for Licensee's non-payment of Maintenance Fees or voluntary non-renewal by Licensee) will be subject to payment by Licensee of the then-current annual Maintenance Fees listed or calculated in accordance with the GSA Pricelist payable for the 12-month period beginning on reinstatement plus the aggregate Maintenance Fees that would have been payable for the relevant Software during the period of lapse in the absence of termination or non-renewal, provided that the combined reinstatement fees are paid within twelve (12) months after the date of the lapse. Reinstatement beyond this date will be at Qlik's or its licensor's sole discretion.

Qlik does not represent, warrant or make any commitment that: (i) the Maintenance services will meet Licensee's requirements or (ii) that Qlik will be able to fully resolve any particular request for Maintenance of the

Qlik Software or that such resolution will meet Licensee's requirements or expectations. Qlik warrants that the Maintenance services shall be performed using reasonable care and skill consistent with generally accepted industry standards. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE MAINTENANCE SERVICES ARE PROVIDED "AS IS", AND QLIK AND ITS SUBCONTRACTORS AND LICENSORS AND THEIR RESPECTIVE AFFILIATES AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED (BY STATUTE, COMMON LAW OR OTHERWISE) INCLUDING, WITHOUT LIMITATION, AS TO THEIR ACCURACY, TIMELINESS, COMPLETENESS, RESULTS, PERFORMANCE, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF QLIK OR ITS SUPPLIERS OR LICENSORS HAS BEEN INFORMED OF SUCH PURPOSE, AND ANY REPRESENTATIONS, EXPRESS OR IMPLIED WARRANTIES OR OTHER TERMS ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE MAINTENANCE SERVICES OR ANY THIRD PARTY MATERIALS IN ANY COMMUNICATION WITH LICENSEE ARE FOR INFORMATION PURPOSES ONLY AND DO NOT CONSTITUTE A WARRANTY, REPRESENTATION OR CONDITION.

5. Qlik's and its suppliers' and licensors, and their respective Affiliates' maximum, cumulative liability for any damages arising under this Maintenance Agreement regardless of the form of action, whether in contract, tort or otherwise, shall in no event exceed the contract price paid by or on behalf of Licensee to Qlik hereunder for Maintenance. IN NO EVENT SHALL QLIK, ITS SUPPLIERS OR LICENSORS OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUES, LOSS OF SAVINGS, GOODWILL, REPUTATION OR DATA, INACCURACY OF ANY DATA, THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR SOFTWARE, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWSOEVER ARISING AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF ANY OF THE FOREGOING ENTITIES HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

#### Attachment 1 to Exhibit B – Maintenance Policy

This Maintenance Policy ("Policy") describes the current practices of Qlik with regard to its provision of Maintenance Services and Support Services as defined below (collectively "Maintenance") to customers with a Maintenance agreement or a subscription which includes Maintenance ("Licensee(s)"). All Maintenance is subject to payment of applicable fees.

##### 1. DEFINITIONS

"**Affiliate**" means any entity which controls, is controlled by, or is under common control with Licensee where "control" means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests of such entity, but only for so long as such control exists

**“Maintenance Agreement”** means the Qlik® User License Agreement or other written agreement for Software or services between Qlik and Licensee, which includes the provision of Maintenance Services and/or Support Services.

**“Authorized Affiliate”** means any Affiliate of Licensee that is designated by Licensee as authorized to use the Software under the terms of an Agreement.

**“Documentation”** means the then-current documentation published and made generally available by Qlik for the Software in the form of manuals and functional descriptions in printed or electronic form, as may be modified by Qlik from time to time.

**“Designated Support Engineer”** or **“DSE”** means a designated Qlik support resource who acts as Licensee's designated point of contact for all technical support matters.

**“Error”** means any verifiable and reproducible failure of the Software to materially conform to the Documentation.

**“Initial Response Time”** means the period commencing when an Error is first reported by Licensee's Technical Contact(s) in the manner required by this Policy and ending when a member of the Qlik technical support team logs the report and responds to the Technical Contact(s) by telephone, email or through the Support Portal.

**“Maintenance Services”** means the release of Updates to the Software, which Qlik elects to make generally available to Licensees.

**“Release Management Policy”** means the then-current release management policy describing the release cadence for the applicable Software as currently set forth at <http://www.qlik.com/license-terms>, and as may be modified by Qlik from time to time.

**“Self-Service Tools”** means the Knowledge Base (Qlik's online database of content and FAQs about the use and support of the Software), white papers, Community Forums, webcasts and other materials available in the Support Portal to Licensees that are current on Maintenance.

**“Severity 1 Error”** means any Error that has very serious consequences for normal business transactions and urgent, business critical work cannot be performed.

**“Severity 2 Error”** means any Error that (i) materially degrades the overall performance of the Software or (ii) materially impairs substantial functions of the Software published in the Documentation, but is not a Severity 1 Error.

**“Severity 3 Error”** means any Error that impairs the performance of the Software, but is not a Severity 1 Error or Severity 2 Error.

**“Software”** means the generally available release of Qlik's proprietary software in object code form, as well as the software API, licensed to Licensee under an agreement. Software excludes early release, technical preview, beta, free trial or evaluation versions as well as any extensions, objects, open source projects or code made available without charge on Qlik Branch or other developer forums, and any Qlik products which exclude Maintenance in the terms of use.

**“Software Family”** means a line of related Software or services provided by Qlik, which share similar functions and may share a common brand. For example, QlikView® and Qlik® Sense are separate Software Families.

**“Support Portal”** means Qlik's online support website available at <http://qliksupport.force.com>.

**“Support Services”** means the technical end user support for the Software as described in this Policy. Support Services do not include services performed onsite at any Licensee facility, consulting or education services, Maintenance Services or any services not expressly stated in this Policy.

**“Technical Contact(s)”** means Licensee's personnel that have been identified by Licensee as the technical contact(s) for Licensee.

**“Update”** means any enhancement, modification or Error correction made available in accordance with the Release Management Policy for the applicable Software, which Qlik elects to make generally available to its customers as part of Maintenance Services. Updates do not include new or separate products which Qlik offers only for an additional fee to its customers generally.

## 2. OVERVIEW

2.1 Qlik will provide Licensee with Maintenance Services and Support Services for the Software in accordance with this Policy and the level of coverage purchased by Licensee as well as any applicable terms in the agreement for the Software, subject to Licensee's timely payment of the applicable Maintenance fees or subscription fees,

2.2 Licensee is required to purchase Maintenance on all Software for a twelve (12) month period beginning on the delivery date of the Software (the “Initial Maintenance Period”). In addition, Licensee must maintain a uniform level of Maintenance across all licenses or subscriptions within the same Software Family. In order to purchase additional Software licenses or subscriptions, Licensee must be current on Maintenance for all previously purchased licenses within the same Software Family. Licensee may elect to upgrade the level of Maintenance at any time during a Maintenance Period, but such upgrade must apply to all Software licensed with the same Software Family. In the event the Licensee elects not to renew Maintenance, the non-renewal must apply to all licenses or subscriptions within the same Software Family. Notwithstanding the foregoing, any Software or subscriptions purchased as a bundle, package, or special promotion (e.g., enterprise licenses) must be maintained together at a uniform level, regardless of whether such Software or subscription purchase includes multiple Software Families, and cancellation of Maintenance by Software Family is not permitted in such case.

2.3 Maintenance fees for any additional Software purchases will be prorated to achieve a common annual Maintenance Period with existing licenses, but does not relieve Licensee of its payment obligations for the remainder of the Maintenance Period. For avoidance of doubt, Licensee is responsible to pay the entire Maintenance Fee for the Initial Maintenance Period on all additional purchases of Software regardless of any proration of Maintenance Fees.

2.4 Reinstatement of lapsed or cancelled Maintenance will be subject to payment by Licensee of (a) the then-current annual Maintenance Fees calculated in accordance with the GSA Pricelist payable for the 12-month period beginning on the date of reinstatement and (b) the aggregate Maintenance Fees that would have been payable for the relevant Software during the period of lapse in the absence of termination or non-renewal, provided that (i) the combined reinstatement fees are paid within twelve (12) months after the date of the lapse. Reinstatement beyond this date will be at Qlik’s sole discretion. Reinstatement fees may be assessed once notice of cancellation or non-renewal is provided, even if a request for reinstatement is provided prior to the expiration of the current Maintenance Period.

2.5 Qlik may elect to make certain software publicly available under an open source license and free of charge on various online communities (“Extensions”). This Policy excludes Maintenance with regard to any Extensions. Support for Extensions is provided solely by the open source community. To the extent Extensions are used in connection with the Software, this Policy provides Maintenance for the Software and Software API only.

2.6 Qlik may elect to make certain software available free of charge for trial, evaluation or other purposes (“Freeware”). Maintenance for Freeware, if any, will be provided at Qlik’s discretion and in accordance with the license terms for such Freeware.

2.7 Unless otherwise expressly set forth herein, all references in this Policy to response times or communications from Qlik shall only apply during Qlik’s Standard Business Hours, regardless of when a support matter is reported to Qlik. Qlik’s “Standard Business Hours” mean from 08:00 to 17:00, Monday to Friday (excluding national and bank holidays) for the Support Center in the specific geographic region to which the applicable licenses are assigned in Qlik’s records. By way of example, Standard Business Hours for licenses assigned to New York in Qlik’s records would be 08:00 to 17:00, Eastern Time, Monday to Friday (excluding U.S. federal and bank holidays). Times expressed as a number of “business days” include Standard Business Hours. When used in this Policy, “Enterprise Business Hours” means from 08:00 to 17:00 for the Support Center in the specific geographic region to which the applicable licenses are assigned in Qlik’s records.

2.8 Any Support Services provided by Qlik hereunder via telephone will be provided in the English language or, as applicable, such other languages that may be specified on the Support Portal, which may change from time to time. The availability of support provided in any language other than English is provided at Qlik’s sole discretion and is not guaranteed by Qlik, and will depend on the location of Qlik’s technical support personnel providing such support, including whether or not Licensee is entitled to contact that particular support line based on the type of Support Services purchased and Licensee’s geographic location.

**3. SUPPORT LEVELS**

**3.1 Basic Support Coverage.**

3.1.1 Scope of Coverage. Licensees who have purchased “Basic Support Coverage” from Qlik receive access to Qlik’s technical support services for problem determination, verification and resolution (or instruction as to work-around, as applicable), via the Support Portal or a dedicated telephone number provided to Licensee by Qlik. Such technical support is provided during Qlik’s Standard Business Hours. Licensee will also be entitled to receive Updates as well as access to the Support Portal and the Self-Service Tools as part of Basic Support Coverage.

3.1.2 Response Times. Qlik will use commercially reasonable efforts to respond (a) within the Initial Response Times set forth in the table below, to Severity 1 Errors reported by a Technical Contact to Qlik via telephone or (b) within the Initial Response Times set forth in the table below for Severity 2 and Severity 3 Errors that are reported by a Technical Contact to Qlik via telephone or the Support Portal. Qlik will respond to Licensee’s Technical Contact by email or telephone or through the Support Portal. Qlik shall use commercially reasonable efforts, consistent with industry practice, to investigate such reports to determine whether there is an Error present. If Qlik determines that an Error is present, Qlik will use commercially reasonable efforts to correct the Error and/or provide a workaround, including, without limitation, by providing Licensee with an Update. Qlik will communicate with Licensee at least once each business day (with respect to any Severity 1 Errors) or otherwise as reasonably necessary based on the nature and type of Error (with respect to Severity 2 Errors and Severity 3 Errors) until the applicable Error is resolved (in accordance with Section 4.1 below) or work-around is provided. All responses and communications from Qlik to Licensee in connection with Qlik’s provision of Basic Support Coverage will be provided during Qlik’s Standard Business Hours.

<b>Basic Support Coverage</b>	
<b>Severity Level</b>	<b>Initial Response Time</b>
Severity 1 Error	2 business hours
Severity 2 Error	4 business hours
Severity 3 Error	1 business day

**3.2 Enterprise Support Coverage.**

3.2.1 Scope of Coverage. Licensees who have purchased “Enterprise Support Coverage” receive, in addition to the elements of Basic Support Coverage described above, unlimited telephone support for Error determination, verification and resolution (or instruction as to work-around, as applicable) twenty-four (24) hours a day, seven (7) days a week, 365 days a year for Severity 1 Errors and 365 days a year during the applicable Enterprise Business Hours for Severity 2 and Severity 3 Errors.

3.2.2 Response Times. Qlik will use commercially reasonable efforts to respond (a) within the Initial Response Times set forth in the table below, to Severity 1 Errors reported by a Technical Contact to Qlik via telephone or (b) within the Initial Response Times set forth in the table below for Severity 2 and Severity 3 Errors that are reported by a Technical Contact to Qlik via telephone or the Support Portal. Qlik will respond to Licensee’s Technical Contact by telephone or via the Support Portal. Qlik shall use commercially reasonable efforts, consistent with industry practice, to investigate such reports to determine whether there is an Error present. If Qlik determines that an Error is present, Qlik will use commercially reasonable efforts to correct the Error and/or provide a workaround, including, without limitation, by providing Licensee with an Update. Qlik will communicate with Licensee at least with the frequency set forth in the table below until the Error is resolved (in accordance with Section 4.1 below) or work-around is provided.

<b>Enterprise Support Coverage*</b>		
<b>Severity Level</b>	<b>Initial Response Time</b>	<b>Communication Frequency</b>
Severity 1 Error	30 minutes, 24x7	Every 4 hours, 24x7
Severity 2 Error	1 hour, 8x7	Every day
Severity 3 Error	4 hours, 8x7	Every 2 days

\*All severity levels will be initially logged and acknowledged by Qlik during Qlik’s business hours in the region where the Error is reported. For Severity 1 Errors, provided that Licensee provides Technical Contacts in other regions that are available to help troubleshoot issues, all Errors will be addressed and handed over between regions for as long as the Licensee provides the available Technical Contacts in such region(s).

3.2.3 Support Case Handling. Errors reported by Enterprise Support Licensees shall be given priority case handling in a designated priority support queue. Further, Qlik will assist Enterprise Support Licensees in issue analysis to determine whether or not the technical issue is related to the third-party hardware or software. In order to isolate the issue, Qlik reserves the right to request that the third-party hardware or software be removed. Qlik may reach out to third-party vendors based on the established Technical Support Alliance Network (TSANet) to troubleshoot the issue. TSANet is a vendor-neutral global support alliance where companies work together to support mutual customers more effectively. Qlik will only engage TSANet for Licensees who are using supported configurations.

3.2.4 Update Information. Enterprise Support Licensees may contact Qlik Enterprise Support for information regarding Updates performed by Licensee, such as installation instructions, release documentation, and general guidance for multiple environments.

**Error Resolution and Escalation.**

An Error is considered to be resolved upon the earlier to occur of the following: (i) Qlik and Licensee mutually agree in writing (including via email) that the issue or problem is resolved; (ii) Qlik has provided Licensee with an Update; (iii) Qlik is able to provide a reasonable and mutually acceptable technical work-around solution; (iv) any of Licensee’s Technical Contacts requests that Qlik close the support case; or (v) the support case has been left open for ten (10) consecutive business days, during which period Qlik has not received a response from any of Licensee’s Technical Contacts.

Exclusions. Notwithstanding anything in this Policy to the contrary, Qlik will have no obligation to provide any Support Services in connection with: (i) any issue or problem that Qlik determines is not due to any Error or deficiency in the Software (e.g., without limitation, issues or problems caused by stand-alone third party software products used in conjunction with the Software); (ii) any Errors or problems with the Software that are not reproducible; (iii) any Error or problem that is reported by Licensee via any Qlik support telephone number or email address associated with any geographic territory other than the one to which Licensee has been assigned on the Support Portal; or (iv) any Errors or problems with the Software that result from: (a) the use of the Software with software or hardware not designed for use with the operating systems approved by Qlik in the

Documentation; (b) the use of the Software with hardware that does not satisfy the minimum system requirements specified by Qlik in the Documentation; (c) changes, modifications, or alterations to the Software not approved in writing by Qlik or its authorized representatives; (d) use of the Software other than in accordance with the Documentation and the Agreement; (e) use of other than a Supported Version of the Software as defined in the applicable Release Management Policy; or (f) Software provided on an evaluation basis or for which Licensee has not paid any maintenance fees. If Qlik does correct any of the Errors described in subsections (a)-(f) above, or otherwise provides support for Software that is not covered by the terms and conditions contained in this Policy, such Error resolution or Software support will be provided only following Licensee’s written request and approval of all charges, and Licensee will be invoiced for such support at Qlik’s then-current “time and materials” rates for such services. Without limiting any of the foregoing, Qlik has no obligation to provide support for any third party software, data, or other materials distributed or bundled with the Software. Licensee may elect to purchase Extended Maintenance services on certain non-Supported Versions of the Software by entering into an agreement with Qlik.

If any Licensee (i) believes that Qlik has failed to meet any of the response and/or communication frequency time frames with respect to any Errors reported to it in accordance with Sections 3.1.2 or 3.2.2, as applicable, or (ii) feels that the quality of the Support Services provided to Licensee by Qlik is not satisfactory, then Qlik encourages such Licensee to escalate the problem to the appropriate level of Qlik management as follows:

<b>Hierarchical Escalation Levels</b>	<b>Notification to Regional Support Manager</b>	<b>Notification to Global Support Director</b>	<b>Notification to Vice President – Global Support</b>	<b>Notification to Global Sales Senior Vice-President</b>
<b>Actions</b>	Corrective	Corrective	Corrective	Corrective
	Measures	Measures	Measures	Measures
	Resource Allocation	Resource Allocation	Monitoring of	Monitoring of
	Monitoring of	Monitoring of	Progress	Progress
	Progress	Progress	Review of Licensee	Review of Licensee
	Review of Licensee	Review of Licensee	Satisfaction	Satisfaction
	Satisfaction	Satisfaction		
<b>Time Frame</b>	Twelve (12) hours	Forty-eight (48) hours	Seventy-two (72) hours	Five (5) business days

Qlik recommends that Licensee-initiated escalation begin at the regional support manager level and proceed upward, using the escalation guidelines shown above for reference, if the actions described in the foregoing chart are not taken to Licensee’s reasonable satisfaction within the applicable timeframes.

**5. DESIGNATED SUPPORT ENGINEER**

5.1 Subject to Licensee’s timely payment of the applicable DSE fees, and provided that Licensee has purchased Enterprise Support and is current on all Maintenance Fees, then Qlik shall provide the following DSE Services for up to four (4) Licensee Technical Contacts:

- Direct access to a Designated Support Engineer with knowledge of Licensee’s environment
- Service Implementation Plan
- Fast-track into R&D for critical bugs
- Weekly Progress Call
- Quarterly on-site visits and service reviews
- Access to beta releases

5.2 DSE Services are supplemental to Support Services, and are not available as a stand-alone service. The term of the DSE Services shall be for a period of twelve (12) months, commencing on the date that the DSE is assigned to Licensee (“DSE Services Commencement Date”), provided, however, that the DSE Services shall automatically terminate in the event that Support Services are not renewed by Licensee or are otherwise terminated. Provided that Licensee is enrolled in Enterprise Support at the time, Licensee may renew DSE Services upon payment of the applicable DSE fees. For avoidance of doubt,

DSE Services are only available for Licensees who are current on Enterprise Support (and for Licensees with existing DSE Services who continue to renew). DSE Services are provided as a part of Maintenance pursuant to this Policy, and not as a consulting service.

## 6. Updates

In addition to its obligations under Sections 2 and 3 of this Policy, Qlik will make Updates available to all Licensees with a current Maintenance Agreement, when and if Qlik elects to make them generally commercially available. All Updates provided to any Licensee under this Policy will be made available, at Qlik's discretion, in a form of digital medium, or via the Qlik Software download site. Each Update will be provided together with the associated Documentation, in printed or electronic form, written in English or another language officially supported by Qlik. Unless otherwise agreed in writing by Qlik, Licensee shall be responsible for installation of all Updates.

## 7. Licensee's Obligations

7.1 The Licensee shall: (i) not request, permit or authorize anyone other than Qlik to provide any form of support services in respect of the Software; (ii) cooperate fully with Qlik's personnel in the diagnosis or investigation of any Error or other issue or problem with the Software; (iii) only report Errors to Qlik via the dedicated Qlik support telephone number or email address associated with Licensee's designated geographic territory as set forth on the Support Portal; (iv) be responsible for purchasing, installing and maintaining all hardware and operating systems required to use and support the Software; (v) be responsible for maintaining all third party software not explicitly licensed under the Agreement; and (vi) maintain an email address for electronic mail communications with Qlik.

7.2 Licensee's contact with Qlik in connection with Licensee's requests for support and reports of Errors shall be solely through its Technical Contact(s). The Technical Contact(s) shall: (i) serve as the internal contact(s) for Licensee's and its Authorized Affiliates' personnel who are authorized to use the Software per the terms of the Agreement; (ii) be responsible for initiating all requests by, and maintaining all records of, the Licensee and its Affiliates relating to Support Services; (iii) serve as the contact(s) with Qlik on all matters relating to Support Services; and (iv) be responsible for providing information and support, as requested by Qlik, to assist in the reproduction, diagnosis, analysis, and resolution of Errors. The maximum number of Technical Contacts for each Licensee is three (3) for Basic Support Coverage, six (6) for Enterprise Support Coverage, and four (4) for DSE Service, regardless of the number or types or quantities of licenses purchased for the Software. Licensee shall ensure that its Technical Contacts comply with any reasonable training requirements for the Technical Contact(s) upon notification by Qlik. Subject to the previous sentence, Licensee may change its Technical Contact(s) by notifying Qlik in writing.

7.3 Upon reasonable request by Qlik, Licensee shall provide Qlik a detailed description of its IT system(s) within which the Software operates, together with the basic structure of that system, any operational disruption experienced by Licensee, and the effect of the disruptions on Licensee's operations.

7.4 If Licensee desires Qlik to provide support via remote access, Licensee shall ensure that a functioning system enabling Qlik to have remote access to Licensee's technical equipment is installed (subject to Licensee's reasonable security measures and policies) and that satisfactory communication between the parties' computer systems is possible. Licensee agrees to be solely responsible for protecting and backing up its equipment, software and data prior to any such access. Qlik accepts no liability in connection with remote access support.

7.5 Licensee will be responsible for primary support of its Authorized Affiliates in connection with their use of the Software in accordance with the terms of the Agreement. Licensee is solely responsible for: (i) distributing all Updates to its Authorized Affiliates; (ii) passing on to its Authorized Affiliates all support materials as appropriate; and (iii) providing software support, including operational instruction, problem reporting and technical advice to its Authorized Affiliates, in each case of (i), (ii) and (iii) above, as necessary to enable the Authorized Affiliate to continue to use the Software as authorized under the Agreement. Licensee will not refer any third party, including without limitation, any of its contractors, authorized end users or any Authorized Affiliate to Qlik for support of Software.

7.6 Qlik supports designated operating systems, not specific hardware configurations. If Licensee is running the Software on a virtual environment, Licensee and the virtual environment vendor will be responsible for any interactions or issues that arise at the hardware or operating system layer as a result of the use of a virtual environment. Qlik reserves the right to request Licensees to diagnose certain issues in a native designated operating system environment, operating without the virtual environment, as needed to determine whether the virtual environment is a contributing factor to the issue.

7.7 For certain services provided under this Policy, the transmission of machine logs may be required. For avoidance of doubt, Licensee shall not include any business sensitive and/or personal information via such transmissions. Accordingly, Qlik shall not be deemed a Data Processor under EU Data Protection Directive 95/46/EC (as amended) (the "Directive"). However, should Licensee send to Qlik any log files or other information containing personal data, Qlik will (i) comply with the Directive and any relevant national enacting legislation in relation to its treatment of that personal data as required under relevant, applicable law; and (ii) in accordance with Qlik's privacy policies from time to time in effect. Licensee shall take reasonable measures to limit the amount and sensitivity of such data provided to Qlik (by anonymization, for example). Qlik's privacy policies are available to view online at [www.qlik.com](http://www.qlik.com) under "Cookie and Privacy Policy."

## 8. Reserved



**9. Disclaimer**

THIS POLICY DEFINES A SERVICE ARRANGEMENT AND NOT A WARRANTY. THE SOFTWARE AND MATERIALS AND SERVICES RELATED THERETO ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE APPLICABLE AGREEMENT. THIS POLICY DOES NOT CHANGE OR SUPERSEDE ANY TERM OF ANY SUCH AGREEMENT. TO THE EXTENT THERE IS A CONFLICT BETWEEN A TRANSLATED VERSION OF THIS POLICY AND THIS ENGLISH VERSION, THE ENGLISH LANGUAGE VERSION WILL PREVAIL

**Exhibit C**

**Education Services Terms**

**1. Training Courses**

**1.1 Training Course Delivery Options**

Qlik currently offers its training courses ("Training Courses") via the following delivery options:

<b>Training Course Delivery Options</b>	<b>Description</b>
(1) Public Classroom	Live public classroom training at a designated Qlik location. Courses are delivered by Qlik authorized instructors.
(2) Private Classroom	Live private classroom training at a designated Qlik location. Courses are delivered by Qlik authorized instructors.
(3) Onsite Classroom	Live private classroom training onsite at Customer's location. Courses are delivered by Qlik authorized instructors.
(4) Virtual Public Classroom	Live virtual public training using online (in the cloud) class environment consisting of live interactive webcasts, hands-on labs and mentoring. Courses are delivered by Qlik authorized instructors.
(5) Virtual Private Classroom	Live virtual private training using online (in the cloud) class environment consisting of live interactive webcasts, hands-on labs and mentoring. Courses are delivered by Qlik authorized instructors live through a virtual environment.

**1.2 Requirements for Onsite Classroom Training Courses.**

Customer is responsible for compliance with all of the following requirements for all Onsite Classroom Training Courses: Maximum number of participants for Onsite Classroom Training Courses is 10 participants.



Each participant must have a dedicated computer for the duration of the course.  
 The course location must be of adequate size (as determined by Qlik) to support the actual number of participants attending the course.  
 The course location facility must be equipped with the following:

Projection equipment, including but not limited to an overhead projector, LCD panel, high-definition television or equivalent display device with a diagonal display area of 40 inches (one meter).

A projection screen with a diagonal measurement of at least six feet (two meters).

Room darkening for display purposes to be operated by instructor.

A blackboard, whiteboard, or flipchart of at least 10 square feet (or one square meter).

If indicated by Qlik for a particular course, a high-speed Internet connection (wired or wireless), of approximately 1.5Mbps of bandwidth so that all participants may connect in the same room.

**2. Training Services**

**2.1 Training Services Delivery Options**

Qlik currently offers the following training services (“Training Services”) via the following delivery options:

<b>Training Services</b>	<b>Description</b>
(1) Qlik Continuous Classroom – Qlik Hosted	Self-Service, on-line learning platform hosted by Qlik
(2) Qlik Continuous Classroom – Customer Hosted	Self-Service, on-line learning platform hosted by Customer.
(3) Custom Application Training	Custom training videos for Customer Qlik Applications hosted by Customer

**2.2 Qlik Continuous Classroom (Qlik Hosted)**

Access to Qlik Continuous Classroom (Qlik Hosted) (“QCCQH”) is provided on a subscription basis for the applicable subscription period, selected User type and authorized quantity of Users. Subject to the Users’ compliance with these Education Terms and the payment of the applicable fees, Qlik grants to such Users a personal, limited, non-assignable, non-exclusive, and non-transferable term license, without the right to sublicense, to access and view QCCQH solely for such Users’ personal training and education. “Users” shall mean Customer’s employees or FTE contractors. The QCCQH subscription date shall start on the date that Qlik delivers the QCCQH subscription registration to Customer or its authorized reseller.

QCCQH for Individuals Users. Each User shall access QCCQH via such User’s Qlik Account. User acknowledges and agrees that User’s Qlik Account is confidential and nontransferable, and may not be shared with any other person or entity. Further, any use of User’s ULC to allow or permit another person or entity to access QCCQH shall terminate User’s license to QCCQH.

Corporate Qlik Continuous Classroom (Qlik Hosted). Upon the purchase of Corporate QCCQH, Customer (through its administrator), shall be responsible to enable, via the Qlik Subscription Management Portal (“SMP”) for up to the amount of authorized quantity of Users. Customers are fully responsible for the proper use of the SMP, and any use of the SMP allowing or permitting (i) more than the authorized number of Users or and (ii) any person (other than Customer’s authorized Users) or entity to access Corporate QCCQH shall terminate Customer’s license to Corporate

QCCQH.

QCCQH may include community forums, office hours, or other interactive features. Such features are provided by Qlik in its sole discretion, and Qlik makes no representation, warranty or covenant about the availability, content or timeliness of any such features. Users should refer to the Usage Guidelines for Qlik Continuous Classroom Interactive Forums for further information.

### 2.3 Qlik Continuous Classroom (Customer Hosted)

Qlik Continuous Classroom (Customer Hosted) (QCCCH) is accessible only by the purchase of a QCCCH license by Customer for its Users. Subject to the Users' compliance with these Education Terms and the payment of the applicable fees, Qlik grants to such Customer and its Users a personal, limited, non-assignable, perpetual, nonexclusive, and non-transferable license, without the right to sublicense, to use the videos, exercises, quizzes and instructional materials that are made available by Qlik in QCCCH solely for such Users' personal training and education, Qlik in its discretion shall determine the content and medium of the components of QCCCH.

QCCCH Customers may host QCCCH on a web server or LMS system, provided that Customer is solely responsible for integration and/or implementation efforts for such hosting. Further, Customer is responsible to ensure that any third party hosting entity of QCCCH on its behalf is in compliance with these Education Terms.

For clarity, no interactive features, including but not limited to student forums and instructor office hours, are included with QCCCH. Customer may not copy, reproduce, publish, display, modify, rent, lease, distribute, sell, sublicense, transfer or use in any way all or any part of QCCCH. Under no circumstances may Customer resell or use QCCCH to offer or provide any training or education (whether or not for fee) to any third party, or to offer any training or education materials, instruction or courses that incorporate or relate in any way to QCCCH to any third party. Customer acknowledges and agrees that it is fully responsible for any changes, modifications, alterations or customizations it makes to QCCCH.

Updates to QCCCH are provided by Qlik only upon the purchase of QCCCH updates. QCCCH updates must be purchased within the 90-day period following the 1-year anniversary date of QCCCH purchase or last QCCCH updates purchased. Purchases of QCCCH updates made after such period shall require the purchase of all updates since the date of original QCCCH purchase or last QCCCH updates purchase.

### 2.4 Custom Application Training (CAT) Services

Subject to payment of the applicable fees and Customer's compliance with these Education Terms, Qlik will provide to CAT Customers the training video(s) ("Videos") for Customer's designated Qlik Applications applicable to the level of CAT Services purchased by Customer. Customer acknowledges that the CAT Services levels designate the number of total content minutes of Videos provided by Qlik, and do not guarantee that any specific number of Videos shall be provided by Qlik. Customer acknowledges that Qlik makes available resources to perform the CAT Services based upon the date of Customer's order.

Each Video will be delivered to Customer in a mutually agreed format such as MP4 or html. Customer is responsible to attend a kickoff meeting with Qlik to establish the requirements gathering process for the CAT Services. Customer shall work with Qlik to complete all requirements documents for each Video, which may include in person or on-line or telephone meetings between Customer and Qlik personnel. Further, Customer shall provide access to all Customer business and technical personnel needed for requirements gathering, and shall reasonably cooperate with Qlik in the performance of the CAT Services and shall provide Qlik with the information, feedback, instructions, and access to applicable equipment necessary to enable the timely performance of the CAT Services by Qlik in the manner provided herein. Customer shall be responsible for the completeness and accuracy of all information, data material, logos, trademarks and other intellectual property provided by Customer or its authorized representatives to Qlik. Customer represents and warrants that it has the full legal rights to provide the information, data, material, logos, trademarks, and other intellectual property (collectively, the "Customer Materials") to Qlik for inclusion in, or with respect to, the CAT Services.

The CAT Services also include applicable training reference card templates ("Reference Cards"), best practices for launching app and communication ("Launch Kit") and access to Qlik's adoption measurement tools to monitor user adoption metrics (collectively, the "CAT Materials"). Qlik grants to Customer a non-exclusive, non-transferrable, nonassignable perpetual license to use each Video and the CAT Materials delivered by Qlik for Customer and its Users' training and informational use. Customer may copy, modify and distribute to its Users the Reference Cards and the Launch Kit for its Users training and informational use. Customer may not, rent, lease, distribute, sell, sublicense, transfer or use with any third party in any way any of the Videos or the CAT Materials. Customer shall not remove or alter any copyright or other proprietary rights notice of Qlik and/or its licensors in or on the Videos or any CAT Materials. All CAT Materials (and the intellectual property rights associated therewith) are and will remain at all times the sole and exclusive property of Qlik and its affiliates and licensors.

Qlik grants to Customer a non-assignable, non-transferable and non-exclusive right to access and use the Introduction to Qlik Training Content Videos in the CAT Services Application provided by Qlik solely for such Customer's Users' training and informational use. The foregoing videos may not be reproduced, modified, rented, leased, distributed, sold, sublicensed, transferred or used by any third party. Customer shall not remove or alter any copyright or other proprietary rights notice of Qlik and/or its licensors in or on the Qlik Training Content Videos.

### 3. Terms and Conditions

**3.1 Payment.** a. Ordering Activity shall pay any fees due in accordance with the payment terms set forth in the Order Form or Statement of Work entered into between Ordering Activity and the GSA Schedule holder in accordance with the GSA Pricelist  
b. For all Training Courses to be held at a non-Qlik location, Ordering Activity Licensee agrees to pay any travel expenses incurred by Qlik to deliver such courses (collectively, "Qlik Expenses") in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document.

#### 3.2 Training Cards

Purchase and Redemption. Training Cards are purchased by Customers in the currency of the Customer's location, and may only be used by the Customer entity that purchased such Training Card. A Training Card shall be activated by Qlik upon purchase thereof by Customer, and shall be identified by a specific Training Card number. All

Training Courses and Training Services ordered, registered for, or attended on Customer's behalf that are paid for via a Training Card will incur the applicable reduction in the value of such Training Card equal to the value of Training Courses or Training Services ordered at the time of registration or payment. If the applicable charge for a Training Course or Training Service is greater than the unused amount connected with Customer's Training Card, such amount may be applied against such Training Course or Training Service, and Customer shall be responsible for payment of the additional charges for such Training Course or Training Service. If Customer's proposed Private and/or Onsite Classroom Training Course exceeds the maximum number of participants, and Qlik agrees to accommodate any additional participants, the Customer shall be required to pay the additional amount to Qlik for such additional participants.

Expiration, Replacement and Non-transferability. The amounts purchased on any Training Cards do not expire. Refunds will be provided upon request for any remaining, unused value on any Training Card. Customers may add value to any Training Card at any time. Qlik is not responsible for a lost, expired or invalid Training Card number. In order to obtain a replacement, Customer must provide valid proof of purchase from Qlik or the Qlik authorized partner from whom Customer obtained the Training Card number. Customer shall have no right to transfer or assign any Training Card to any affiliate or third party.

#### 3.3 Training Courses Availability; Registration of Participants, Cancellation and Rescheduling

All Training Courses are subject to space availability and Qlik's scheduling requirements. Customer shall promptly complete all registration or information forms required for any Training Course. Prior to the start date of any Private or Onsite Training Course, Customer shall provide to Qlik the list of participants scheduled to attend such Training Course. In the event that a scheduled participant is unable to attend a Training Course due to illness or a new role at Customer, or if such participant is no longer employed by Customer, Customer may substitute another participant for such Training Course upon prior written notice to Qlik of such new participant's contact details.

Cancellations and requests by Customer to reschedule Public Classroom, Private Classroom, Onsite Classroom, Virtual Private or Virtual Public Classroom Training must be made at least ten (10) business days prior to the applicable Training Course start date. If Customer has paid by Training Card, such refund shall be credited to Customer's applicable Training Card number.

Qlik reserves the right to reschedule or cancel a Training Course due to low enrollment or if necessitated by an emergency or other unforeseen circumstances. Customer shall be credited for the full amount paid by Customer for such course.

#### 3.4 Customer Obligations

If Qlik is to perform any Education Services at Customer's site or location, Customer shall carry and maintain public liability insurance and employers' liability insurance, covering its employees, suppliers and contractors engaged at its premises, in amounts no less than required by the applicable law. Customer shall be responsible to comply with all of Qlik's policies and procedures that have been identified to Customer, including but not limited to health and safety, access to Qlik's equipment and systems, and confidentiality (collectively, "Qlik Policies" or individually, a "Qlik Policy"). Qlik reserves the right to remove from any Training Course or refuse to admit to any Training Course any participant who is not in compliance with any Qlik Policy.

Customer agrees to provide timely feedback to Qlik following completion of each Training Course or applicable Training Service, which may include satisfaction forms, customer surveys or evaluations (collectively, "Feedback"). To the extent that Customer provides any Feedback or any other suggestions, data, information, comments or ideas with respect to Qlik's products and services (individually and collectively "Contributions"), Customer acknowledges and agrees that any and all Contributions made by Customer or any of its participants shall be deemed the confidential and proprietary property of Qlik. Customer expressly assigns, transfers and conveys all right, title and interest in and to the Contributions to Qlik. Customer agrees that Qlik and its designees will be free to use, copy, modify, create derivative works, publicly display, disclose, distribute, license and sublicense through multiple tiers of distribution and licensees, incorporate and otherwise use and exploit the Contributions, including derivative works thereto, for any and all commercial and non-commercial purposes, without any liability or obligation to Customer whatsoever Qlik shall not refer to this Agreement in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by

the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services.

### **3.5 Access to Training Courses; Ownership**

If required for any Training Course, Qlik shall provide the applicable participants with an evaluation version of the applicable Qlik proprietary software to use during a live public or private classroom Training Course for instructional purposes only (the "Training Software") and such right to use the Training Software shall automatically terminate upon conclusion of the applicable Training Course. Attendance at a Training Course does not entitle any Customer or participant to any license whatsoever to any Qlik Software.

In connection with the Training Services or a Training Course, Qlik may distribute to or make available for download by participants Qlik-branded Training Course materials, in printed form or other medium ("Course Materials"). Subject to Customer's compliance with these Education Terms and the payment of the applicable fees, Qlik grants to Customer a personal, limited, non-assignable, non-exclusive, and non-transferable right, without the right to sublicense, to use the Course Materials solely for Customer's personal training and education.

Customer may not copy, reproduce, modify, rent, lease, distribute, sell, sublicense, transfer or use in any way except for in accordance with the limited right granted herein the Course Materials, the Training Services, Training Courses or any part thereof. Customer may use the information contained in the Course Materials, the Training Services and the Training Courses solely for education purposes only and may not disclose or make available to any person any information contained therein, except to others who have also rightfully received the same Course Materials, Training Services or Training Courses from Qlik. Except for the limited right to use granted herein, all rights in and to the Training Courses, Training Services and the Course Materials, and all copies thereof, are retained by Qlik and its licensors, including, without limitation, all patent rights, copyrights, trademark rights and trade secret rights. Customer shall not remove or alter any copyright or other proprietary rights notice of Qlik and/or its licensors in or on the Course Materials. All Training Services, Training Courses and Course Materials and the intellectual property rights associated therewith are and will remain at all times the sole and exclusive property of Qlik and its affiliates and licensors, and Customer has no right, title or interest in or to the Training Services Training Courses, Course Materials or the intellectual property associated therewith.

Certain Education Services require Customer to have sufficient Internet access. Qlik is not responsible for Customer's inability to access any such Education Services due to User's failure to have adequate Internet or bandwidth capabilities, or for any failure of the Internet or other communications or connectivity networks, or any disruptions or inaccessibility caused by third party sites, software or hardware.

### **3.6 Verification**

Customer understands that Qlik may contact Customer, using the information provided by Customer, and that Qlik may verify such contact information in accordance with Qlik's then current privacy policy. Qlik has no obligation to allow Customer to use or access the Training Services, any Training Course and/or the Course Materials, unless Qlik is satisfied, in its discretion, that Customer is a bona fide trainee, that Customer has all necessary valid Customer licenses, if any, that Customer has paid the applicable fees for use of the Training Services, Training Courses and/or Course Materials, and that the information provided by Customer to Qlik in registering for the Training Services, Training Courses and/or Course Materials is current, accurate and complete and in compliance with Export Control Laws.

### **3.7 Confidentiality**

Customer acknowledges and agrees that the intellectual property associated with the Training Services, Training Courses and the Course Materials, and any other nonpublic information of a technical or commercial nature concerning Qlik or the Training Services, Training Courses and the Course Materials disclosed to Customer in connection with these Education Terms constitute Qlik's proprietary information and trade secrets, and Customer agrees to hold such information in strict confidence, and not disclose or otherwise share the Training Services, Training Courses or Course Materials or any other confidential information with any third party except as expressly provided in these Education Terms.

### **3.8 Disclaimer; Limitation of Liability**

Qlik warrants that the Training Services, the Course Materials and the Training Courses shall be performed using reasonable care and skill consistent with generally accepted industry standards. For any claimed breach of this warranty, Customer shall promptly notify Qlik of the warranty claim within five (5) business days of Customer's receipt of the applicable Training Services the Course Materials or the Training Courses. Customer's sole and exclusive remedy for any breach of this warranty shall be, at Qlik's sole option, re-performance of the non-compliant Training Services, Course Materials or Training Courses or return the fees paid for the non-compliant Training Services, Course Materials or Training Courses. Client shall provide reasonable assistance to Qlik in Qlik's efforts to furnish a remedy for any breach of this warranty regarding Professional Services

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3.8 (a), TO THE MAXIMUM EXTENT PERMITTED BY

LAW, THE TRAINING SERVICES, THE COURSE MATERIALS AND THE TRAINING COURSES ARE PROVIDED "AS IS". EXCEPT AS EXPRESSLY SET FORTH IN THESE EDUCATION TERMS, QLIK AND ITS AFFILIATES AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER EXPRESS OR IMPLIED (BY STATUTE, COMMON LAW OR OTHERWISE). Qlik does not warrant that: (i) the Course Materials, the Training Services or any Training Course

will meet Customer's or its Users' requirements; or (ii) the content of any Training Services, Course Materials or any Training Course will be error free.

IN NO EVENT SHALL QLIK OR ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES OR LOSSES OF ANY KIND ARISING UNDER ANY THEORY OF LIABILITY (INCLUDING TORT), INCLUDING WITHOUT LIMITATION DAMAGES OR LOSSES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OR CORRUPTION OF BUSINESS DATA OR INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF QLIK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. QLIK'S MAXIMUM AGGREGATE LIABILITY FOR ANY EDUCATION SERVICES (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE CONTRACT PRICE. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THESE EDUCATION TERMS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE EDUCATION SERVICES IS DONE AT USER'S OWN DISCRETION AND RISK. QLIK AND ITS SUPPLIERS SHALL

HAVE NO RESPONSIBILITY FOR ANY DAMAGE TO USER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF ANY SUCH CONTENT. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from the Vendor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## Exhibit D

### Consulting Services Terms

Unless otherwise agreed in writing, any consulting services ("Consulting Services") provided by Qlik to a client ("Client") are subject to and governed by these Consulting Services Terms and Conditions ("Terms"). Consulting Services may be described in an Order Form and also may be subject to a Statement of Work ("SOW") referencing these Terms and executed by authorized representatives of Qlik and Client.

Client shall obtain all necessary consents, permissions and authorizations to enable Qlik and/or its subcontractors to provide the Consulting Services and shall provide access to all staff and data necessary for Qlik's performance of the Consulting Services. Client is responsible for the completeness and accuracy of all information, data and material provided by or on behalf of Client to Qlik.

Qlik may delegate all or part of the Consulting Services to be performed hereunder to a Qlik affiliate or third party. Qlik shall remain liable for the actions and services provided by such affiliate, Third-Party and subcontractors at all times. Qlik retains the right to assign, reassign and substitute personnel at any time.

If the Consulting Services are to be performed at Client's location and subject to Government security requirements: (i) Client will provide, and shall ensure it has all rights to provide, all necessary working facilities (including, but not limited to, meeting facilities, desks, computers, software, hardware, equipment, telephone, facsimile, internet access, and access to the applicable locations, computers and systems of Client) to enable Qlik to perform the Consulting Services at License's premises; (ii) Client shall ensure that the premises at which the Consulting Services are to be carried out comply at all times with all applicable legislation, including but not limited to, any applicable health or safety laws, rules and regulations; and (iii) ensure that its employees and contractors cooperate fully with Qlik in relation to the provision of the Consulting Services.

Ordering Activity shall pay any fees due in accordance with the payment terms set forth in the Order Form or Statement of Work entered into between Ordering Activity and the GSA Schedule holder in accordance with the GSA Pricelist. Ordering Activity agrees to pay any travel expenses incurred in connection with the Consulting Services in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable order form.

Consulting Services are conducted and billed on an hourly basis. Any reference to Days or Daily is equal to eight (8) hours of service. For the duration of the Consulting Services engagement or a period of twelve (12) months from the effective date of any Order Form referencing such Consulting Services, whichever is shorter, Qlik will provide the services at rates set forth in the Order Form. Thereafter, Qlik's Consulting Services rates shall apply in accordance with the GSA Pricelist unless otherwise agreed in writing between Client and Qlik.

Client acknowledges that any time frames set forth in an SOW are estimates only of the amount of time required by Qlik for the provision of the Consulting Services and time shall not be of the essence. All work will be performed on a time and materials basis and the Client will be invoiced for the actual (and not estimated) time spent in providing the Consulting Services to the Client.



Client is responsible for supplying Qlik with any required information within any timeline set out in an SOW. Client is also responsible to assign a contact person who will be available to answer any questions in person or by telephone and also have the authority to make prompt decisions.

Client acknowledges and agrees that any Consulting Services to be held at Client's location have been reserved specifically for Client. Any cancellation or rescheduling of any such on-site Consulting Services requires at least ten (10) business days' written notice prior to the date of the scheduled Consulting Services.

Rescheduling of any such Consulting Services is subject to availability of Qlik personnel, and Qlik makes no commitment or guaranty that any such rescheduling can be accommodated.

10 (a) Qlik warrants that the Consulting Services shall be performed using reasonable care and skill consistent with generally accepted industry standards. For any claimed breach of this warranty, Client shall promptly notify Qlik of the warranty claim within five (5) business days of Client's receipt of the applicable Consulting Services. Client's sole and exclusive remedy for any breach of this warranty shall be, at Qlik's sole option, re-performance of the noncompliant Professional Services or return the fees paid for the non-compliant Consulting Services. Client shall provide reasonable assistance to Qlik in Qlik's efforts to furnish a remedy for any breach of this warranty regarding Professional Services.

(b) Qlik will have no liability to Client with respect to any warranty claim made pursuant to Section 10(a), or any obligation to correct any defect or problem with the Software, to the extent that it: (i) arises out of any use of the Software by Client or its authorized affiliates not in accordance with the Documentation; (ii) arises out of any modification or alteration of the Software by anyone other than Qlik or its authorized contractors; or (iii) arises out of the use of the Software in combination with any other software or equipment not specified in the Documentation as supported by Qlik. QLIK AND ITS AFFILIATES AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER EXPRESS OR IMPLIED (BY STATE COMMON LAW OR OTHERWISE) INCLUDING WITHOUT LIMITATION, AS TO THEIR ACCURACY, TIMELINESS, COMPLETENESS, RESULTS, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF QLIK HAS BEEN INFORMED OF SUCH PURPOSE, AND ANY REPRESENTATIONS, WARRANTIES OR OTHER TERMS ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

EXCEPT FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, THE AGGREGATE AND CUMULATIVE LIABILITY OF EITHER PARTY FOR DAMAGES (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT SHALL IN NO EVENT EXCEED THE CONTRACT PRICE PAID OR PAYABLE

BY CLIENT FOR THE APPLICABLE SERVICES WHICH GAVE RISE TO THE CLAIM. IN NO EVENT SHALL EITHER PARTY OR ITS RESPECTIVE SUPPLIERS, RESELLERS OR AFFILIATES BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUES, SAVINGS, GOODWILL, DATA OR INACCURACY OF ANY DATA OR COST OF SUBSTITUTE GOODS OR SOFTWARE REGARDLESS OF THE THEORY OF LIABILITY OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS, HOWSOEVER ARISING, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THESE TERMS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Qlik and its affiliates, or their respective suppliers or licensors where applicable, own and retain all right, title and interest in and to the Consulting Services and the deliverables provided, including all patents, trademarks (registered or unregistered), trade names, copyrights, trade secrets and any Confidential Information which Qlik may disclose. Qlik grants to Client a license to use any deliverable with the same scope and limitations as the license Client has for the Qlik proprietary software that is the subject matter of such deliverable.

Client acknowledges and agrees that all intellectual property associated with the Consulting Services and any other nonpublic information of a technical or commercial nature concerning Qlik or the Consulting Services constitute Qlik's proprietary and confidential information and trade secrets ("Qlik Confidential Information"). Any nonpublic information disclosed by or on behalf of Client during or in relation to Qlik's performance of Consulting Services that is identified as confidential or proprietary shall constitute Client Confidential Information. Confidential Information of a party does not include information which, and solely to the extent it (i) is generally available to the public other than as a result of a disclosure by the receiving party or any of its representatives; (ii) was known to the receiving party prior to the date hereof on a non-confidential basis from a source other than disclosing party or its representatives; (iii) is independently developed by the receiving party without the benefit of any of the disclosing party's Confidential Information; (iv) becomes lawfully known to the receiving party on a non-confidential basis from a source (other than disclosing party or its representatives) who is not prohibited from disclosing the information to the receiving party by any contractual, legal, fiduciary or other obligation or (v) was disclosed by disclosing party to a third party without an obligation of confidence. Each party will protect such information from unauthorized distribution and use with the same degree of care that it uses to protect its own like information, but in no event less than a reasonable degree of care. The



receiving party shall not disclose Confidential Information within its own organization nor that of its affiliates except to those employees or consultants who need to know such information in connection with the business relationship between the parties. Qlik recognizes that U.S. Government agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which can result in certain information being released, despite being identified as “confidential,” subject to procedural requirements of the Act which include notice, the right to present arguments, and the right to appeal a disclosure decision.

General

This Agreement is governed by and construed in accordance with U.S. Federal law. Any suit, action or proceeding arising out of or relating to this Agreement shall be resolved by a court or administrative tribunal of competent jurisdiction.

. Excusable Delay. Qlik shall not be liable for delays caused by an occurrence beyond its reasonable control and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Qlik shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Client agrees to comply with all export control laws applicable to the Consulting Services.

Reserved.

All notices or other communications to Qlik shall be addressed to: QlikTech Inc., 211 South Gulph Road, Suite 500, King of Prussia, PA, 19406; Attention: Legal Department

**Support Policy**

This Support Policy (“Policy”) describes the current practices of Qlik with regard to its provision of Maintenance Services and Support Services as defined below (collectively “Support”) to customers with a Support agreement or a subscription which includes Support (“Customer(s)"). Prior versions of this Policy were titled “Qlik Maintenance Policy” and any reference to such Maintenance Policy in any customer agreement shall be deemed a reference to this Policy.

## DEFINITIONS

“**Affiliate**” means any entity which controls, is controlled by, or is under common control with Customer where “control” means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests of such entity, but only for so long as such control exists

“**Authorized Affiliate**” means any Affiliate of Customer that is designated by Customer as authorized to use the Software if permitted under the terms of an Agreement.

“**Documentation**” means the then-current documentation published and made generally available by Qlik for the applicable QlikProduct in the form of manuals and functional descriptions in printed or electronic form, as may be modified by Qlik from time to time.

“**Error**” means any verifiable and reproducible failure of a Qlik Product to materially conform to the Documentation.

“**Initial Response Time**” means the period commencing when an Error is first reported by Customer’s Technical Contact(s) in the manner required by this Policy and ending when a member of the Qlik technical support team logs the report and responds to the Technical Contact(s) by telephone, email or through the Support Portal.

“**Maintenance Services**” means the release of Updates to the applicable Qlik Product, which Qlik elects to make generally available to Customers.

“**Product Line**” means a group of related products or items, which have common features, functions or branding, and are deployed in a common environment. For example, Professional User and Analyzer User are part of the same Qlik Sense Enterprise product line. Qlik Sense Enterprise and Qlik Sense Business are deployed in different environments and not part of the same Product Line.

“**Qlik Product**” means the applicable Software.

“**Self-Service Tools**” means the Knowledge Base (Qlik’s online database of content and FAQs about the use and support of the Software), white papers, Community Forums, webcasts and other materials available in the Support Portal to Customers that are recurrent on Support.

“**Severity 1 Error**” means that the Software is inoperable or not accessible in a production environment due to i) a server-side failure, but not as a result of scheduled maintenance and/or upgrades, or ii) any event beyond the reasonable control of Qlik, including but not limited to any interruption of power, telecommunications or Internet

connectivity, and any failure of Customer's internal telecommunications equipment, browser or network configurations, hardware and/or third party software).

**"Severity 2 Error"** means that major functionality is materially impacted and not working in accordance with the technical specifications in the Documentation or significant performance degradation is experienced so that critical business operations cannot be performed.

**"Severity 3 Error"** means any Error that is not a Severity 1 Error or Severity 2 Error.

**"Software"** means the generally available release of Qlik's proprietary software in object code form, as well as the software API, licensed to Customer under an agreement. Software excludes early release, technical preview, beta, free trial or evaluation versions as well as any extensions, objects, open source projects or code made available without charge on Qlik Branch or other developer forums, and any Qlik products which exclude Support in the terms of use.

**"Standard Business Hours"** mean from 08:00 to 17:00, (8:00 am to 5:00 pm) Monday to Friday (excluding national and bank holidays) for the Support Center in the specific geographic region to which the applicable licenses are assigned in Qlik's records.

**"Support Agreement"** means the Qlik® User License Agreement or other written agreement for Software or services between Qlik and Customer, which includes the provision of Support Services and/or Maintenance Services.

**"Support Portal"** means Qlik's online support website.

**"Support Services"** means the technical end user support for the Qlik Products as described in this Policy. Support Services do not include services performed onsite at any Customer facility, consulting or education services, Maintenance Services or any services not expressly stated in this Policy.

**"Supported Version"** a major release of the Software. Qlik provides Support Services and Maintenance Services for Supported Versions for a period of twenty-four (24) months from the date such Supported Version was made generally available by Qlik.

**"Technical Contact(s)"** means Customer's personnel that have been identified in writing by Customer as the technical contact(s) for Customer and authorized to contact Qlik for support.

“Update” means any Software enhancement, modification or Error, which Qlik elects to make generally available to its customers as part of Maintenance Services. For all Qlik Products, Updates do not include new or separate products which Qlik offers only for an additional fee to its customers generally.

## OVERVIEW

Qlik will provide Customer with Support Services and Maintenance Services for the Qlik Products in accordance with this Policy and the level of coverage purchased by Customer as well as any applicable terms in the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), and agreement for the Software, subject to Customer’s timely payment of the applicable Support Services fees (“Support Fees”) or subscription fees.

Unless otherwise expressly set forth herein, all references in this Policy to response times or communications from Qlik shall only apply during Qlik’s Standard Business Hours, regardless of when a support matter is reported to Qlik. Times expressed as a number of “business days” include Standard Business Hours.

Any Support Services provided by Qlik hereunder will be provided in the English language or, as applicable, such other languages that may be specified on the Support Portal, which may change from time to time. The availability of support provided in any language other than English is provided at Qlik’s sole discretion and is not guaranteed by Qlik, and will depend on the location of Qlik’s technical support personnel providing such support, including whether or not Customer is entitled to contact that particular support line based on the type of Support Services purchased and Customer’s geographic location.

## SUPPORT LEVELS

Enterprise Support Coverage for Software.

Scope of Coverage. Customers with with Enterprise Support receive support for Error determination, verification and resolution (or instruction as to work-around, as applicable) twenty-four (24) hours a day, seven (7) days a week, 365 days a year for Severity 1 Errors and during Qlik’s Standard Business Hours for Severity 2 and Severity 3 Errors.

Support Case Handling. Qlik will assist Enterprise Support Customers in issue analysis to determine whether or not the technical issue is related to the third-party hardware or software. In order to isolate the issue, Qlik reserves the right to request that the third-party hardware or software be removed. Qlik may in its discretion reach out to third-party vendors based on the established Technical Support Alliance Network (TSANet) to troubleshoot the issue. TSANet is a vendor-neutral global support alliance where companies work together to support mutual customers more effectively. Qlik will only engage TSANet for Customers who are using supported configurations.

Update Information. Customers may contact Qlik Enterprise Support for information regarding Updates performed by Customer, such as installation instructions, release documentation, and general guidance for multiple environments.

Qlik will use commercially reasonable efforts to respond (a) within the initial response time targets set forth in the table below for Severity 1 Errors reported by a Technical Contact to Qlik via telephone or (b) within the Initial Response Times set forth in the table below for Severity 2 and Severity 3 Errors that are reported by a Technical Contact to Qlik via telephone or

the Support Portal. Qlik will respond to Customer’s Technical Contact by telephone or via the Support Portal. Severity 2 & 3 Errors will be initially logged and acknowledged by Qlik during Qlik’s Standard Business Hours in the region where the Error is reported. Provided that Customer provides Technical Contacts in other regions that are available to help troubleshoot issues, all Severity 1 Errors will be addressed and handed over between regions for as long as the Customer provides the available Technical Contacts in such region(s). Qlik shall use commercially reasonable efforts, consistent with industry practice, to investigate such reports to determine whether there is an Error present. If Qlik determines that an Error is present, Qlik will use commercially reasonable efforts to correct the Error and/or provide a workaround, including, without limitation, by providing Customer with an Update. Qlik will communicate with Customer at least with the frequency targets set forth in the table below until the Error is resolved (in accordance with Section 4 below) or a work-around is provided.

<b>Enterprise Support Coverage</b>		
<b>Severity Level</b>	<b>Initial Response Time</b>	<b>Communication Frequency</b>
Severity 1 Error	30 minutes, 24x7	Every 4 hours, 24x7
Severity 2 Error	1 hour*	72 Hours*
Severity 3 Error	4 hours*	Weekly*

\*During Standard Business Hours

**ERROR RESOLUTION AND ESCALATION**

An Error is considered to be resolved upon the earlier to occur of the following: (i) Qlik and Customer mutually agree in writing that the issue or problem is resolved; (ii) Qlik has provided Customer with an Update; (iii) a technical work-around solution is provided and is reasonable in Qlik’s discretion; (iv) Customer requests that Qlik close the support case; or (v) the support case has been left open by the Customer for ten (10) consecutive business days, during which period Qlik has not received a response from any of Customer’s Technical Contacts.

Exclusions. Notwithstanding anything in this Policy to the contrary, Qlik will have no obligation to provide any Support Services in connection with: (i) any issue or problem that Qlik determines is not due to any Error or deficiency in the Qlik Product (including without limitation, issues or problems caused by stand-alone third party software products used in conjunction with the Qlik Product, the Internet or other communications, Customer network or browser matters, or login issues); (ii) use of the Qlik Product other than in accordance with the Documentation and the Agreement; (iii) use of the Qlik Product provided on a trial or evaluation basis or for which Customer has not paid any fees; (iv) any Errors or problems with the applicable Qlik Product that are not reproducible; (v) any Error or problem that is reported by Customer via any Qlik support telephone number or email address associated with any geographic territory other than the one to which Customer has been assigned on the Support Portal; or (vi) any Errors or problems with the Software that result from: (a) the use of the Software with software or hardware not designed for use with the operating systems approved by Qlik in the Documentation; (b) the use of the Software with hardware that does not satisfy the minimum system requirements specified by Qlik in the Documentation; (c) changes, modifications, or alterations to the Software not approved in writing by Qlik or its authorized representatives (d) use of the Software with third party operating systems, databases, data sources, network software and client applications that are no longer supported by the related product vendors, or

(e) use of other than a Supported Version of the Software. If Qlik does correct any of the Errors described in subsections (a)-(e) above, or otherwise provides support for a Qlik Product that is not covered by the terms and conditions contained in this Policy, such Error resolution or support will be provided only following Customer’s written request and written approval of all charges, and Customer will be invoiced for such support at Qlik’s then-

current “time and materials” rates for such services. Without limiting any of the foregoing, Qlik has no obligation to provide support for any third party software, data, or other materials distributed or bundled with a Qlik Product.

**UPDATES**

In addition to its obligations under Sections 2 and 3 of this Policy, Qlik will make Updates available to all Customers with a current subscription or Support Agreement, when and if Qlik elects to make them generally commercially available. All Updates provided to any Customer under this Policy will be made available at Qlik’s discretion, in a form of digital medium, or for Software, via the

Qlik Software download site. Each Update will be provided together with the associated Documentation written in English or another language officially supported by Qlik. Unless otherwise agreed in writing by Qlik, Customer shall be responsible for installation of all Updates. Qlik is under no obligation to develop any future functionality, programs, services or enhancements.

## CUSTOMER'S OBLIGATIONS

Customer will provide timely information and access to knowledgeable resources as reasonably required to provide support. Qlik's support obligations shall be excused to the extent Customer fails to cooperate in this regard.

The Customer shall: (i) not request, permit or authorize anyone other than Qlik (or a Qlik-authorized partner or provider) to provide any form of support services in respect of the Qlik Products; (ii) cooperate fully with Qlik's personnel in the diagnosis or investigation of any Error or other issue or problem with the Qlik Products; (iii) be responsible for purchasing, installing and maintaining all hardware and operating systems required to use and support the Software; and (v) be responsible for maintaining all third party software not explicitly licensed under the Support Agreement.

Customer's contact with Qlik in connection with Customer's requests for support and reports of Errors shall be solely through its Technical Contact(s). The Technical Contact(s) shall: (i) serve as the internal contact(s) for Customer's and its Authorized Affiliates' personnel who are authorized to use the Qlik Products per the terms of the Support Agreement; (ii) be responsible for initiating all requests by, and maintaining all records of, the Customer and its Authorized Affiliates relating to Support Services; (iii) serve as the contact(s) with Qlik on all matters relating to Support Services; and (iv) be responsible for providing information and support, as requested by Qlik, to assist in the reproduction, diagnosis, analysis, and resolution of Errors. The maximum number of Technical Contacts for each Customer is six (6), regardless of the number or types or quantities of licenses purchased for the Software. Customer shall ensure that its Technical Contacts comply with any reasonable training requirements for the Technical Contact(s) upon notification by Qlik. Subject to the previous sentence, Customer may change its Technical Contact(s) by notifying Qlik in writing. If Qlik is unable to reproduce a problem or the solution requires modifying Software configuration parameters, Qlik may require Customer to provide remote access in order to continue providing support. Customer shall ensure that a functioning system enabling Qlik to have remote access to Customer's technical equipment is installed (subject to Customer's reasonable security measures and policies) and that satisfactory communication between the parties' computer systems is possible. Customer agrees to be solely responsible for protecting and backing up its equipment, software and data prior to any such access. Qlik accepts no liability in connection with remote access support. A request for a remote connection will come only after other options are explored.

Customer will be responsible for primary support of any Authorized Affiliates in connection with their use of the Qlik Product in accordance with the terms of the Agreement. Customer is solely responsible for: (i) distributing all Updates to its Authorized Affiliates; (ii) passing on to its Authorized Affiliates all support materials as appropriate; and (iii) providing software support, including operational instruction, problem reporting and technical advice to its Authorized Affiliates, in each case of (i), (ii) and (iii) above, as necessary to enable the Authorized Affiliate to continue to use the Qlik Product as authorized under the Support Agreement. Customer's Authorized Affiliates, as well as its contractors and third party users, may not contact Qlik directly for support of the Software, unless designated as a Technical Contact by the Customer.

Qlik supports the Software in designated operating systems as described in the Documentation and not specific hardware configurations. If Customer is running the Software on a virtual environment, Customer and the virtual environment vendor will be responsible for any interactions or issues that arise at the hardware or operating system layer as a result of the use of a virtual environment. *Qlik reserves the right to request Customers to diagnose certain issues in a native designated operating system environment, operating without the virtual environment, as needed to determine whether the virtual environment is a contributing factor to the issue.*

Customer is expected to use a non-production environment for development and to conduct sufficient testing before making any updates to production.

For certain services provided under this Policy, the transmission of machine logs may be required. For avoidance of doubt, Customer shall not include any business sensitive and/or personal information via such transmissions. Accordingly, Qlik shall not be deemed a Data Processor under EU Data Protection Directive 95/46/EC (as amended) (the "Directive") in providing support for the Software. However, should Customer send to Qlik any log files or other information containing personal data, Qlik will (i) comply with the Directive and any relevant national enacting legislation in relation to its treatment of that personal data as required under relevant, applicable law; and (ii) in accordance with Qlik's privacy policies from time to time in effect. Customer shall take reasonable measures to limit the amount and sensitivity of such data provided to Qlik (by anonymization, for example). Qlik's privacy policies are available to view online at [www.qlik.com](http://www.qlik.com) under "Cookie and Privacy Policy".



### **ADDITIONAL TERMS**

Support is included in the subscription fee for all subscriptions and provided by Qlik. Customer is required to separately purchase Support on all perpetually licensed Software for a twelve (12) month period beginning on the delivery date of the Software (the "Initial Support Period). In addition, Customer must maintain support across i) all perpetual licenses within the same Product Line and, ii) all licenses, whether perpetual or subscription, within the same deployment. Customer must be current on Support for all previously purchased licenses in the same Product Line in order to purchase additional licenses. In the event the Customer elects not to renew a Support Agreement for its perpetual licenses, the non-renewal must apply to all licenses within the same Product Line. Notwithstanding the foregoing, any Software or subscriptions purchased as a bundle, package, or special promotion (e.g., enterprise licenses) must be supported together at a uniform level, regardless of whether such Software purchase includes multiple Product Lines.

Unless otherwise agreed in writing, Support Agreements for perpetually licensed Software may be renewed for successive twelve (12) month periods (each, a "Support Period") by both parties executing an agreement in writing. Support fees for any additional Software purchases will be prorated to achieve a common annual Support Period with existing licenses.

Reinstatement of lapsed or cancelled Support Agreements for perpetually licensed Software will be subject to payment by Customer of (a) the then-current annual Support Fees calculated in accordance with the GSA Pricelist payable for the 12-month period beginning on the date of reinstatement and (b) the aggregate Support Fees that would have been payable for the relevant Software during the period of lapse in the absence of termination or non-renewal, provided that (i) the combined reinstatement fees are paid within twelve (12) months after the date of the lapse. Reinstatement beyond this date will be at Qlik's sole discretion. Reinstatement fees may be assessed once notice of cancellation or non-renewal is provided, even if a request for reinstatement is provided prior to the expiration of the current Support Period.

Qlik may elect to make certain software publicly available under an open source license and free of charge on various online communities ("Extensions"). This Policy includes Support with regard to any certified Qlik Extensions only. To the extent customer uses non-certified Extensions in connection with the Software, this Policy provides Support for the Software and Software API only.

While Qlik may make available certain open source libraries created by Qlik (each a "Qlik Library" and collectively the "Qlik Libraries") that may be referenced in the Documentation as being available for use with Qlik

Core, Qlik Libraries are not supported under the Policy. To the extent an Error in Qlik Core arises from or relates to use of the Qlik Libraries, Qlik's obligation to provide Support for such Error shall only exist during the period in which the applicable library remains a valid Qlik Library for use with Qlik Core (as set forth in the then-current Qlik Core Documentation) and the applicable Qlik Library must not be changed, modified or altered in any manner by anyone other than Qlik.

Qlik may elect to make certain software available free of charge for trial, evaluation or other purposes ("Freeware"). Support for Freeware, if any, will be provided at Qlik's discretion and in accordance with the license terms for such Freeware.

**DISCLAIMER**

THIS POLICY DEFINES A SERVICE ARRANGEMENT AND NOT A WARRANTY. THE QLIK PRODUCTS ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE APPLICABLE AGREEMENT. THIS POLICY DOES NOT CHANGE OR SUPERSEDE ANY TERM OF ANY SUCH AGREEMENT. TO THE EXTENT THERE IS A CONFLICT BETWEEN A TRANSLATED VERSION OF THIS POLICY AND THIS ENGLISH VERSION, THE ENGLISH LANGUAGE VERSION WILL PREVAIL.

## Qlik® Cloud Terms of Service

### 1. AGREEMENT

These Qlik Cloud Terms of Service (“Terms”) are effective when (A) a Customer places an Order with the Qlik entity identified in Table 1 to this Agreement (“Qlik”) or (B) an Authorized Reseller places an order on behalf of the Customer (each an “Order Form”), are by and between Qlik and the Customer specified in the Order Form. These Terms govern the Customer’s access to and use of all Qlik Cloud products and related Qlik Products and Services as referenced on the applicable Order Form. If the Customer does not agree to these Terms, or if the Terms are not incorporated into the Order Form, the Customer must not use Qlik Cloud.

### 2. DEFINITIONS

Unless defined elsewhere in this Agreement, the capitalized terms utilized in this Agreement are defined below.

- 2.1. **“Account Data”** means specific Customer Data is that exempt from the boundary established in Qlik’s FedRAMP System Security Plan and permitted within Qlik corporate services.
- 2.2. **“Agreement”** means these Qlik Cloud Terms of Service, and any Order Form(s) between Qlik and Customer for the provision of Qlik Cloud and any applicable Qlik Software or Services used in connection with Qlik Cloud.
- 2.3. **“Authorized Third Party”** means any third party authorized by Customer to access and use Qlik Products.
- 2.4. **“Authorized Reseller”** means a reseller, distributor or other third party authorized by Qlik to sell Qlik Products or Services.
- 2.5. **“Authorized User”** means an employee or Authorized Third Party of Customer, who has been authorized by Customer to use the Qlik Products in accordance with these Terms and has been allocated a license or user credentials.
- 2.6. **“Confidential Information”** means non-public information that is disclosed by or on behalf of a Party under or in relation to this Agreement that is identified as confidential at the time of disclosure or should be reasonably understood to be confidential or proprietary due to the nature of the information and/or the circumstances surrounding its disclosure. Confidential Information does not include information which, and solely to the extent it: (i) is generally available to the public other than as a result of a disclosure by the receiving Party or any of its representatives; (ii) was known or becomes known to the receiving Party from a source other than disclosing Party or its representatives without having violated any confidentiality agreement of the disclosing Party; (iii) is independently developed by the receiving Party without the use or benefit of any of the disclosing Party’s Confidential Information; or (iv) was disclosed by the disclosing Party to a third party without an obligation of confidence. In any dispute concerning the applicability of these exclusions, the burden of proof will be on the receiving Party and such proof will be by clear and convincing evidence.
- 2.7. **“Consulting Services”** means any consulting services performed by Qlik under these Terms and any applicable Order Form.
- 2.8. **“Content”** means information, data and metadata created, collected, processed, maintained, disseminated, disclosed or disposed of by or for the Customer in any medium or form provided by Customer or any Authorized User for use with Qlik Cloud.
- 2.9. **“Customer”** means any of the following third parties that is permitted by Qlik to use, license or access Qlik Cloud: (a) the federal government, a federal government department and/or United States federal governmental agency of the United States; (b) a state or local government or a state or local governmental department or agency located in the United States; (c) K-12 & Higher Education utilizing a Government Contracting Vehicle; (d) Healthcare vendors/hospitals (not payers) utilizing a government contracting vehicle; or (e) system integrators, contractors and companies doing work for the Government solely in connection with such work for a Government entity, in each case that has entered into this Agreement by electronically accepting the terms or by accessing or using the Qlik Products; or where an Order Form has been executed, then Customer means the entity identified on the Order Form. For clarity, a Customer may include the Government public safety agencies, tribal, territorial, federally funded research centers (FFRDCs), or lab entities.
- 2.10. **“Delivery Date”** means the date on which access to the Qlik Products is initially made available (via download or otherwise) to Customer or to the Authorized Reseller as applicable, which date may be specified in an Order Form.
- 2.11. **“Documentation”** means the then-current user documentation for the Qlik Products, including the product metrics available at [www.qlik.com/product-terms](http://www.qlik.com/product-terms).
- 2.12. **“Education Services”** means any training or education services performed by Qlik under the terms of this Agreement and any applicable Order Form.
- 2.13. **“Export Control Laws”** means export control laws and regulations of the U.S., E.U., and other governments, as well as regulations declared by the U.S. Department of the Treasury Office of Foreign Assets Control, the U.S. Department of Commerce, the Council of the E.U. and their counterparts under applicable law (“Export Control Laws”), including all end user, end-use and destination restrictions imposed by such Export Control Laws.

- 2.14. **“External Use”** means an Authorized Third Party’s use of any Qlik Products, which are designated for external use in the Documentation, provided such use is solely in connection with Customer’s business relationship with the Authorized Third Party.
- 2.15. **“FedRAMP”** means the Federal Risk and Authorization Management Program.
- 2.16. **“IP Claim”** means a claim brought by a third party alleging that the Qlik Products, as delivered by Qlik and used as authorized under this Agreement, infringes upon any third- party copyright, trademark or a patent.
- 2.17. **“Government”** means any an agency, department, territory, or instrumentality of the U.S. government or an agency, department, or instrumentality of a state, county, municipal, or local government located in the United States.
- 2.18. **“Order Form”** means an order form, statement of work or written document pursuant to which Customer orders Qlik Products or Services to be performed by Qlik and executed by the Parties or by Customer and an Authorized Reseller.
- 2.19. **“Party”** or **“Parties”** means Qlik and Customer, individually and collectively, as the case may be.
- 2.20. **“Platform Data”** means the statistical data and performance information, analytics, metadata, or similar information, generated through instrumentation and logging systems, regarding the operation of Qlik Cloud, including Customer’s use of Qlik Cloud.
- 2.21. **“Qlik Acceptable Use Policy”** means Qlik’s then-current Hosted SaaS Services Acceptable Use Policy located at [www.qlik.com](http://www.qlik.com) and attached hereto as Exhibit 1.
- 2.22. **“Qlik Cloud”** means a subscription-based, hosted solution provided and managed by Qlik under these Terms to which the Customer is being granted access via a website or other designated IP address.
- 2.23. **“Qlik Marks”** means Qlik’s trademarks, service marks, trade names, logos, and designs, relating to Qlik Products, whether or not specifically recognized, registered or perfected, including without limitation, those listed on Qlik’s website.
- 2.24. **“Qlik Products”** means Software and Qlik Cloud. Qlik Products do not include Services or early release, beta versions or technical previews of product offerings.
- 2.25. **“Rules of Behavior”** means Qlik’s then-current Qlik Cloud Government Rules of Behavior for External Users(available at <https://www.qlik.com/us/legal/qlik-cloud-governmenthttps://www.qlik.com/us/legal/qlik-cloud-government-onboarding-termsonboarding-terms> and attached hereto as Exhibit 2
- 2.26. **“Services”** means Support, Consulting Services or Education Services performed by Qlik under the terms of this Agreement and any applicable Order Form. Services does not include Qlik Cloud.
- 2.27. **“Software”** means the generally available release of the Qlik software, in object code form, initially provided or made available to Customer as well as updates thereto that Qlik elects to make available at no additional charge to all of its customers that subscribe to Support for the Software.
- 2.28. **“Subscription”** means access to and usage of Qlik Cloud subject to these Terms.
- 2.29. **“Support”** means end user support and access to updates for the Qlik Products, which are provided by Qlik as part of a subscription for Qlik Products.

### 3. CUSTOMER RIGHTS AND RESPONSIBILITIES

**3.1. Use of Qlik Cloud.** Customer directly, or through a Qlik Partner, may purchase a Subscription to Qlik Cloud. Qlik will provide the Customer and the Customer’s Authorized Users with non-exclusive access to Qlik Cloud, provided any use of Qlik Cloud shall be (i) in accordance with the Documentation and these Terms; and (ii) for the authorized scope and quantities which may be specified in an Order Form. Customer may use Qlik Cloud solely for the Customer’s own internal governmental purposes.

**3.2. Use of Qlik Software.** Subject to the terms of this Agreement, in the event Customer licenses Qlik Software to support its transition to Qlik Cloud, Qlik grants to Customer a world-wide, non-exclusive, non-transferable and non-sublicensable right for its Authorized Users to access or use Qlik Software for Customer’s internal business operations and for External Use, provided any use of Qlik Software shall be (i) in accordance with the Documentation and these Terms and (ii) for the authorized scope and quantities which may be specified in an Order Form.

**3.3. Services.** Qlik will support Qlik Cloud and related Qlik Software in accordance with Qlik’s Public Sector Service Level Agreement (available at <https://www.qlik.com/us/legal/qlik-cloud-governmentonboarding-terms> and attached hereto as Exhibit 3) for Customer’s subscription period. Qlik may provide Consulting or Education Services to Customer pursuant to this Agreement, any applicable product descriptions (available at [www.qlik.com/product-terms](http://www.qlik.com/product-terms)) and any applicable Order Form.

**3.4. Restrictions.** Customer will not, nor permit nor authorize anyone to: (i) make any Qlik Products available to anyone other than Customer or its Authorized Users; (ii) offer, use, or otherwise exploit the Qlik Products whether or not for a fee, in any managed service provider (MSP) offering; platform as a service (PaaS) offering; service bureau; or other similar product or offering; (iii) input, process or store any classified data in Qlik Cloud; (iv). copy, decompile, disassemble or reverse engineer or otherwise attempt to extract or derive the source code or any methods, algorithms or procedures from the Qlik Products, except as otherwise expressly permitted by applicable law, or modify, adapt, translate or create derivative works based upon the Qlik Products; (v) alter or circumvent any product, key or

license restrictions, or transfer or reassign a named user license or entitlement, in such a manner that enables Customer to exceed purchased quantities, defeat any use restrictions, or allows multiple users to share such entitlement to exceed purchased quantities; (vi) copy or create Internet "links" to Qlik Cloud or "frame" or mirror" any of the Qlik Cloud; (vii) permit direct or indirect access to or use of any Qlik Cloud or Content in a way that circumvents any usage limit; (viii) use the Qlik Products if Customer is a competitor of Qlik; or (viii) access or use the Qlik Products in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Qlik Products, or (c) copy any ideas, features, functions or graphics of the Qlik Products.

**3.5. Content.** Customer acknowledges and agrees that it has sole responsibility: (i) to administer Authorized User access to its account on Qlik Cloud and the Content, (ii) for the input and administration of Content in Qlik Cloud, including deletion of Content, (iii) to ensure it has all rights necessary to use, transmit and display Content and for Qlik to host, store, adapt or integrate such Content as required to provide Qlik Cloud, (iv) for maintaining Content on the systems from which they are sourced and making backup copies of Content; and (v) to ensure that all Authorized Users abide by the Qlik Acceptable Use Policy and the Rules of Behavior while accessing Qlik Cloud. Customer hereby represents and warrants on behalf of itself and its Authorized Users that it has all of the rights in the Content necessary for the use, display, publishing, sharing and distribution of the Content and that such use of the Content under these Terms does not violate any third-party rights, laws or these Terms. Qlik is not responsible for the accuracy, completeness, appropriateness, copyright compliance or legality of any Content.

**3.6. Authorized Third Parties.** If Customer chooses to have an Authorized Third Party access Qlik Cloud on its behalf, including any provider of services or Qlik employees accessing Qlik Cloud at Customer's request, Customer acknowledges that Customer, and not Qlik, is solely responsible and liable for (i) the acts and omissions of such Authorized Third Party in connection with Qlik Cloud and compliance with Customer's obligations hereunder; (ii) any Content that Customer requests or instructs the Authorized Third Party to include in Qlik Cloud; and (iii) the issuance, removal and/or deactivation of the credentials issued for such Authorized Third Party.

**3.7. Security.** Qlik will use commercially reasonable, industry standard security measures in providing Qlik Cloud and will comply with such data security regulations applicable to Qlik Cloud. Qlik has implemented appropriate technical and procedural safeguards to protect and secure Content. Qlik Cloud is hosted and delivered from a data center operated by a third-party provider, which is solely responsible for the underlying infrastructure and hosting of Qlik Cloud. Qlik reserves the right to remove or update its third-party provider. Customer is solely responsible for any breach or loss resulting from: (i) Customer's failure to control user access; (ii) failure to secure Content which Customer transmits to and from Qlik Cloud; and (iii) failure to implement security configurations and encryption technology to protect Content.

**3.8. Privacy.** The terms of the Data Processing Addendum at [www.qlik.com/legal-agreements](http://www.qlik.com/legal-agreements) and attached hereto as Exhibit 4 ("DPA") are incorporated by reference when executed by Customer as set forth in the DPA and received by Qlik, and shall apply to the extent Content includes "Customer Personal Data" as defined in the DPA. All Content used by or within Qlik Cloud may be stored on servers located in various regions and Customer may select (where available) the region in which its Content resides. Customer and Authorized Users are not permitted to store, maintain, or process payment card information or related financial information subject to Payment Card Industry Data Security Standards, Protected Health Information (as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)), or other sensitive data in Qlik Cloud.

**3.9. Access.** Customer may only use Qlik Products activated with a product key or other credentials provided by Qlik or via an Authorized Reseller. Customer is solely and directly responsible (a) for maintaining the security of all keys, user IDs, passwords and other credentials, (b) for all activities taken by its Authorized Users or under any of its keys or credentials; (c) for Customer's and Authorized Users' compliance with this Agreement and applicable laws, including Export Control Laws; and (d) to promptly notify Qlik of any unauthorized use or access and take all steps necessary to terminate such unauthorized use or access. Customer will provide Qlik with such cooperation and assistance related to any unauthorized use or access as Qlik may reasonably request.

#### **4. Term and Termination**

**4.1 Term.** Customer's and its Authorized Users' access to the Services shall remain in effect, unless earlier terminated, for the Services subscription term set forth in the Order Form for such subscription ("Term"). Subscriptions may not be cancelled in whole or in part during any Term. The term may be renewed for additional successive one (1) year terms by executing an order in writing. If a Subscription cannot be automatically renewed due to applicable law or government appropriations processes, then Subscriptions shall automatically terminate at the end of the then-current Term, unless Qlik receives written notice of renewal no later than forty-five (45) days prior to the end of the then-current Term.

**4.2 Termination for Breach.** The Customer may terminate this Agreement (without resort to court or other legal action) if Qlik fails to cure a material breach within thirty (30) days in accordance with FAR 52.212-4(m) or other similar law or regulation if applicable to the relevant Order Form.

**4.3 Termination for Cause.** Subject to 41 U.S.C. § 71 (Contract Disputes), FAR 52.233-1(Disputes), applicable local law or regulation, and unless a remedy is otherwise ordered by a United States Federal Court, Qlik may terminate the Agreement if it is determined that the Customer failed to comply with these Terms. Customer may terminate the Agreement effective immediately upon written notice to Qlik if Qlik (A) fails to cure a breach of the Agreement within 30 days of notice of the breach, or (B) commits an incurable material breach of these Terms, or (C) terminates or suspend its business.

**4.4** Qlik may terminate Customer's or any individual Authorized User's access to all or any part of Qlik Cloud at any time if required by applicable law, effective immediately, which may result in the forfeiture and destruction of all information within Customer's subdomain. If the Qlik Products are purchased through an Authorized Reseller.

**4.5 Termination for Convenience.** Customer may terminate the Agreement for its sole convenience in accordance with FAR 52.212-4(l) or similar law or regulation if the clause is applicable to the relevant Order Form.

**4.6 Effect of Termination.** Upon any termination or expiration of this Agreement, Customer and its Authorized Users' right to access and use the Services shall automatically cease.

Qlik will delete all Content associated to Customer's account within six (6) months following such termination or expiration. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability. Termination of this Agreement or any licenses or subscriptions shall not prevent either Party from pursuing all available legal remedies, nor shall such termination relieve Customer's obligation to pay all fees that are owed.

**4.7** Qlik may, without limiting its other rights and remedies, temporarily suspend Customer's access to Qlik Cloud at any time if: (i) required by applicable law, (ii) reserved, or (iii) Customer's use disrupts the integrity or operation of Qlik Cloud or interferes with the use by others. Qlik will use reasonable efforts to notify Customer prior to any suspension, unless prohibited by applicable law or court order.

## **5. Warranties; Disclaimer; Limitation of Liability**

**5.1. Warranty.** Qlik warrants that Qlik Cloud will perform substantially in accordance with the applicable Documentation when used as authorized under this Agreement. This warranty will not apply (i) unless Customer notifies Qlik of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appears, or (ii) the event giving rise to the warranty claim was caused by misuse, unauthorized modifications, or third-party hardware, software or services. Customer's exclusive remedy and Qlik's sole liability with regard to any breach of this warranty will be, at Qlik's option and expense, to either: (i) repair or replace the non-conforming portion of Qlik Cloud or (ii) terminate the affected portion of Qlik Cloud and refund Customer, on a pro rata basis, any unused, prepaid fees as of the termination effective date, but in no event less than one thousand U.S. dollars (USD \$1,000).

**5.2. Consulting and Education Warranty.** Qlik warrants that Consulting Services and Education Services will be performed using reasonable care and skill consistent with generally accepted industry standards. For any claimed breach of this warranty, Customer must notify Qlik of the warranty claim within thirty (30) days of Customer's receipt of the applicable Consulting Services or Education

Services. Customer's exclusive remedy and Qlik's sole liability with regard to any breach of this warranty will be, at Qlik's option and expense, to either: (i) re-perform the nonconforming Consulting Services or Education Services; or (ii) refund to Customer the fees paid for the non-conforming Consulting Services or Education Services. Customer shall provide reasonable assistance to Qlik in support of its efforts to furnish a remedy for any breach of this warranty

**5.3. Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE QLIK PRODUCTS AND SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE" AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. QLIK AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, PARTNERS, SERVICE PROVIDERS AND LICENSORS DO NOT WARRANT THAT: (I) THE QLIK PRODUCTS WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (II) THE QLIK PRODUCTS WILL BE FREE OF DEFECTS OR ERRORS, (III) THE QLIK PRODUCTS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; (IV) THAT THE QLIK PRODUCTS WILL NOT HARM COMPUTER SYSTEMS; OR (V) THE RESULTS OF USING THE QLIK PRODUCTS WILL MEET CUSTOMER'S OR AUTHORIZED USERS' REQUIREMENTS.

**5.4. Limitation of Liability.** Except for: (i) Qlik's indemnification obligations hereunder; (ii) Customer's breach of Section 3.3 (Restrictions), or Section 3.8(c) (Export Control); or (iii) Customer's violation of Qlik's intellectual property rights, each Party's maximum cumulative liability for any claims, losses, costs (including attorney's fees) and other damages arising under or related to this Agreement, regardless of the form of action, whether in contract, tort (including but not limited to negligence or strict liability) or otherwise, will be limited to actual damages incurred, which will in no event exceed the greater of (a) one thousand dollars (USD \$1,000); or (b) the aggregate amount of subscription fees paid by Customer for the Qlik Cloud under the applicable order.

**5.5. Exclusion of Damages.** EXCEPT FOR EITHER PARTY'S BREACH OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICES, INCLUDING FOR ANY LOST PROFITS, DATA OR CONTENT LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF GOODWILL, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, EVEN IF THE PARTY HAD BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**5.6.** THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS CONTAINED IN THIS AGREEMENT ARE INDEPENDENT OF ANY AGREED REMEDY SPECIFIED IN THIS AGREEMENT AND WILL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY AGREED REMEDY IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. TO THE EXTENT THAT QLIK MAY NOT, AS A MATTER OF LAW, DISCLAIM ANY WARRANTY OR LIMIT ITS LIABILITIES, THE SCOPE OR DURATION OF SUCH WARRANTY AND THE EXTENT OF QLIK'S LIABILITY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. IF A WAIVER, RIGHT, OR REMEDY IS EXERCISED PURSUANT TO

MANDATORY LAW, IT SHALL BE EXERCISED SOLELY FOR THE PURPOSE PROVIDED AND IN CONFORMANCE WITH THE PROCEDURES AND LIMITATIONS EXPRESSLY PROVIDED FOR BY SUCH LAW.

## **6. Intellectual Property Rights; Indemnification**

**6.1. Ownership.** Customer retains all right, title and interest in and to all Content. Qlik retains all right, title and interest in and to the Qlik Products, Platform Data, and if applicable, all deliverables resulting from performance of Consulting Services, including all know-how, methodologies, designs and improvements to the Qlik Products, but excluding any Content incorporated into any such deliverable. Qlik hereby grants Customer a non-exclusive license to use any deliverables or work product that are the result of any Consulting Services in connection with Customer's authorized use of the Qlik Products.

6.2. **Retention of Rights.** No title or ownership of any proprietary or other rights related to Qlik Products is transferred or sold to Customer or any Authorized User pursuant to this Agreement. All intellectual property rights not explicitly granted to Customer are reserved and Qlik, its affiliates, and their respective suppliers or licensors, where applicable, retain all right, title and interest in and to the Qlik Products, including all intellectual property rights embodied therein, as well as to all Qlik Marks. Customer is not obligated to provide Qlik with any suggestions or feedback about the Qlik Products, but if Customer elects to do so, Qlik may use and modify this feedback for any purpose, including developing and improving the Qlik Products, without any liability, time limitation, restriction, or payment to Customer.

6.3. **Indemnification by Qlik.** Qlik shall have the right to intervene to defend, indemnify and hold Customer and its directors, officers, employees, agents, and permitted successors and assigns harmless from any damages and costs awarded against Customer and its directors, officers, employees, agents, successors and assigns as a result of an IP Claim. Qlik will not be liable for any IP Claim arising from or based upon: (i) any unauthorized use of, unauthorized access granted to or unauthorized distribution of the Qlik Products; and/or (ii) use of any Content with or in Qlik Cloud. If the Qlik Products become, or, in Qlik's opinion, is likely to become, the subject of an IP Claim, Qlik may, at its option and expense, either: (i) obtain the right for Customer to continue using the affected Qlik Products in accordance with this Agreement; (ii) replace or modify the Qlik Product so that it becomes non-infringing while retaining substantially similar functionality; or (iii) if neither of the foregoing remedies can be reasonably effected by Qlik, terminate the Agreement (without need for a ruling by a court or arbitrator) and refund Customer any prepaid fees covering the remainder of the term of the terminated subscription. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. THIS

SECTION 6.3 STATES QLIK'S SOLE AND ENTIRE  
OBLIGATION AND LIABILITY, AND CUSTOMER'S SOLE  
AND EXCLUSIVE RIGHT AND REMEDY, FOR INFRINGEMENT OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS.

6.4. **Conditions.** Qlik's indemnification obligations hereunder are subject to: (i) prompt notification of a claim in writing to the indemnifying party; (ii) consent to allow Qlik to have control of the defense and any related settlement negotiations; and (iii) provision of information, authority and assistance as necessary for the defense and settlement of the IP Claim.

**7. Fees; Payment and Taxes**

7.1 Customer shall pay all fees due within thirty (30) days from the receipt date of Qlik's valid invoice therefor, unless otherwise stated on an Order Form. Fees are not subject to any right of offset or suspension and all payments shall be non-cancelable, and non-creditable. Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k). If the Customer fails to pay any Fee when due, then Qlik may charge Customer interest in an amount indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. In the event any use of Qlik Products exceeds purchased quantities ("Overage"), without limiting Qlik's other rights and remedies at law or in equity, Customer will be invoiced and shall pay for such Overage as specified in an Order Form.

**8. Confidentiality**

8.1. Each Party will hold in confidence the other Party's Confidential Information and will not disclose or use such Confidential Information except as necessary to exercise its express rights to perform its express obligations hereunder. Any Party's disclosure of the other Party's Confidential Information may be made only to those of its employees or consultants who need to know such information in connection herewith and who have agreed to maintain the Confidential Information as confidential as set forth herein. Notwithstanding the foregoing, a Party may disclose the other Party's Confidential Information to the extent that it is required to be disclosed in accordance with an order or requirement of a court, administrative agency or other governmental body, provided that such Party, to the extent permitted by law, provides the other Party with prompt notice of such order or requirement in order that it may seek a protective order. Each Party's confidentiality obligations hereunder will continue for a period of three (3) years following any termination of this Agreement, provided, however, that each Party's obligations will survive and continue in effect thereafter with respect to, and for so long as, any Confidential Information continues to be a trade secret under applicable law. Qlik recognizes that Customers may be subject to the Freedom of Information Act 5 U.S.C. 552 or other similar open records law which may require that certain information be released, despite being characterized as "confidential" by the vendor. The Parties acknowledge and agree that the Qlik Products and all pricing information are Confidential Information of Qlik.

**9. General**

9.1. **Entire Agreement; Severability; No Wavier; Headings.** This Agreement is the entire agreement between Customer and Qlik with respect to the Qlik Products and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Qlik and Customer with respect to the Qlik Products, including any prior version of this Agreement. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. In addition, this Agreement shall supersede any conflicting or contradictory terms contained in any purchase order, order form, or any other document Customer submits to any of Qlik's designated vendors in connection with a purchase of a subscription to the Qlik Products, and any such conflicting or contradictory terms will be of no force or effect. Failure to enforce any part of this Agreement shall not constitute a waiver of any right to later enforce that or any other part of this Agreement. The section and paragraph headings in this Agreement are for convenience only and shall not affect their interpretation.

9.2 **Governing Law; Jurisdiction.** This Agreement is governed by the law of the jurisdiction set out in Table 1 corresponding to the Qlik entity identified therein as the contracting party, but excluding any conflict of law rules or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. Any suit, action or proceeding arising out of or relating to this Agreement will be brought before the courts or arbitration boards set out in Table 1 corresponding to the contracting



Qlik entity, and the Parties hereby expressly and irrevocably submit to the exclusive jurisdiction of such courts or arbitral bodies for the purpose of any such suit, action or proceeding. Notwithstanding anything to the contrary in this Agreement, either Party may at any time seek injunctive or interlocutory relief in a court of competent jurisdiction in order to protect any urgent interest of such Party, including, without limitation, the confidentiality and use restrictions of this Agreement. TO THE EXTENT AVAILABLE UNDER APPLICABLE LAW, CUSTOMER EXPRESSLY WAIVES ANY RIGHT TO A JURY TRIAL REGARDING DISPUTES RELATED TO THIS AGREEMENT.

- 9.3 Early Release Products.** Qlik may, in its discretion, periodically provide certain Customers with an opportunity to test additional early release features or functionality in connection with Qlik Products. Customer may decline to participate in the testing of such additional features or functionality at any time. Customer acknowledges that such features or functionality are not considered part of the Qlik Products under this Agreement, are not supported, are provided “as is” with no warranties of any kind and may be subject to additional terms. Qlik reserves the right at any time, in its sole discretion, to discontinue provision of, or to modify, any such features or functionality provided for testing purposes.
- 9.4 Third-Party Materials.** Qlik Products may incorporate or otherwise access certain open source or other third-party software, data, services, or other materials for the hosting and delivery of the Qlik Products, which are identified in the Documentation (the “Third-Party Materials”). Qlik represents that if the Qlik Products are used in accordance with this Agreement, such use shall not violate any license terms for the Third-Party Materials. Qlik makes no other representation, warranty, or other commitment regarding the Third-Party Materials, and hereby disclaims any and all liability relating to Customer’s use thereof.
- 9.5 Statistical Information.** Qlik may collect and use certain Platform Data to enable, optimize, support, and improve performance of the Qlik Products. Platform Data does not include any personally identifiable information or any personal data and is owned by Qlik.
- 9.6 Connectivity to Third-Party Applications.** Use of Qlik Products to connect or interoperate with or access thirdparty web-based applications or services may be governed by terms and conditions established by such third party. Third-party application programming interfaces and other third-party applications or services (“Third-Party Applications”) are not managed by Qlik, and Qlik shall have no liability for connectivity if any Third-Party Applications are changed or discontinued by the respective third parties. Qlik does not support, license, control, endorse or otherwise make any representations or warranties regarding any Third-Party Applications.
- 9.7 Force Majeure.** FAR 552.212-4(f) governs all excusable delays defined as an occurrence beyond the reasonable control of the Qlik and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Qlik will notify the Customer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Customer of the cessation of such occurrence.
- 9.8 Recordkeeping, Verification and Audit.** While this Agreement is in effect and for one (1) year after the effective date of its termination, upon request by Qlik but not more than once per calendar year, Customer shall conduct a self-audit of its use of the Qlik Products and, within ten (10) business days after receipt of such request, submit a written statement to Qlik verifying that it is in compliance with the terms and conditions of this Agreement. Qlik shall have the right, on its own or through its designated agent or third-party accounting firm, to conduct an audit of Customer’s use and deployment of the Qlik Products and monitor use of Qlik Cloud, in order to verify compliance with this Agreement. Qlik’s written request for audit will be submitted to Customer at least fifteen (15) days prior to the specified audit date, and such audit shall be conducted during regular business hours and with the goal of minimizing the disruption to Customer’s business. If such audit discloses that Customer is not in material compliance with the terms of this Agreement, then Customer shall be responsible for the reasonable costs of the audit, in addition to any other fees or damages to which Qlik may be entitled under this Agreement and applicable law.
- 9.9 Commercial Terms.** Qlik Cloud is a commercial item and commercial off the shelf products as defined in FAR Part 202-1. These Terms reflect (a) standard commercial practices for the acquisition of Qlik Cloud and (b) terms and conditions that Qlik customarily provides to its other customers. These Terms apply to the Customer’s use of Qlik Cloud as consistent with applicable law and regulation. If the Agreement conflicts with applicable law and regulation (such as FAR Part 12.212(a)), those terms are deleted and unenforceable as applied to any Order Forms. Qlik developed Qlik Cloud solely at private expense. All other use is prohibited.
- 9.10 Assignment; Relationship between the Parties.** Unless law or regulation prohibit restrictions on transfer, Customer may only assign these Terms, any Order Form, or any right or obligation under the Agreement, or delegate any performance, with Qlik’s prior written consent, which will not be unreasonably withheld. Qlik may assign its right to receive payment in accordance with the Assignment of Claims Act (31 U.S.C. § 3727) and FAR 52.212-4(b), and may assign the Agreement if the Anti-Assignment Act (41 U.S.C. § 15) does not prohibit the transfer. Subject to FAR 42.12 (Novation and Change-of-Name Agreements), Customer must recognize Qlik’s successor in interest following a transfer of all or substantially all of Qlik’s assets or a change in Qlik’s name. Any assignment contrary to this Section will be void. The Agreement will be binding upon and benefit the parties and their respective successors and assigns. No agency, partnership, joint venture, fiduciary, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect.
- 9.11 Notices.** All notices concerning a default, breach or violation of this Agreement by Qlik must be in writing and delivered to Qlik: (a) by certified or registered mail; or (b) by an internationally recognized express courier, and shall be addressed to: Qlik at 211 S. Gulph Rd., Suite 500, King of Prussia, PA 19406 USA, Attention: Legal Department. All other notices to Qlik, including account related communications, will be electronically sent to Qlik at CustomerNotices@qlik.com. Unless otherwise specified in writing by the Customer, all notices to Customer shall be sent to the address provided by Customer in the Order Form.
- 9.12 Evaluation Subscriptions.** (a) Qlik may make a free evaluation subscription of Qlik Products (“Free Evaluation Subscription:”) If Customer uses a Free Evaluation Subscription, Qlik will make such Free Evaluation Subscription available to Customer on a trial basis, free of charge, until the earlier of (a) the end of the free trial period for such Free Evaluation Subscription, (b) the start date of Qlik Product

subscription purchased by Customer for such or (c) termination of the Free Evaluation Subscription by Qlik in its sole discretion. Notwithstanding anything to the contrary in this Agreement, a Free Evaluation Subscription is provided "AS IS." QLIK MAKES NO REPRESENTATION

OR WARRANTY AND SHALL HAVE NO

INDEMNIFICATION OBLIGATIONS WITH RESPECT TO AN EVALUATION SUBSCRIPTION. QLIK SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO AN EVALUATION SUBSCRIPTION, UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE

UNDER APPLICABLE LAW IN WHICH CASE QLIK'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO AN EVALUATION SUBSCRIPTION IS US\$1,000. NOTWITHSTANDING ANYTHING TO THE

CONTRARY IN SECTION 5.4 ("LIMITATION OF LIABILITY"), CUSTOMER SHALL NOT USE THE AN EVALUATION SUBSCRIPTION IN A MANNER THAT VIOLATES APPLICABLE LAWS AND WILL BE FULLY LIABLE FOR ANY DAMAGES CAUSED BY ITS USE OF AN EVALUATION SUBSCRIPTION. ANY DATA AND CONFIGURATIONS ENTERED INTO CUSTOMER'S EVALUATION SUBSCRIPTION ACCOUNT MAY BE PERMANENTLY LOST UPON TERMINATION OF AN EVALUATION SUBSCRIPTION. (b) For Government Users: Qlik may provide a free Evaluation Subscription to the Qlik Products and Documentation to the U.S.

Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data". If Customer or any Authorized User is using the Evaluation Subscription on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer and Customer's Authorized Users must immediately discontinue use of the evaluation. The terms listed above are defined in the Federal Acquisition . Regulation and the Defense Federal Acquisition Regulation Supplement.



**Table 1  
Governing Law and Venue**

Customer Location	Qlik Contracting Entity	Governing Law
United States, Puerto Rico, Jamaica, Virgin Islands (US) or Haiti	QlikTech Inc.	(i) Federal laws of the United States govern the Agreement without reference to conflict of laws. In the absence of federal laws and/or to the extent federal law permits, the Governing Law shall be the laws of the Commonwealth of Pennsylvania, USA excluding the conflict of law principles, and  (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by the State and Federal Courts of Montgomery County in the Commonwealth of Pennsylvania.



## Exhibit 1

## Qlik Hosted Services Acceptable Use Policy

This Hosted Services Acceptable Use Policy ("AUP") defines acceptable practices and prohibited uses relating to Qlik's network and systems that are used for hosting Qlik products and services or providing SaaS services (collectively, the "Services") by users ("You" or "Your"). The Services must be used in a manner consistent with the intended purpose of the Services, the terms of Your applicable agreement with Qlik for the products and/or services being hosted and this AUP. By using the Services, you agree to the latest version of this AUP. For purposes of this AUP, "Qlik" includes QlikTech International AB and its affiliates, and Qlik may be referred to as "We" or "Our."

**Security**

- You agree to maintain appropriate security, protection and backup copies of any content that is included, transmitted, stored, published, displayed, distributed, integrated, or linked by You in the Services (collectively, "Content"). We will have no liability of any kind as a result of the deletion of, correction of, destruction of, damage to, loss of or failure to store or backup any Content.
- You may not use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a "System"). Prohibited activities include:
  - Unauthorized Access. Bypassing, circumventing, or attempting to bypass or circumvent any measures Qlik may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services), including any attempt to probe, scan, or test the vulnerability of the Services or to breach any security or authentication measures used by the Services.
  - Reverse Engineering. Deciphering, decompiling, disassembling, reverse engineering or otherwise attempting to derive any source code or underlying ideas or algorithms of any part of the Services, except to the limited extent applicable laws specifically prohibit such restriction.
  - Falsification of Origin or Identity. Forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route, or attempting to impersonate any of Our employees or representatives.
  - Using manual or automated software, robotic process automation, devices, or other processes to harvest or scrape any content from the Services.
  - Denial of Service (DoS)/Intentional Interference. Flooding a System with communications requests so the System either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective, or interfering with the proper functioning of any System, including by deliberate attempts to overload the System.

**No Illegal, Harmful, or Offensive Use or Content**

You may not use, or encourage, promote, facilitate or instruct others to use, the Services for any illegal (under applicable law), fraudulent, infringing or offensive use, or to transmit, store, display, distribute, post or otherwise make available content that is illegal (under applicable law), harmful, fraudulent, infringing or offensive. Prohibited activities or content include:

- Illegal, Harmful or Fraudulent Activities. Any activities that are illegal, that violate the rights of others, that may be harmful to others, or that may be harmful to Qlik's operations or reputation.
- Infringing Content. Content that infringes or misappropriates the intellectual property or proprietary rights of others or that violates any law or contractual duty.
- Offensive Content. Content that is illegal, harassing, libelous, fraudulent, defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable.
  - Harmful Content. Content or other computer technology that may damage, interfere with, surreptitiously intercept or disrupt the Service, including viruses, Trojan horses, spyware, worms, time bombs, or cancelbots.
  - Unsolicited Content. Content that constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming") or contains software viruses or any other computer codes, files or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password, or other information of ours or any third party.
  - Competitive Content. Attempting to collect and/or publish performance data for the purposes of benchmarking, or developing a product that is competitive with any Qlik product or services.

**Our Monitoring and Enforcement**

We reserve the right, but do not assume the obligation, to monitor for, and investigate, any violation of this AUP or other misuse of the Services. Failure to comply with this AUP constitutes a material breach of the terms and conditions upon which You are permitted to use the Services, and at any time may result in Qlik taking any and all remedial actions in its sole discretion, up to and including:

- Warnings;
- Suspending or terminating access to the Services;
- Removing, disabling or prohibiting access to content that violates this AUP and/or Your applicable agreement with Qlik; and/or
- Legal proceedings against You



We may report any activity that We suspect violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Our reporting may include disclosing appropriate customer information. We also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this AUP.

Qlik takes no responsibility for any material created or accessible on or through the Services and will not exercise any editorial control over such material. Qlik is not obligated to monitor such material, but reserves the right to do so, as well as remove any content that We, in our sole discretion, determine to be in violation of this AUP.

**Reporting of Violations of this Policy**

If you become aware of any violation of this AUP, you will immediately notify us and provide us with assistance, as requested, to stop or remedy the violation.

Violation of this AUP may be reported to [security@qlik.com](mailto:security@qlik.com)

Exhibit 2

Rules of Behavior

**QLIK CLOUD GOVERNMENT RULES OF BEHAVIOR FOR EXTERNAL USERS**

These Rules of Behavior for External Users ("Rules") defines the responsibilities and expected behavior by users ("You" or "Your") of QlikTech Inc.'s ("Qlik") network and systems that are used for hosting Qlik Cloud Government SaaS Services ("QCG") QCG must be used in a manner consistent with the intended purpose of QCG, the terms of Your applicable agreement with Qlik for QCG and these Rules. By using QCG, you agree to the latest version of these Rules.

1. You must report all security incidents or suspected incidents to the Qlik Customer Support Team ([government.support@qlikcloudgov.com](mailto:government.support@qlikcloudgov.com)). Reports of any anomaly / possible security incidents are immediately analyzed and mitigated by the Information Security team.
2. As a Qlik customer, You are in sole control of the individual permissions on Your accounts and surveys, which enables integrity of the systems that You access.
3. You must meet Your agency's password policy.
4. You must not store passwords or other sensitive information on desks or in plain sight. Passwords may not be shared, and must be protected at all times.
5. You must never share account information details with anyone from Qlik except members of the Qlik Customer Support Team ([government.support@qlikcloudgov.com](mailto:government.support@qlikcloudgov.com)) if you require their assistance. You should only share the information after ensuring that the parties have the proper clearance, authorization, and need-to-know.
6. You must never leave your computer unattended while logged into QCG.
7. You own all right, title and interest in all data you enter into QCG, including uploaded content such as completed forms and documents. All reports and downloads that are derived from the data are also owned by you. All data specified is deemed as Confidential information and will not be utilized by Qlik for any purpose.
8. You are solely responsible for all data, and are liable for Your data and the manner in which You collect or distribute your data to third parties.
9. You must not resell QCG or permit third parties to use QCG without prior written consent.
10. You must not make unauthorized copies of any content within QCG except your own data.
11. You must not upload data that contains nudity, pornography, profanity, or foul language or links to such content.
12. You must not upload or store malicious software or data that condones, promotes, contains or links to warez, cracks, hacks, their associated utilities, or other piracy related information, whether for educational purposes or not.
13. You must not upload data that infringes any copyrights, patents, trademarks or other Intellectual property.
14. You must not upload binary files or executable files.
15. You must use browsers using TLS 1.2, which use AES 128/256-bit encryption.
16. You must not reverse-engineer or tamper with the security of QCG.
17. You must not perform vulnerability tests, network scans, penetration tests or other investigative techniques on QCG services.



18. You must report a suspected security breach event to [government.support@qlikcloudgov.com](mailto:government.support@qlikcloudgov.com). In such a case, Qlik will provide reasonable assistance to mitigate further exposure and attempt to determine the root cause.
19. You agree to contact the Qlik Customer Support Team ([government.support@qlikcloudgov.com](mailto:government.support@qlikcloudgov.com)) if you do not understand any of these Rules.
20. You acknowledge and accept that any violation of these Rules may subject You to civil and/or criminal actions and that Qlik retains the right, to terminate, cancel or suspend Your access rights to QCGin accordance with the Contract Disputes Act, in the event of Your violation of these Rules.

Exhibit 3  
Qlik Public Sector Service Level Agreement

Qlik Cloud Government Service Level Agreement

This Qlik Cloud Government Service Level Agreement ("Policy") describes the current practices of Qlik with regard to its provision of Support Services as defined below to customers with a Qlik Cloud Government subscription ("Customer(s)").

### 1. Definitions

**"Affiliate"** means any entity which controls, is controlled by, or is under common control with Customer where "control" means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests of such entity, but only for so long as such control exists.

**"Agreement"** means the written agreement between Qlik and Customer for Qlik Cloud Government.

**"Authorized Affiliate"** means any Affiliate of Customer that is designated by Customer as authorized to use a Qlik Cloud Government subscription if permitted under the terms of an Agreement.

**"Documentation"** means the then-current user documentation for Qlik Cloud Government, including any product metrics available at [www.qlik.com/product-terms](http://www.qlik.com/product-terms), as may be modified by Qlik from time to time.

**"Error"** means any verifiable and reproducible failure of Qlik Cloud Government to materially conform to the Documentation.

**"Initial Response Time"** means the period commencing when an Error is first reported by Customer's Technical Contact(s) in the manner required by this Policy and ending when a member of the Qlik technical support team logs the report and responds to the Technical Contact(s) in accordance with this Policy.. **"Qlik Cloud Government"** refers to any paid SaaS offering deployed on Qlik's Government Cloud.

**"Self-Service Tools"** means the Knowledge Base (Qlik's online database of content and FAQs), white papers, Community Forums, webcasts and other materials available in the Support Portal to Customers.

**"Severity 1 Error"** means that Qlik Cloud Government is down or not available due to (i) a server-side failure, but not as a result of scheduled maintenance and/or upgrades, or (ii) any event beyond the reasonable control of Qlik, including but not limited to any interruption of power, third party hosting companies, telecommunications and/or Internet connectivity, and any failure of Customer's internal telecommunications equipment, browser or network configurations, hardware and/or third party software).

**"Severity 2 Error"** means that major functionality is materially impacted and not working in accordance with the technical specifications in the Documentation or significant performance degradation is experienced so that critical business operations cannot be performed.

**"Severity 3 Error"** means any Error that is not a Severity 1 Error or Severity 2 Error.

**"Standard Business Hours"** mean from 08:00 to 17:00 ET (8:00 am to 5:00 pm), Monday to Friday (excluding national and bank holidays).

**"Support Portal"** means Qlik's online support website available at <https://community.qlik.com/t5/Support/ct-p/qlik>.

**"Support Services"** means the technical end user support for Qlik Cloud Government as described in this Policy. Support Services do not include services performed onsite at any Customer facility, consulting or education services or any services not expressly stated in this Policy.

**"Technical Contact(s)"** means Customer's personnel that have been identified in writing by Customer as the technical contact(s) for Customer and authorized to contact Qlik for support.

**"Update"** means a subsequent release of Qlik Cloud Government which Qlik generally makes available at no additional fee.

### 2. Overview

2.1 Qlik will provide Customer with Support Services for Qlik Cloud Government in accordance with this Policy, subject to Customer's timely payment of the applicable subscription fees. Support Services provided by Qlik hereunder will be provided in the English language

2.2 Unless otherwise expressly set forth herein, all references in this Policy to response times or communications from Qlik shall only apply during Qlik's Standard Business Hours, regardless of when a support matter is reported to Qlik.

### 3. Support Levels

#### 3.1 Enterprise Support Coverage for Qlik Cloud Government .

3.1.1. Qlik will use commercially reasonable efforts to respond within the applicable initial response time targets set forth in the tables below for Severity 1, 2 and 3 Errors in Qlik Cloud Government reported by a Technical Contact to Qlik via email at [government.support@qlikcloudgov.com](mailto:government.support@qlikcloudgov.com). Qlik will respond to Customer's Technical Contact by telephone or email. All Errors will be initially logged and acknowledged by Qlik during Qlik's Standard Business Hours.



Support Coverage for Qlik Cloud Government		
Severity Level	Initial Response Time	Communication Frequency
Severity 1 Error	30 minutes*	Every 4 hours*
Severity 2 Error	1 hour*	48 Hours*
Severity 3 Error	4 hours*	Weekly*

\*During Standard Business Hours

3.1.2 Qlik will report known outages of Qlik Cloud Government on Qlik’s status page, currently located at [status.qlikcloud.com](https://status.qlikcloud.com) (“Status Page”). If a suspected outage is not listed on the Status Page, Customer may contact Qlik to report the suspected outage via email to [government.support@qlikcloudgov.com](mailto:government.support@qlikcloudgov.com). Qlik will respond to such report via email, by posting an update on the Status Page or by telephone. Scheduled maintenance times for Qlik Cloud Government will be posted on the Support Portal. Qlik endeavors to provide at least forty-eight (48) hours prior posting of any scheduled maintenance for the Qlik Cloud Government.

3.2 Updates. Updates for Qlik Cloud Government automatically replace the previous version of the Qlik Cloud Government. Updates do not include new or separate



products which Qlik offers only for an additional fee to its customers generally.

#### **4. Error Resolution and Escalation**

4.1 An Error is considered to be resolved upon the earlier to occur of the following: (i) Qlik and Customer mutually agree in writing that the issue or problem is resolved; (ii) Qlik has provided an Update; (iii) a technical work-around solution is provided and is reasonable in Qlik's discretion; (iv) Customer requests that Qlik close the support case; or (v) the support case has been left open by the Customer for ten (10) consecutive business days, during which period Qlik has not received a response from any of Customer's Technical Contacts.

4.2 Exclusions. Notwithstanding anything in this Policy to the contrary, Qlik will have no obligation to provide any Support Services in connection with: (i) any issue or problem that Qlik determines is not due to any Error or deficiency in Qlik Cloud Government (including without limitation, issues or problems caused by stand-alone third party software products used in conjunction with Qlik Cloud Government, the Internet or other communications, Customer network or browser matters, or login issues); (ii) use of Qlik Cloud Government other than in accordance with the Documentation and the Agreement; (iii) use of Qlik Cloud Government provided on a trial or evaluation basis or for which Customer has not paid any fees; (iv) any Errors or problems with the Qlik Cloud Government that are not reproducible; (v) any Error or problem that is not reported by Customer via email to [government.support@qlikcloudgov.com](mailto:government.support@qlikcloudgov.com); or (vi) any Error or problem that would require Qlik to have access to Customer's Qlik Cloud Government tenant in order to provide Support Services. If Qlik does correct any of the Errors described in subsections (i)-(v) above, or otherwise provides support for Qlik Cloud Government that is not covered by the terms and conditions contained in this Policy, such Error resolution or support will be provided only following Customer's written request and approval of all charges, and Customer will be invoiced for such support at Qlik's then-current "time and materials" rates for such services. Without limiting any of the foregoing, Qlik has no obligation to provide support for any third party software, data, or other materials distributed or bundled with Qlik Cloud Government.

#### **5. Customer's Obligations**

5.1 Customer will provide timely information and access to knowledgeable resources as reasonably required to provide Support Services. Qlik's support obligations shall be excused to the extent Customer fails to cooperate in this regard.

5.2 The Customer shall: (i) not request, permit or authorize anyone other than Qlik (or a Qlik-authorized partner or provider) to provide any form of support services in respect of Qlik Cloud Government; (ii) cooperate fully with Qlik's personnel in the diagnosis or investigation of any Error or other issue or problem with Qlik Cloud Government; (iii) be responsible for maintaining all third party software not explicitly licensed under the Agreement; and (iv) be fully responsible for the actions of any third party (including any Qlik-authorized partner or provider) that it allows to access any information relating to Support Services.

5.3 Customer's contact with Qlik in connection with Customer's requests for support and reports of Errors shall be solely through its Technical Contact(s). The Technical Contact(s) shall: (i) serve as the internal contact(s) for Customer's and its Authorized Affiliates' personnel who are authorized to use Qlik Cloud Government per the terms of the Agreement; (ii) be responsible for initiating all requests by, and maintaining all records of, the Customer and its Authorized Affiliates relating to Support Services; (iii) serve as the contact(s) with Qlik on all matters relating to Support Services; and (iv) be responsible for providing information and support, as requested by Qlik, to assist in the reproduction, diagnosis, analysis, and resolution of Errors. The maximum number of Technical Contacts for each Customer is six (6), regardless of the number or types or quantities of subscriptions purchased by the Customer. Customer shall ensure that its Technical Contacts comply with any reasonable training requirements for the Technical Contact(s) upon notification by Qlik. Subject to the previous sentence, Customer may change its Technical Contact(s) by notifying Qlik in writing.

5.4 Customer will be responsible for primary support of any Authorized Affiliates in connection with their use of Qlik Cloud Government in accordance with the terms of the Agreement. Customer is solely responsible for: (i) passing on to its Authorized Affiliates all support materials as appropriate; and (ii) providing software support, including operational instruction, problem reporting and technical advice to its Authorized Affiliates, as necessary to enable the Authorized Affiliate to continue to use

Qlik Cloud Government as authorized under the Agreement. Customer's Authorized Affiliates, as well as its contractors and third party users, may not contact Qlik directly for support, unless designated as a Technical Contact by the Customer.

5.5 For certain services provided under this Policy, the transmission of machine logs and/or sharing of data via screen share may be required. For avoidance of doubt, Customer shall not include any business sensitive and/or personal information via transmissions relating to Support Services. Customer shall take reasonable measures to anonymize such data before providing the data to Qlik. However, should Qlik agree to accept any log files or other information containing personal data, Qlik will comply with Qlik's privacy policies, available to view online at [www.qlik.com](http://www.qlik.com).

#### **6. Additional Terms**

6.1 Open Source. Qlik may make certain open source libraries available for use with Qlik Cloud Government as described in the Documentation ("Qlik Libraries").

Qlik Libraries identified at <https://qlik.dev/support> are eligible for support, provided that Qlik shall only be obligated to support: (i) the most current release, (ii) Qlik Libraries which have not been changed, modified or altered in any manner except by Qlik, and (iii) Qlik Libraries used in accordance with the Documentation. Any other open source software leveraging and extending Qlik Cloud Government (an "Extension") and released by Qlik on various online communities is supported solely by the open source community. Extensions, which are developed by Qlik's partners, including certified Extensions, are also not eligible for support under this Policy

6.2 Qlik may elect to make certain software available free of charge for trial, evaluation or other purposes ("Freeware"). Support for Freeware, if any, will be provided at Qlik's discretion and in accordance with the license terms for such Freeware.

6.3 Support for QSE Client Managed for QSE SaaS – Government (US). If Customer has licensed QSE Client Managed for QSE SaaS – Government US Licenses in connection with its use of Qlik Cloud Government, the provisions of Sections 2 through 5, inclusive, of this Policy shall apply to such product.

## **7. Changes to Policy**

Subject to the terms of the Agreement, Qlik reserves the right, at its discretion, to change the non-material terms of this Policy at any time based on prevailing market practices and the evolution of Qlik's products and services.

## **8. Disclaimer**

THIS POLICY DEFINES A SERVICE ARRANGEMENT AND NOT A WARRANTY. QLIK CLOUD GOVERNMENT IS SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE APPLICABLE AGREEMENT. THIS POLICY DOES NOT CHANGE OR SUPERSEDE ANY TERM OF ANY SUCH AGREEMENT. TO THE EXTENT THERE IS A CONFLICT BETWEEN A TRANSLATED VERSION OF THIS POLICY AND THIS ENGLISH VERSION, THE ENGLISH LANGUAGE VERSION WILL PREVAIL.



Exhibit 4

Data Protection Agreement

**QLIK® DATA PROCESSING ADDENDUM**

This Data Processing Addendum including its Schedules 1, 2 and 3 (“**DPA**”), once executed and received by Qlik according to the instructions below, forms part of the Agreement between Qlik and the Customer (each defined below).

The Qlik party to this DPA is the Qlik entity that is the Qlik party to the Agreement. Only the Customer entity that is the party to the Agreement may sign this DPA. If the Customer entity signing this DPA is not a party to the Agreement, this DPA is not valid and is not legally binding. Such entity should request that the Customer entity who is a party to the Agreement executes this DPA. The Customer’s signatory represents and warrants that he or she has the legal authority to bind the Customer to this DPA.

The Parties hereby agree from the Effective Date to be bound by the terms and conditions of this DPA.

<b>Accepted and agreed to by Qlik</b>		<b>Accepted and agreed to by the Customer</b>	
<i>Name of signatory</i>	Roy Horgan	<i>Customer legal name (include entity type, e.g., Inc., Ltd., etc.)</i>	
		<i>Country of customer</i>	
<i>Position</i>	Senior Director, Privacy Counsel and Data Protection Officer	<i>Name of signatory</i>	
<i>Signature</i>		<i>Position</i>	
<i>Date</i>		<i>Signature</i>	
		<i>Date</i>	

V.1.3, JANUARY 2022

## SCHEDULE 1 DATA PROTECTION OBLIGATIONS

This DPA is an agreement between the Customer and Qlik governing the Processing by Qlik of Customer Personal Data in its performance of the Services. Capitalized terms used in the DPA will have the meanings given to them in Section 1 below.

### 1. DEFINITIONS

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**"Agreement"** means either (i) the [Qlik Customer Agreement](#); (ii) the [Qlik Cloud Government Terms of Service](#) or (iii) the Qlik OEM Partner Agreement, between Qlik and the Customer under which Qlik provides the applicable Services.

**"CCPA"** means the California Consumer Privacy Act and its implementing regulations. The terms **"Business"** and **"Service Provider"** where used in this DPA addressing compliance under the CCPA will have the meanings given to them under the CCPA.

**"Client-Managed Deployment"** means a deployment of on-premise Qlik software managed and/or hosted by the Customer or by a Customer's third party cloud provider.

**"Consulting Services"** means any consulting services provided to the Customer by Qlik pursuant to the Agreement.

**"Customer"** means the customer legal entity which is a Party to the Agreement.

**"Customer Personal Data"** means Personal Data which Qlik Processes on behalf of the Customer in the performance of the Services, including, where applicable, Qlik Cloud Customer Content. It does not include Personal Data for which Qlik is a Controller.

**"Data Protection Law"** means, as amended from time to time, the Australia Privacy Act, the Brazil General Data Protection Law (LGPD), the Canada Personal Information Protection and Electronic Documents Act, the EU GDPR, the Japan Act on the Protection of Personal Information, the Singapore Personal Data Protection Act, the UK Data Protection Act 2018 and UK General Data Protection Regulation, and the data privacy laws of the United States and its states (including, where applicable, the CCPA), and in each case only to the extent applicable to the performance of either Party's obligations under this DPA. It does not include any Industry-Specific Data Law.

**"Effective Date"** means the date on which Qlik receives a validly executed DPA under the instructions above and always subject to the Customer having validly executed an Agreement.

**"EEA"** means, for the purpose of this DPA, the European Economic Area (including the European Union) and Switzerland.

**"EU GDPR"** means, in each case to the extent applicable to the Processing activities (i) Regulation (EU) 2016/679; and (ii) Regulation (EU) 2016/679 as amended by any legislation arising out of the withdrawal of the UK from the European Union.

**"Industry-Specific Data Law"** means any Data Protection Law that is specific to Customer's industry, including the Health Insurance Portability and Accountability Act and its implementing regulations ("HIPAA") and the Gramm Leach Bliley Act ("GLBA"), and any industry data standard to which Customer has agreed to comply, including the Payment Card Industry Data Security Standard of the PCI Security Standards Council ("PCI DSS").

**"Party"** or **"Parties"** means Qlik and the Customer, individually and collectively, as the case may be.

**"Personal Data"** means information relating to an identified or identifiable natural person or as otherwise defined under applicable Data Protection Law.

**"Personnel"** means a Party's employees or other workers under their direct control.

**"Qlik"** means the Qlik Affiliate which is party to the Agreement.

**"Qlik Cloud Customer Content"** means information, data, media, or other content to the extent it includes Customer Personal Data that is, by or upon the instructions of the Customer, uploaded into and residing in Qlik Cloud which Qlik Processes on behalf of the Customer. **"Qlik Cloud"** means a subscription-based, hosted solution provided and managed by Qlik under an Agreement.

**"Security Breach"** means any unauthorized or unlawful destruction, loss, alteration or access to, or disclosure of, Customer Personal Data that is in Qlik's possession or under Qlik's control. It does not include events which are either (i) caused by the Customer or Customer Affiliates or their end users or third parties operating under their direction, such as the Customer's or Customer Affiliate's failure to (a) control user access; (b) secure or encrypt Customer Personal Data which the Customer transmits to and from Qlik during performance of the Services; and/or (c) implement security configurations to protect Customer Personal Data; or (ii) unsuccessful attempts or activities that do not or are not reasonably likely to compromise the security of Customer Personal Data, including but not limited to unsuccessful login attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.

**"Services"** means, pursuant to an Agreement, (i) Qlik Cloud, (ii) a Qlik Cloud trial, (iii) a Qlik Cloud presales proof-of-concept performed by Qlik, and/or (iv) Support Services and/or Consulting Services requiring Qlik personnel to access or otherwise Process either (a) Qlik Cloud Customer Content while within or originating from Qlik Cloud and/or (b) Customer Personal Data relating to a Client-Managed Deployment, and in each case, only as it relates to Processing by Qlik of Customer Personal Data. Notwithstanding the foregoing, "Services" does not include, and accordingly, this DPA does not cover, (i) Qlik Cloud Customer Content which leaves

Qlik Cloud, and/or (ii) Customer Personal Data stored in a Client-Managed Deployment, including but not limited to Customer Personal Data stored within selfhosted software.

“**Support Services**” means end user support provided by Qlik to the Customer under the Agreement involving Processing by Qlik of Customer Personal Data either by way of (i) temporary remote access or screenshare, and/or (ii) receipt by Qlik of Customer files via Qlik’s support portal on the Qlik Community website.

“**Termination Date**” means the termination or expiration of the relevant Service(s) under the Agreement between the Parties, or, in the case of a Qlik Cloud presales proof-of-concept or trial, the termination or expiration of that presales proof-of-concept or trial.

“**Third Country**” means a third country not deemed by the EU Commission or UK Information Commissioner, as applicable, to have an equivalent level of privacy protection to those jurisdictions.

“**2010 SCCs**” means the Standard Contractual Clauses (Processor) published under EU Commission Decision 2010/87/EU deemed amended to the extent required to reflect UK Data Protection Law.

“**2021 SCCs**” means the 2021 SCCs Module Two and the 2021 SCCs Module Three, collectively or individually, as applicable, published under EU Commission Decision 2021/914/EU for EU Personal Data transfers outside the EU to Third Countries not deemed by the EU Commission to have an equivalent level of privacy protection. The terms “**2021 SCCs Module Two**” means the 2021 SCCs, module two (controller to processor), and “**2021 SCCs Module Three**” means the 2021 SCCs, module three (processor to processor).

“**Controller**”, “**Data Subject**”, “**Processor**”, “**Process/Processed/Processing**”, “**Subprocessor**” and “**Supervisory Authority**” will be interpreted in accordance with Data Protection Law.

**2. PROCESSING BY QLIK OF CUSTOMER PERSONAL DATA**

**2.1 Details of Processing.** The table below in this Section 2.1 sets out the Customer Personal Data Qlik may Process when providing the Services:

<b>Nature/Activities/Purpose of Processing</b>	Data analysis and storage of Customer Personal Data by the Customer in Qlik Cloud and/or Support or Consulting Services.
<b>Frequency and Duration of Processing</b>	From time to time during the term of the Services under the Agreement or, in the case of a Qlik Cloud presales proof-of-concept or trial, the term of that proof-of-concept or trial. Duration of Processing and retention period shall be the duration of the Services unless Customer Personal Data is deleted sooner.
<b>Types of Personal Data Processed</b>	Customer Personal Data uploaded to and residing in Qlik Cloud and/or otherwise Processed by Qlik to provide the Services. Customer Personal Data may include sensitive Personal Data as long as such data is not regulated by an Industry-Specific Data Law.
<b>Categories of Data Subjects whose Personal Data is Processed</b>	Qlik will not be aware of what Personal Data the Customer may provide for the Services. It is anticipated that the Data Subjects may include employees, customers, prospects, business partners and vendors of the Customer.

**2.2 Purpose of Processing Customer Personal Data.** The Parties agree that either (a) the Customer is the Controller and Qlik is a Processor, or (b) Customer is the Processor and Qlik is a

Subprocessor, in relation to the Customer Personal Data that Qlik Processes on the Customer's behalf in the course of providing the Services. For the avoidance of doubt, this DPA does not apply to Personal Data for which Qlik is a Controller. Qlik will Process the Customer Personal Data only to perform the Services for the Customer and for no other purpose. To the extent that the CCPA applies to the Processing of Customer Personal Data in the course of providing the Services, Qlik is a Service Provider and the Customer is a Business. If Qlik is required to Process the Customer Personal Data for any other purpose by applicable laws to which Qlik is subject, Qlik will, unless prohibited by such applicable laws and subject to the terms of this DPA, inform Customer of this requirement first.

**2.3 Disclosure of Customer Personal Data.** Unless otherwise provided for in this DPA, Qlik will not disclose to any third party any Customer Personal Data, except, in each case, as necessary to maintain or provide the Services, or, notwithstanding Section 5.5 below, as necessary to comply with the law or a valid and binding order of a governmental body (such as a subpoena or court order). If a governmental body sends Qlik such a demand for Customer Personal Data, Qlik will attempt, where possible under relevant law, to redirect the governmental body to request that data directly from the Customer. Qlik does not sell Customer Personal Data. The Customer will not disclose Personal Data to Qlik or request that Qlik Process Customer Personal Data that is subject to any Industry-Specific Data Law without first notifying Qlik and agreeing upon any additional written terms applicable to the Processing of such Industry-Specific Data Law. For clarity, Qlik expressly disclaims any responsibility under this DPA for the Processing of Personal Data under any IndustrySpecific Data Law. Qlik has no obligation to assess the Customer Personal Data in order to identify information subject to any IndustrySpecific Data Law.

**2.4 Customer Personal Data for Support Services.** The Parties acknowledge that Qlik does not ordinarily require to Process Customer Personal Data on the Customer's behalf to resolve a technical issue for Support Services. Accordingly;

2.4.1 the Customer shall use their best efforts to minimize any transfer of Customer Personal Data to Qlik for Support Services. Such efforts shall include but not be limited to removing, anonymizing and/or pseudonymizing Customer Personal Data in files prior to Processing by Qlik; and

2.4.2 Qlik's total liability in relation to the Processing of Support Services Customer Personal Data, whether in contract, tort or under any other theory of liability, shall be limited to the greater of the price Customer paid or US\$20,000.

**2.5 Obligations of Qlik Personnel.** Qlik will ensure that Qlik Personnel required to access the Customer Personal Data are subject to a binding duty of confidentiality in respect of such Customer Personal Data and take reasonable steps to ensure the reliability and competence of such Qlik Personnel.

**2.6 Instructions.** Customer authorizes and instructs Qlik to Process Customer Personal Data for the performance of the Services. The Parties agree that this DPA and the Agreement are the Customer's complete and final documented Processing instructions to Qlik in relation to Customer Personal Data. The Customer shall ensure that its Processing instructions comply with applicable Data Protection Laws in relation to Customer Personal Data and that the Processing of Customer Personal Data in accordance with the Customer's instructions will not cause Qlik to be in breach of any relevant law. The Customer warrants that it has the right and authority under applicable Data Protection Law to disclose, or have disclosed, Customer Personal Data to Qlik to be Processed by Qlik for the Services and that the Customer has obtained all necessary consents and provided all necessary notifications required by Data Protection Law with respect to the Processing of Customer Personal Data by Qlik. The Customer will not disclose Customer Personal Data to Qlik or instruct Qlik to Process Customer Personal Data for any purpose not permitted by applicable law, including Data Protection Law. Qlik will notify the Customer if Qlik becomes aware that, and in Qlik's reasonable opinion, an instruction for the Processing of Customer Personal Data given by the Customer violates Data Protection Law, it being acknowledged that Qlik is not under any obligation to undertake additional work, screening or legal assessment to determine whether Customer's instructions are compliant with Data Protection Law.

**2.7 Assistance to the Customer.** Upon a written request, Qlik will provide reasonable cooperation and assistance necessary to assist the Customer, insofar as required by Data Protection Law and as it relates to Processing by Qlik for the Services, in fulfilling the

Customer's obligations to respond to requests from Data Subjects exercising their rights (notwithstanding the Customer's obligations in Section 7) and/or to carry out data protection impact assessments. Qlik's Data Protection Officer and privacy team may be reached at [privacy@qlik.com](mailto:privacy@qlik.com).

**2.8 Compliance with Data Protection Laws.** Each Party will comply with the Data Protection Laws applicable to it in relation to their performance of this DPA, including, where applicable, the EU GDPR.

### 3. SECURITY

**3.1 Security of Data Processing.** Qlik will implement and maintain appropriate technical and organizational measures to protect Customer Personal Data against unauthorized or unlawful Processing and against accidental or unlawful loss, destruction, alteration or damage, and against unauthorized disclosure or access. These measures will be appropriate to the harm, which might result from any unauthorized or unlawful Processing, accidental loss, destruction, damage or theft of the Customer Personal Data and having regard to the nature of the Customer Personal Data which is to be protected. At a minimum, these will include the measures set out in Schedule 2.

**3.2 Notification of a Security Breach.** Upon becoming aware of a Security Breach, Qlik will notify the Customer without undue delay and take reasonable steps to identify, prevent and mitigate the effects of the Security Breach and to remedy the Security Breach to the extent such remediation is within Qlik's reasonable control. A notification by Qlik to the Customer of a Security Breach under this DPA is not and will not be construed as an acknowledgement by Qlik of any fault or liability of Qlik with respect to the Security Breach.

**3.3 Notification Mechanism.** Security Breach notifications, if any, will be delivered to Customer by any means Qlik selects, including via email. It is the Customer's responsibility to ensure that it provides Qlik with accurate contact information and secure transmission at all times.

#### 4. SUBPROCESSORS

**4.1 Authorized Subprocessors.** The Customer agrees that Qlik may use its Affiliates and other Subprocessors to fulfil its contractual obligations under this DPA or to provide certain Services on its behalf. The Qlik website lists Subprocessors that are currently engaged by Qlik to carry out Processing activities on Customer Personal Data (currently located at <https://community.qlik.com/t5/Qlik-Technical-Bulletin-Blog/Qlik-Subprocessors-General-Data-Protection><https://community.qlik.com/t5/Qlik-Technical-Bulletin-Blog/Qlik-Subprocessors-General-Data-Protection-Regulation-GDPR/ba-p/1572352>). The Customer may subscribe to the list in order to receive Subprocessor updates.

**4.2 Subprocessor Obligations.** Where Qlik uses a Subprocessor as set forth in this Section 4, Qlik will (i) enter into a written agreement with the Subprocessor and will impose on the Subprocessor contractual obligations not less protective on an aggregate basis than the overall obligations that Qlik has provided under this DPA, including but not limited to, where applicable, incorporating the 2021 and/or 2010 SCCs; and (ii) restrict the Subprocessor's access to and use of Customer Personal Data only to provide the Services. For the avoidance of doubt, where a Subprocessor fails to fulfil its obligations under any subprocessing agreement or any applicable Data Protection Law with respect to Customer Personal Data, Qlik will remain liable, subject to the terms of this DPA, to the Customer for the fulfilment of Qlik's obligations under this DPA.

**4.3 Appointing a New Subprocessor.** At least thirty (30) days before Qlik engages any new Subprocessor to carry out Processing activities on Customer Personal Data, Qlik will provide notice of such update to the Subprocessor list through the applicable website. If the Customer is entitled to do so under applicable Data Protection Law and as it relates to the Processing of Customer Personal Data by the Subprocessor, the Customer may make reasonable objections in writing to [privacy@qlik.com](mailto:privacy@qlik.com) within the 30-day period regarding the appointment of the new Subprocessor. After receiving such written objection Qlik will either: (i) work with the Customer to address the Customer's objections to its reasonable satisfaction, (ii) instruct the Subprocessor not to Process Customer Personal Data, provided that the Customer accepts that this may impair the Services (for which Qlik shall bear no responsibility or liability), or (iii) notify the Customer of an option to terminate this DPA and the applicable order form for Services which cannot be provided by Qlik without the use of the objected-to new subprocessor. If Qlik does not receive an objection from the Customer within the 30-day objection period, the Customer will be deemed to have consented to the appointment of the new Subprocessor.

#### 5. EEA/UK THIRD COUNTRY DATA TRANSFERS

**5.1 Transfers of EEA Customer Personal Data.** For transfers of EEA Customer Personal Data by the Customer to Qlik, where the Qlik party to this DPA is in a Third Country not deemed under EEA Data Protection Law to provide an equivalent level of privacy protection;

5.1.1 where the Customer is the Controller and Qlik a Processor of such EEA Customer Personal Data, such transfer(s) will be subject to the 2021 SCCs Module Two; and/or

5.1.2 where the Customer is the Processor and Qlik a Subprocessor of such EEA Customer Personal Data (i.e., where the EEA Customer Personal Data contains EEA Personal Data of the Customer's customers where the Customer is a Processor), such transfer(s) will be subject to the 2021 SCCs Module Three;

in each case, the 2021 SCCs Module Two and 2021 SCCs Module Three are hereby incorporated in this DPA, as applicable, and shall apply as described in Section 5.2 below and subject to the provisions of this DPA.

**5.2 Particulars regarding the 2021 SCCs.** The 2021 SCCs referred to in Section 5.1 above shall apply with the following particulars:

5.2.1 the Customer will be the data exporter and Qlik will be the data importer;

5.2.2 for Clause 9 (a) (use of Subprocessors), the Parties agree to option 2 (general written authorization) as described in Section 4. A list of Qlik's Subprocessors, for the purpose of Annex III to the 2021 SCCs, is available at Schedule 3;

5.2.3 the options in Clause 7 (docking) and Clause 11 (a) (redress) are not exercised;

5.2.4 for Clause 17 (governing law), Clause 18 (b) (choice of forum and jurisdiction) and Annex I (c) (Supervisory Authority), the Parties agree that the governing law, relevant Supervisory Authority, and relevant courts for a dispute regarding the 2021 SCCs will be those of the Customer country (or state, if relevant) if the Customer is an EEA entity and, in any event, decided in accordance with the relevant Data Protection Law. In the event of ambiguity, the governing law, Supervisory Authority and relevant courts will be those of Sweden;

5.2.5 the Parties agree that the aggregate liability of Qlik to the Customer under or in connection with this DPA and the 2021 SCCs will be limited as set out in Sections 2.4.2 and 8.3;

5.2.6 the Parties agree that any rights to audit pursuant to Clause 8.9 of the 2021 SCCs will be exercised in accordance with Section 6;

5.2.7 the details of the Processing to be provided in Annex I of the 2021 SCCs are provided in Section 2; and

5.2.8 the Technical and Organizational Measures to be provided in Annex II of the 2021 SCCs are provided in Schedule 2.



The Parties agree that in the event of a conflict between this DPA and the applicable 2021 SCCs (Modules Two or Three) the relevant 2021 SCCs will prevail.

**5.3 Transfers of UK Customer Personal Data.** For transfers of UK Customer Personal Data by the Customer to Qlik where the Qlik party to this DPA is in a Third Country not deemed under UK Data Protection Law to provide an equivalent level of privacy protection, the Parties agree that the provisions of the 2010 SCCs are hereby incorporated in this DPA in respect of such transfer of UK Customer Personal Data. In particular:

5.3.1 the Customer will be the data exporter, and Qlik the data importer; and

5.3.2 the Parties agree that the Processing details and other particulars required to be described in the 2010 SCCs shall be, where applicable to the 2010 SCCs, those set out above in Section 5.2 save that the governing law, jurisdiction and supervisory authority shall be England & Wales, and the UK Information Data Commissioner respectively.

**5.4 Alternative Lawful Transfer Mechanisms.** The Customer acknowledges that Qlik's obligations under the 2010 SCCs or the 2021 SCCs under this DPA may be replaced by obligations under any successor or alternate EEA/UK Third Country lawful transfer mechanism adopted by Qlik which is recognized by the relevant EEA/UK authorities. In such instances, the Parties shall not be required to re-execute this DPA as they have already agreed to such measures, and such obligations will be deemed automatically included in this DPA. In particular, if the UK adopts as a lawful transfer mechanism the 2021 SCCs (or a UK enacted version thereof) these shall be considered automatically substituted or, as the case may be, supplemented, in this DPA by the Parties in place of the 2010 SCCs in respect of UK Customer Personal Data.

**5.5 EEA/UK-US Transfers.** In response to the Court of Justice of the European Union's decision in Schrems II, Case No. C-311/18, and related guidance from Supervisory Authorities, the Parties acknowledge that supplemental measures may be needed with respect to EEA/UK-U.S. data transfers where Customer Personal Data may be subject to government surveillance. The Customer and Qlik agree that Customer's EEA/UK operations involve ordinary commercial services, and any EEA/UK-U.S. transfers of EEA Customer Personal Data contemplated by this DPA involve ordinary commercial information, such as employee data, which is not the type of data that is of interest to, or generally subject to, surveillance by U.S. intelligence agencies. Accordingly, Qlik agrees that it will not provide access to Customer Personal Data of an EEA/UK Customer transferred under this DPA to any government or intelligence agency, except where its legal counsel has determined it is strictly relevant and necessary to comply with the law or a valid and binding order of a government authority (such as pursuant to a court order). If a law enforcement agency or other government authority provides Qlik with a demand for access to such Customer Personal Data, Qlik will attempt to redirect the law enforcement agency to request the Customer Personal Data directly from the Customer. If compelled by law to provide access to such Customer Personal Data to a law enforcement agency or other government authority, and only after a determination of such is made by legal counsel, then Qlik will, unless Qlik is legally prohibited from doing so: (1) give Customer notice of the demand no later than five (5) days after such demand is received to allow Customer to seek recourse or other appropriate remedy to adequately protect the privacy of EEA/UK Data Subjects, and Qlik shall provide reasonable cooperation in connection with the Customer seeking such recourse; and (2) in any event, provide access only to such Customer Personal Data as is strictly required by the relevant law or binding order (having used reasonable efforts to minimize and limit the scope of any such access). This Section 5.5 does not overwrite Clause 15 (where applicable) of the 2021 SCCs.

**5.6 EEA Qlik Cloud Storage Capability.** For the avoidance of doubt, although the Customer may select (where available) the region in which its Qlik Cloud Customer Content resides, including the EU, the ability to retain Qlik Cloud Customer Content (including Customer Personal Data) solely in-region is subject to how the Customer's users of Qlik Cloud share and use applications and other technical particulars.

## 6. AUDITS

**6.1 Audit Requests.** Without prejudice to its other obligations in this DPA, Qlik will give to the Customer on written request (where such requests shall occur no more than once every 12 months) reasonable information necessary to determine Qlik's compliance with this DPA and will discuss in good faith any audits reasonably required by the Customer, conducted by a third party agreed to by the Parties. Such audits, if agreed, must be carried out at the Customer's cost, be conducted in a manner undistruptive to the business of Qlik and its Affiliates, be conducted subject to the terms of an applicable nondisclosure agreement, and not prejudice other confidential information (including but not limited to Personal Data) of Qlik, its Affiliates or its other customers.

**6.2 Subprocessor Audits.** If the Customer's request for information relates to a Subprocessor, or information held by a Subprocessor which Qlik cannot provide to the Customer itself, Qlik will promptly submit a request for additional information in writing to the relevant Subprocessor(s). The Customer acknowledges that information about the Subprocessor's previous independent audit reports is subject to agreement from the relevant Subprocessor, and that Qlik cannot guarantee access to that Subprocessor's audit information at any particular time, or at all.

## 7. ACCESS AND DELETION OF CUSTOMER PERSONAL DATA

**7.1 Access and Deletion of Qlik Cloud Customer Content during the Agreement.** Qlik will, as necessary to enable the Customer to meet its obligations under Data Protection Law, provide the Customer via availability of Qlik Cloud with the ability to access, retrieve, correct and delete through to the Termination Date its Qlik Cloud Customer Content in Qlik Cloud. The Customer acknowledges that such ability may from time to time be limited due to temporary service outage for maintenance or other updates to Qlik Cloud. To the extent that the Customer, in its fulfilment of its Data Protection Law obligations, is unable to access, retrieve, correct or delete Customer Personal Data in Qlik Cloud due to prolonged unavailability of Qlik Cloud due to an issue within Qlik's control (for example, exceeding 10 working days), upon written request from the Customer, Qlik will where possible use reasonable efforts to provide, correct or delete such Customer Personal Data. The Customer acknowledges that Qlik may maintain backups of Qlik Cloud Customer Content, which would remain in place for approximately third (30) days following a deletion in Qlik Cloud. The

Customer remains solely responsible for the deletion, correction and accuracy of its Qlik Cloud Customer Content and will be solely responsible for retrieving such Qlik Cloud Customer Content to respond to Data Subject access requests or similar requests relating to Customer Personal Data. If Qlik receives any such Data Subject request, Qlik will use commercially reasonable efforts to redirect the Data Subject to the Customer.

**7.2 Access and Deletion of Customer Personal Data on Termination of the Agreement.** By the Termination Date, the Customer will have deleted all Qlik Cloud Customer Content Personal Data, unless prohibited by law, or the order of a governmental or regulatory body. Notwithstanding the foregoing, after the Termination Date and upon the Customer's written request Qlik will provide reasonable assistance to the Customer to securely destroy or return any remaining Customer Personal Data. The Customer acknowledges that Customer Personal Data may be stored by Qlik after the Termination Date in line with Qlik's data retention rules and back-up procedures until it is eventually deleted. To the extent that any portion of Customer Personal Data remains in the possession of Qlik following the Termination Date, Qlik's obligations set forth in this DPA shall survive termination of the Agreement with respect to that portion of the Customer Personal Data until it is eventually deleted.

## **8. MISCELLANEOUS**

**8.1 Entire Agreement.** This DPA and the Agreement, where referenced, contain the entire agreement regarding the subject matter thereof and supersede any other data protection/privacy agreements and communications between the Parties concerning the Processing by Qlik of Customer Personal Data in Qlik's performance of the Services.

**8.2 Effect of this DPA.** Except as amended by this DPA, the Agreement will remain in full force and effect. If there is a conflict between any other agreement between the Parties, including the Agreement and this DPA, the terms of this DPA will control. This DPA is effective from the Effective Date and only if and for so long as Qlik provides Services under the Agreement. This DPA will terminate, unless otherwise terminated by the Parties, on the Termination Date.

**8.3 Liability.** Subject to Section 2.4.2, the total combined liability of either Party towards the other Party, whether in contract, tort or under any other theory of liability, shall be limited to that set forth in the Agreement as well as any disclaimers contained therein. Any reference in such section to the liability of a Party means the aggregate liability of that Party under the Agreement and this DPA.

**8.4 Third Party Rights.** This DPA shall not confer any rights or remedies to any other person or entity other than the Parties except as to enable the Data Protection Law rights of Data Subjects of Customer Personal Data under this DPA.

**8.5 Updates to this DPA.** Qlik may modify the non-material terms of this DPA, such as to account for future changes in Data Protection Law to enable the continued Processing of Customer Personal Data to carry out the Services and shall do so by way of updating the DPA terms on [www.qlik.com](http://www.qlik.com). Any future changes to this DPA published by Qlik on its website will become effective once published and shall supersede any previous DPA between the Parties, insofar and only to the extent that those changes (i) are to account for changes under Data Protection Law, which may include to account for revised guidance from a Supervisory Authority, or (ii) to enable an EEA/UK Third Country lawful transfer mechanism, as contemplated under Section 5.2, or (iii) are not less favorable to the Customer (for example, to permit further data types of Customer Personal Data to be uploaded to Qlik Cloud). The Customer is therefore encouraged to keep up to date with these DPA terms at [www.qlik.com](http://www.qlik.com).

## **SCHEDULE 2 TECHNICAL AND ORGANIZATIONAL MEASURES**

Qlik shall undertake appropriate technical and organizational measures for the availability and security of Customer Personal Data and to protect it against unauthorized or unlawful Processing and against accidental or unlawful loss, destruction, alteration or damage, and against unauthorized disclosure or access. These measures, listed below, shall take into account the nature, scope, context and purposes of the Processing, available technology as well as the costs of implementing the specific measures and shall ensure a level of security appropriate to the harm that might result from a Security Breach. Some of the measures below apply to Qlik's general IT infrastructure/practices and may not necessarily apply to Qlik Cloud. While Qlik may alter its measures in line with evolving security practices and risks, and with due regard to the nature of the Processing, Qlik will not materially decrease the overall protections of the Customer Personal Data below the aggregate standard of the measures in this Schedule 2. Customers should stay up to date with Qlik's security measures by visiting its security resources available at [www.qlik.com](http://www.qlik.com).

**1. Access Controls to Premises and Facilities.**

Qlik maintains technical and organizational measures to control access to premises and facilities, particularly to check authorization, utilizing various physical security controls such as ID cards, keys, alarm systems, surveillance systems, entry/exit logging and door locking to restrict physical access to office facilities.

**2. Access Controls to Systems and Data.**

Qlik operates technical and organizational measures for user identification and authentication, such as logs, policies, assigning distinct usernames for each employee and utilizing password complexity requirements for access to on-premises and cloud-based platforms. In addition, user access is established on a role basis and requires user management, system or HR approval, depending on use. Second-layer authentication may be employed where relevant by way of multi-factor authentication. User access for sensitive platforms is subject to periodic review and testing. Qlik's IT control environment is based upon industry-accepted concepts, such as multiple layers of preventive and detective controls, working in concert to provide for the overall protection of Qlik's computing environment and data assets. To strengthen access control, a centralized identity and access management solution is used to manage application access. Qlik uses on-boarding and off-boarding processes to regulate access by Qlik Personnel.

**3. Disclosure Controls.**

Qlik maintains technical and organizational measures to transport, transmit and communicate or store data on data media (manual or electronic). For certain data transfers, bearing in mind the risk and sensitivity of the data, Qlik may employ encrypted network or similar transfer technologies. Personnel must utilize a dedicated or local VPN network to access internal resources and/or industry-standard authentication and secure communication mechanisms to access cloud-based systems.

Logging and reporting are utilized for validation and review purposes. Third party Subprocessors are subject to privacy and security risk assessments and contractual commitments.

**4. Input Controls.** Qlik maintains measures in its general IT systems for checking whether relevant data has been entered, changed or removed (deleted), and by whom, such as by way of application-level data entry and validation capabilities. and reporting is utilized for validation and review purposes. For Qlik Cloud Customer Content, other than as provided for under this DPA, the

Customer is solely responsible for entry, alteration and removal (deletion) of any of its Qlik Cloud Customer Content in Qlik Cloud and, to respect the security and integrity of the Customer Personal Data, Qlik does not monitor Qlik Cloud Customer Content for regular entries, alterations or removals (deletion) by the Customer or its users in its use of the Services.

**5. Job Controls.** Qlik uses technical (e.g., access controls) and organizational (e.g., policies) measures to delineate, control and protect data for which the Qlik is the Controller or the Processor. Qlik records and delineates the data types for which it is a Controller or a

Processor in its record of processing activities under Article 30 (2) EU GDPR.

**6. Separation Controls.** Qlik uses segregation standards and protocols between production, testing and development environments of sensitive platforms. Additionally, segregation of data is further supported through user access role segregation.

**7. Availability Controls.** Qlik maintains measures to assure data availability such as local and/or cloud-based back-up mechanisms involving scheduled and monitored backup routines, and local disaster recovery procedures. Qlik may supplement these with additional security protections for its business, for example malware protection. Additionally, data centers of a critical nature are required to submit to periodic 3rd party evaluation of operating effectiveness for significant controls ensuring data availability. Relevant systems and data center locations are protected through the use of industry-standard firewall capabilities.

**8. Other Security Controls.** Qlik maintains (i) regular control evaluation and testing by audit (internal and/or external), on an asneeded basis, (ii) individual appointment of system administrators, (iii) user access by enterprise IDP, (iv) binding policies and procedures for Qlik's Personnel, and (v) regular security and privacy training. Policies will clearly inform Personnel of their obligations (including confidentiality and associated statutory obligations) and the associated consequences of any violation.

**9. Certifications.** Qlik has, at the time of the Effective Date, and shall maintain, certifications regarding SOC 2 Type II and ISO 27001 or their equivalents, which may change over time in line with evolving security standards.

**10. Specific Qlik Cloud Services Measures.**

Qlik shall in relation to Qlik Cloud (i) implement compliance audits, (ii) maintain applicable third-party certifications which may include audit reporting that can be provided to the Customer; and (iii) implement industry standard measures for data-at-rest, such as encryption. The Customer is responsible for any data minimization before inputting into Qlik Cloud any Customer Personal Data.

**SCHEDULE 3  
SUBPROCESSORS**

**Qlik Affiliates:**

<b>Qlik Affiliates</b>	<b>Country</b>
QlikTech International AB	Sweden
QlikTech Nordic AB	Sweden
QlikTech Latam AB	Sweden
NodeGraph AB	Sweden
QlikTech Denmark ApS	Denmark
QlikTech Finland OY	Finland
QlikTech France SARL	France
QlikTech Iberica SL (Spain)	Spain
QlikTech Iberica SL (Portugal liaison office)	Portugal
QlikTech GmbH	Germany
QlikTech GmbH (Austria branch)	Austria
QlikTech GmbH (Swiss branch)	Switzerland
QlikTech Italy S.r.l.	Italy
QlikTech Netherlands BV	Netherlands
QlikTech Netherlands BV (Belgian branch)	Belgium
Blendr NV	Belgium
QlikTech UK Limited	United Kingdom
DataMarket ehf. (Iceland)	Iceland
Qlik Analytics (ISR) Ltd.	Israel
QlikTech Netherlands BV (Russian branch)	Russia
QlikTech International Markets AB (DMCC Branch)	United Arab Emirates
QlikTech Inc.	United States
QlikTech Corporation (Canada).	Canada
QlikTech México S. de R.L. de C.V.	Mexico
QlikTech Brasil Comercialização de Software Ltda.	Brazil
QlikTech Japan K.K.	Japan
QlikTech Singapore Pte. Ltd.	Singapore
QlikTech Hong Kong Limited	Hong Kong
Qlik Technology (Beijing) Limited Liability Company	China
QlikTech India Private Limited	India
QlikTech Australia Pty Ltd	Australia
QlikTech New Zealand Limited	New Zealand

QUALTRICS, LLC  
400 QUALTRICS DRIVE, #100  
PROVO, UT 84604

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Qualtrics, LLC** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not

when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**QUALTRICS, LLC**

**QUALTRICS, LLC LICENSE, WARRANTY AND SUPPORT TERMS**

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Background



Contractor through Qualtrics will provide the Qualtrics Service to Ordering Activity ("Licensee") as an end user customer. Qualtrics will use, operate, and/or make available applicable software, hardware, network, systems, platforms, and/or other technologies and expertise reasonably required to provide the Qualtrics Service to Licensee. The Qualtrics Service shall be hosted on Qualtrics' servers. Qualtrics may, at its election, outsource the hosting to a trusted third party in the business of hosting Internet services and/or applications.

#### License of Qualtrics Service

Contractor grants Licensee a non-exclusive, non-transferable worldwide license and lease, during the term of the Delivery Order, to use the Qualtrics Service for Licensee's own internal business purposes.

**Access:** During the term of the Delivery Order, provided that Licensee has paid all fees due and owed to Contractor and is in compliance with the terms of this Attachment A, Licensee will be able to access the Qualtrics Service by going to the web site specified in Exhibit 1. The Qualtrics Service will prompt Licensee for its login and password information and, if correct, will provide Licensee with access to the Qualtrics Service.

**Unauthorized Duplication or Use:** Licensee shall use commercially reasonable efforts to prevent its employees and other third parties from making unauthorized copies of any content in the Qualtrics Software or using the Qualtrics Service in violation of this Attachment A. If Licensee discovers any such unauthorized duplication or use, it will promptly notify Contractor through Qualtrics and take commercially reasonable actions to resolve the problem as soon as reasonably possible.

**Restrictions:** Licensee is not permitted to sublicense the Qualtrics Software to third parties without written permission of Qualtrics except to affiliates and third party vendors solely for providing services for Licensee and not for their own use.

#### Support and Maintenance

In consideration of the fees paid by Licensee, as part of the Qualtrics Services, Contractor through Qualtrics will provide the following support and maintenance services:

**Technical Support:** Contractor through Qualtrics shall provide Licensee with telephone-based and web site-based technical support services to assist Licensee in utilizing the Qualtrics Service, including the Software. Licensee may telephone or e-mail Qualtrics' offices for support during Qualtrics' regular business hours, 6:00 p.m. Sunday to 6:00 p.m. Friday U.S. Mountain Time (0100 Monday to 0100 Saturday GMT), except U.S. holidays. Qualtrics will respond to telephone calls or e-mails based on the following criteria: (a) the order that such calls or e-mails are received; and (b) the relative importance of such calls or e-mails as reasonably determined by Qualtrics. Qualtrics shall make reasonable, good faith efforts to respond to technical support requests and to correct errors within a reasonable time. Licensee agrees to cooperate with Qualtrics in providing such documentation and information as Qualtrics may reasonably request, so that Qualtrics can verify and reproduce the reported error. Additionally, Licensee may log on to the support web site to register e-mail requests.

**Modifications and Enhancements:** Contractor through Qualtrics may also make modifications to the Qualtrics Service to improve and enhance the Qualtrics Service, as it deems appropriate in its sole discretion, by adding additional service options, improving the user interface and otherwise responding to its licensees' feedback and requests. Qualtrics will make all such improvements and enhancements (including, but not limited to, error corrections, bug fixes and performance or functionality improvements) available to Licensee under the terms of this Attachment A at no additional charge. Licensee may also utilize Qualtrics' support web site to make enhancement requests and other special requests.

#### Account Managers

Each party shall appoint an Account Manager, as set forth on the signature page. The Account Managers shall be responsible for addressing and resolving issues relating to the delivery and use of the Qualtrics Service. Either party may change its Account Manager upon written notice to the other party.

#### Ownership

Subject to the licenses and rights granted herein, the parties acknowledge that:

As between the parties, Qualtrics owns all right, title and interest in and to the Qualtrics Service, all related software and technology, and all Qualtrics content provided in connection with the Qualtrics Service, including all intellectual property rights in the foregoing. Qualtrics reserves all rights not expressly granted to Licensee in this Attachment A.

Licensee owns all right, title and interest in and to any questions, responses, and other data and information input by Licensee and its survey recipients in the surveys conducted through the Qualtrics Service ("Data") including, but not limited to, any survey created by Licensee, as well as any additional data provided by the Licensee as part of the survey process including personally identifiable information provided by Licensee's survey recipients and respondents. All such Data shall be deemed Confidential Information of Licensee pursuant to the terms of the Schedule Contract and shall not be utilized by Qualtrics for any purpose other than to perform its obligations under this Attachment A or as agreed to in writing by an authorized representative of Licensee.

#### Term and Termination

**Term:** The initial term of a Delivery Order is one (1) year from the Effective Date. A Delivery Order may be renewed for additional one (1) year term upon mutual agreement in writing.

**Effect of Termination:** Upon termination of the Delivery Order for any reason, Contractor through Qualtrics shall discontinue providing the Qualtrics Service to Licensee and Licensee shall cease using the Qualtrics Service. Each party shall promptly return or destroy all Confidential Information of the other party, as applicable, in accordance with the terms of the Confidential Information in section of the Schedule Contract. Within thirty (30) days of the date of termination, Licensee shall pay to Contractor all outstanding undisputed fees due to Contractor as of the



effective date of termination. For thirty (30) days of the date of termination, Licensee shall have reasonable access to retrieve and secure its data contained in the service. In addition, any terms that by their nature extend beyond termination of the Delivery Order shall survive.

#### Representations and Warranties

By Contractor: Contractor represents and warrants to Licensee that:

it has the power and authority to enter into a Delivery Order and perform its obligations hereunder, and such performance will not breach any separate agreement by which Contractor is bound;

it will comply with the laws, rules and regulations that apply to Contractor in connection with the conduct of its business and its provision of the Qualtrics Service;

it will not knowingly infringe on any party's patent, trademark, mask work, copyright, trade secret, or other intellectual property right; and will not violate any laws, rules, or regulations applicable to Qualtrics or the Qualtrics Service; and

it will use commercially reasonable efforts to allow Licensee to access the Qualtrics Service seven (7) days per week, twenty-four (24) hours per day with a goal of ninety-nine percent (99%) reliability to the Qualtrics Service, excluding downtime (i) scheduled in advance for maintenance on a periodic basis, or (ii) due to faults caused by Licensee or Licensee's system, or (iii) due to other causes outside of the reasonable control of Qualtrics, including without limitation malfunction or cessation of Internet services by any third party network or ISP.

it will use commercially reasonable efforts to ensure that updates and/or new releases will not introduce, any program, routine, subroutine, or data (including malicious software or "malware," viruses, worms, and Trojan Horses) that are designed to disrupt the proper operation of the Service or any software or system used by Licensee in connection with the Service, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause the Service or any system or software used in connection with the Software to be destroyed, damaged, or rendered inoperable.

to the best of Contractor's knowledge, it shall not violate the software as delivered to the Licensee shall not violate any proprietary rights of third parties, including, without limitation, patents, copyrights or trade secrets; and, that the software as delivered to the Licensee will not violate any applicable law, rule, regulation or contractual obligations or confidential relationships which Contractor may have or with any third party, or violate the privacy of any third party from whom Contractor through Qualtrics may obtain any information in connection therewith.

By Licensee: Licensee warrants and represents to Contractor that:

it has the power and authority to enter into a Delivery Order and perform its obligations hereunder, and such performance will not breach any separate agreement by which Licensee is bound;

it will comply with the laws, rules and regulations that apply to Licensee in connection with the conduct of its business and its use of the Qualtrics Service; and

it will not knowingly utilize (or allow utilization of) the Qualtrics Service in any manner prohibited by this Attachment A or written Qualtrics policies provided to Licensee, or reverse engineer or tamper with the security of any Qualtrics computer software.

Limitation of Warranties: EXCEPT AS SET FORTH IN THIS SECTION 7, (i) NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY, AND (ii) ALL PRODUCTS AND SERVICES ARE PROVIDED BY CONTRACTOR ON AN "AS IS" BASIS. CONTRACTOR DOES NOT WARRANT THAT THE QUALTRICS SERVICE OR ITS SOFTWARE WILL BE ERROR-FREE OR THAT ALL NON-CONFORMITIES CAN BE OR WILL BE CORRECTED. CONTRACTOR DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS WITH RESPECT TO ANY THIRD PARTY CONTENT, EXPRESS OR IMPLIED. EXCEPT AS SET FORTH IN THIS SECTION 7, EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, CONDITIONS AND REPRESENTATIONS RELATED TO THE SUBJECT MATTER OF THIS ATTACHMENT A, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND MERCHANTABILITY.

#### Exhibit 1

**QUALTRICS SERVICE:** Develop and host the survey website which includes all survey development tools, e-mail delivery capabilities, online analysis tools, online survey libraries, tutorials and help facilities.

**SCOPE OF LICENSE:** The term of the license for the Qualtrics Software is one year, beginning on the date below and includes features as outlined below.

**SUPPORT AND TRAINING:** Contractor through Qualtrics will provide online tutorials, phone support and respond to e-mails during normal business hours. Qualtrics will provide a U.S. toll free number that may be used for contacting Qualtrics regarding support issues. As each survey project tends to be uniquely structured the majority of training will occur through telephone and e-mail support. Quarterly training calls may also be scheduled by the Qualtrics Account Manager to discuss and/or demonstrate new features that have been made available by Qualtrics.

**BRANDED SURVEY SITE:** This license will operate under a branded platform, which will be created by Qualtrics. The cost of this branded platform is included in the bid. Any changes to the site and domain are also included in the bid.

**SKINS TO MATCH:** The corporate branded solution comes with skins in a library that can be used to change the look and feel of a survey. Licensee will have the ability to request new skins that will fit their branding.

**REQUESTS:** A "Request" is a server call sent to Contractor through Qualtrics that occurs each time a site intercept code is triggered. Qualtrics will provide information on the number of requests to Licensee each month. In the event Licensee exceeds the number of allotted Monthly Requests by fifty percent (50%), or in the event Licensee exceeds the number of allotted Yearly Requests, Licensee must pay the overage at the current order rate.

**DISTRIBUTION OF USERNAMES AND PASSWORDS:** Contractor through Qualtrics will give the Licensee account manager an admin login name and password. With this admin login the account manager will be able to view the use of all users and create new usernames and passwords with unique permissions.

**Quantum Corporation**  
224 AIRPORT PARKWAY  
SUITE 550  
SAN JOSE, CA 95110

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Quantum Corporation (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
  
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby

superseded.

- h) Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any

excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

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- q) Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- 3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## QUANTUM MASTER PURCHASE AGREEMENT

This Master Purchase Agreement (“Master Agreement”) is made and entered into as of the final date executed by both parties (“Effective Date”) by and between Quantum Corporation, a Delaware, US corporation headquartered in San Jose, CA, USA (“Quantum”), and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Customer” or “Ordering Activity”), and sets forth the terms governing the purchase, licensing, and provision of Quantum Products, Support Services, Software as a Service, and Cloud Services (as defined below) from Quantum, and the limited warranty provided thereon. The terms of this Master Agreement shall supersede any pre-printed or standard terms accompanying the Customer’s purchase order or Quantum’s Quote.

### 1. General Definitions

#### 1.1 Product

“Product” shall be defined as Quantum branded hardware and Software collectively.

#### 1.2 Support Services

“Support Services” shall be defined as repair, adjustments, and/or part replacements for the covered Quantum Product as Quantum deems necessary to bring Product in compliance with Product warranty or pursuant to the support plan purchased due to normal Product usage during the Support Term. Support Services do not include Professional Services or Limited Support Services (as defined herein).

#### 1.3 Professional Services

“Professional Services” means services requested by Customer and provided by Quantum for an additional fee, and that are excluded as part of Support Services or are specifically identified as Professional Services herein. Professional Services are quoted on the Quantum Sales Quote and may be supplemented by a statement of work detailing the deliverables of the services purchased.

#### 1.4 Cloud Services

“Cloud Services” shall be defined as the provision of computing and storage capacity as a service over a network.

#### 1.5 Software as a Service

“Software as a Service” (SaaS) shall mean Software, delivered, and managed remotely by Quantum or a Quantum authorized provider, and received as a service by customers on a pay-for-use or subscription basis.

### 2. Quote

“Quote” shall refer to the Quantum issued Sales Quote to which these terms apply, and against which Customer issues an order purchasing the items quoted therein. Quantum does not warrant the accuracy of its Quotes in terms of sizing, configuration, cabling, porting, and other details specific to Customer’s network.

### 3. Delivery

Delivery of purchased Products will be FCA Quantum's manufacturing facility (INCOTERMS 2010). Title and risk of loss or damage to the Products shall shift to Customer upon release to the initial carrier for holding or shipment. Customer hereby grants Quantum a purchase-money security interest in all Products to secure payment of the purchase price and any other charges due to Quantum. If delivery of the Products to the initial carrier is delayed in excess of twenty Business Days, Customer may cancel the order involved upon notice to Quantum prior to shipment. Such cancellation right is Customer's sole remedy for any delay or failure in delivery by Quantum. Customer purchases of Products from a Quantum Authorized Reseller shall be shipped pursuant to the terms between the Customer and the Reseller.

### 4. Prices and Payment

#### 4.1 Generally



Quoted pricing will be valid for thirty days unless a different term is set forth in writing. Customer agrees to pay to Quantum the purchase price set forth in the Quote in accordance with the GSA Schedule Pricelist. Quantum shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

#### 4.2 Software License Subscription Fee

Software License Subscriptions (defined below) shall be invoiced for the amount and on the periodic basis specified in the Quote, in advance of the invoice period, throughout the duration of the subscription term. Thereafter, unless terminated as provided herein or otherwise prohibited by law, the Software License Subscription may be renewed for successive one-year periods under the terms of the then-current Quantum Sales and Support Terms and Conditions by both parties exercising an option or a new purchase order in writing, and Customer will be invoiced for the then current list price in accordance with the GSA Schedule Pricelist.

#### 4.3 Fees for Training and Professional Services

Training and Professional Services may be purchased for the fees quoted. Customer shall have the time period specified in the quote, or one year from the time of purchase if no time period is specified, to schedule and receive such services, or receive a refund. Additional fees may be assessed if costs are incurred as a result of waiting, rescheduling, or other accommodations made as a result of lack of Customer availability, or lack of preparation by the Customer for services scheduled.

#### 4.4 Lapse of Support Contract

In the event that Customer fails to maintain a current and continuous Support Contract with Quantum or a Quantum Authorized Service Provider, and thereafter seeks to re-enroll into a current Support Contract, such re-enrollment shall be at Quantum's discretion and may require a re-enrollment fee equal to the fee for the lapsed period that would have been paid had the Customer maintained continuous support in addition to the fees for the upcoming Support Term. Quantum does not guarantee a level of support immediately following purchase of the renewal contract. Service calls received during this time will be addressed on a best effort basis.

#### 4.5 Payment

Payment shall be due in full within thirty days from the receipt date of the invoice in the currency quoted. Payment terms are not guaranteed and are subject to approval and ongoing credit history and timely receipt of payment. Customer purchases from a Quantum Authorized Reseller shall be paid by the Customer pursuant to the payment terms between the Customer and the Reseller.

### 5. Order Cancellation

Subject to Quantum's prior written approval, Customer may cancel an order, or any portion thereof, for standard Products any time prior to thirty days before shipment when shipment is not delayed.

### 6. Termination of Software License Subscription

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Quantum shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon expiration or termination of a Software License Subscription, the license and right to use Quantum Software shall terminate.

#### 7. Third Party Product

Product sold to Customer by Quantum that is the branded product of a third party (“Third Party Product”) shall be identified under the third party brand on the Quote, shall be warranted directly to Customer by the third party. Nothing herein shall bind the Ordering Activity to any Third Party terms unless the terms are provided for review and agreed to in writing by all parties. Certain Third Party Product documentation is available at [www.Quantum.com](http://www.Quantum.com). Notwithstanding any provision herein, subject

to any non-excluded rights that you may have under the laws in your country, Quantum makes no representations or warranties regarding Third Party Product, and shall have no ongoing obligations to Customer for the support or maintenance of Third Party Product unless expressly agreed to in writing. Third party software licensed by Quantum and embedded in Quantum branded software or hardware and not separately licensed shall not be considered Third Party Product.

#### 8. Limited Product Warranty

SUBJECT TO THE LIMITATIONS SET FORTH BELOW, QUANTUM WARRANTS TO THE END-USER CUSTOMER THAT PRODUCTS (EXCLUDING MEDIA) WILL PERFORM IN ACCORDANCE WITH QUANTUM'S PUBLISHED PRODUCT SPECIFICATIONS, COMMENCING AT THE TIME OF SHIPMENT AND FOR THE DURATION PUBLISHED BY QUANTUM AND SPECIFIED IN THE PRODUCT WARRANTY INFORMATION TABLE ATTACHED HERETO. QUANTUM WARRANTS THAT MEDIA PRODUCTS WILL BE FREE FROM DEFECTS IN MATERIAL AND MANUFACTURE AT THE TIME OF PURCHASE. SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY, CUS-

TOMER'S SOLE AND EXCLUSIVE REMEDY SHOULD PRODUCT FAIL TO PERFORM ACCORDING TO SPECIFICATIONS, IS REPAIR, REPLACEMENT, OR ACCEPTANCE OF RETURN OF THE DEFECTIVE PRODUCT AT QUANTUM'S SOLE DISCRETION.

#### 9. Support Services and Professional Services Warranty

SUBJECT TO THE LIMITATIONS SET FORTH BELOW, QUANTUM WARRANTS TO THE END-USER CUSTOMER THAT THE SUPPORT SERVICES AND PROFESSIONAL SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS WILL BE FREE FROM DEFECTS IN MATERIALS OR WORKMANSHIP FOR THIRTY DAYS FROM THE DATE SUCH SERVICES ARE RENDERED, OR THE REMAINING TERM OF THE THEN CURRENT AND PAID FOR SUPPORT SERVICE PERIOD, WHICHEVER IS LONGER, AND WILL BE PERFORMED BY FULLY TRAINED AND COMPETENT PERSONNEL IN ACCORDANCE WITH INDUSTRY STANDARD TECHNICAL AND PROFESSIONAL PRACTICES AND PROCEDURES. IF A DEFECT COVERED UNDER THIS WARRANTY IS FOUND AND REPORTED TO QUANTUM, SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY, QUANTUM WILL, AT ITS DISCRETION AND AS ITS SOLE RESPONSIBILITY AND LIABILITY, AND AS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, USE COMMERCIALY REASONABLE MEANS TO CORRECT SUCH DEFECT OR IN THE CASE OF PROFESSIONAL SERVICES REFUND TO CUSTOMER THE SUMS PAID BY CUSTOMER FOR THE DEFECTIVE PROFESSIONAL SERVICES.

#### 10. Disclaimers, and Limitations on Liability

THE FOREGOING WARRANTIES SHALL BE VOIDED IF THE PRODUCT IS NOT PROPERLY INSTALLED, USED, OR MODIFIED BY A PERSON OTHER THAN QUANTUM OR A QUANTUM AUTHORIZED SERVICE PROVIDER. THIS CLAUSE IS SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY. THE WARRANTIES EXPRESSED HEREIN ARE THE ONLY WARRANTIES MADE BY QUANTUM WITH RESPECT TO THE PRODUCTS AND SERVICES. QUANTUM DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES WILL MEET ALL CUSTOMER REQUIREMENTS, OR THAT THEY WILL BE UNINTERRUPTED OR ERROR FREE. QUANTUM EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, OBLIGATIONS, LIABILITIES, CUSTOMER'S RIGHTS AND REMEDIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW OR OTHERWISE INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM

COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE. IN NO EVENT SHALL QUANTUM BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OR ALTERATION OF DATA, DELAYS OR LOST PROFITS OR SAVINGS, EVEN IF QUANTUM IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF THE EXCLUSIVE REMEDIES STATED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. CUSTOMER'S RIGHTS AS STATED HEREIN ARE ITS EXCLUSIVE REMEDIES. EXCEPT FOR QUANTUM'S LIABILITY BASED UPON GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR A VIOLATION OF LAW, QUANTUM'S CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING IN CONNECTION WITH THE PRODUCTS OR SERVICES MAY NOT EXCEED THE

MOST RECENT ANNUAL FEE OR THE PRICE PAID. Quantum and its subsidiaries, directors, officers, employees and providers shall in no way be liable for any and all actions, causes of action, liability, claims, suits, judgments, liens, awards or damages of any kind and nature whatsoever (hereinafter referred to as "Claims") for property damage, and expenses, costs of litigation and reasonable attorneys' fees related thereto, to the extent such claims arise from any negligent act or omission or willful misconduct of Customer or any of Customer's employees, agents, buyers or contractors (except for Quantum) arising

out of or in any way relating to Quantum's presence on Customer's designated premises for the purposes of providing services hereunder. No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of Services, may be brought by either party more than six (6) years after such cause of action accrued.

The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## 11. Proprietary Information

Pursuant to these Terms and Conditions, each party (the "disclosing party") may occasionally provide the other (the "receiving party") with its confidential and/or proprietary information (e.g., equipment, services, components, instruction manuals or installation information, trade secrets, know-how, ideas, concepts and methodologies, customers, prices (excluding GSA Schedule prices), product roadmaps, operations and plans and data, etc.) ("Proprietary Information"). The receiving party acknowledges that use or disclosure of Proprietary Information of the disclosing party in any unauthorized manner will destroy its value to the disclosing party. Unless the disclosing party agrees otherwise in writing, the receiving party (including its employees, agents and contractors) (i) will not sell, disclose, copy or reproduce any Proprietary Information of the disclosing party; (ii) will only permit or allow access to Proprietary Information of the disclosing party to those employees or third parties who require such access in order to perform work on the disclosing party's behalf pursuant to these Terms and Conditions; (iii) agrees to protect the Proprietary Information of the disclosing party as carefully as it would protect its own proprietary information but never less than a reasonable standard of care; (iv) agrees to be responsible for any unauthorized use or disclosure of Proprietary Information of the disclosing party by any of its employees, agents or contractors; and (v) agrees to leave intact all copyright, patent, trademark, confidentiality and similar notices in connection with the Proprietary Information of the disclosing party. The parties agree to return all Proprietary Information to the disclosing party upon the termination of these Terms and Conditions.

Quantum recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

## 12. Intellectual Property

Customer agrees and acknowledges that Quantum, its suppliers and its licensors are the owners of all right, title, and interest in and to Quantum-provided Software, SaaS, and Cloud Services, and all Intellectual Property (IP) therein, and that Customer shall not obtain or claim any ownership interest in (i) any IP in Quantum provided hardware, and (ii) any Quantum-provided Software, SaaS, and Cloud Services. Customer shall not, unless expressly permitted by law or by Quantum (i) obscure, alter or remove any patent, copyright, trademark, or service mark marking or legend contained on or in any Quantum Products, SaaS, or Cloud Services, (ii) use any Quantum Products, SaaS, or Cloud Services except as licensed, (iii) permit or enable any third party to use Quantum Products, SaaS, or Cloud Services, unless Quantum provides its prior written consent to such use, (iv) copy, distribute, or transmit all or any portion of any Quantum Software except as expressly permitted, (v) cause or permit the disclosure, copying, renting, licensing, sublicensing, leasing, dissemination, transfer or other distribution of any Quantum Products, SaaS, or Cloud Services by any means or in any form, without the prior written consent of Quantum.

## 13. Infringement Indemnification

Quantum will indemnify Customer for any damages and costs finally awarded against Customer on the grounds that the Products, Support Services, Professional Services, SaaS, or Cloud Services, in the form and condition delivered by Quantum to Customer hereunder, infringe any valid United States patents or copyrights of any third party, provided that Customer

notifies Quantum in writing of any such claim within ten days after learning thereof and that Customer gives Quantum control over the defense and settlement of the claim and fully cooperates with Quantum with respect thereto. If any such claim is brought or appears to Quantum likely to be brought, Quantum may at its option (1) replace or modify the Products, Support Services, Professional Services, SaaS, or Cloud Services to make them non-infringing, (2) obtain rights for Customer to continue using Products, Support Services, Professional Services, SaaS, or Cloud Services, (3) terminate a subscription with no right of refund, or (4) refund to Customer, upon the return of the Products at issue and termination of any licenses, the price paid there for, less twenty percent for each year which has passed since the date of delivery hereunder. Customer shall discontinue all use of any portion of the Products, Support Services, Professional Services, SaaS, or Cloud Services that has been replaced or modified or for which such a refund has been tendered. Quantum's obligations hereunder shall not apply to any claim based on (1) Quantum's following Customer's specifications or requests, (2) the use of the Products, Support Services, Professional Services, SaaS, or Cloud Services to practice a process not recommended by Quantum, (3) the use of Products, Support Services, Professional Services, SaaS, or Cloud Services in a way that is illegal, unethical, or immoral, or (4) in conjunction with items not supplied by Quantum, and Customer shall similarly indemnify Quantum with respect to any such claims.

THE FOREGOING STATES QUANTUM'S SOLE RESPONSIBILITY, AND CUSTOMER'S SOLE REMEDY, FOR ANY IN-FRINGEMENTS OF ANY PROPRIETARY RIGHTS.

#### 14. Compliance with Laws

##### 14.1 General Compliance

Each Party will comply, and will cause each of its employees, agents and subcontractors to comply, with the laws of all governmental authorities and all governmental regulations to the extent such laws are applicable. Each Party will also obtain all required regulatory approvals, licenses and permits.

##### 14.2 Import/Export/Re-Export

###### 14.2.1 Generally

Customer shall not, unless otherwise authorized by the U.S. Government, supply Products or enable use of SaaS or Cloud Services to entities identified on restricted lists (such as Denied Parties List, Debarred Parties, Specially Designated Nationals, Terrorists, Narcotics Traffickers, Blocked Persons and Vessels, or Entity List). Customer shall not ship or transfer Product or enable use of SaaS or Cloud Services, either directly or indirectly, to the countries identified as restricted in the U.S. Export Administration Regulations, without written approval from the United States Bureau of Industry and Security. Customer will comply with the export and re-export restrictions set forth in any export license (if applicable) or license exception used to ship Products or enable use of SaaS or Cloud Services. Terms of sale or other specific agreement will denote the Importer of Record. Importer of Record shall not violate any import laws, rules, or regulations of the United States and/or any other applicable country. Importer of Record is responsible for all Customs duties and other Customs related fees. Importer of Record is eligible for duty drawback rights to the Products, SaaS, or Cloud Services. Quantum shall mark each Product with the country of origin in compliance with the marking requirements of the United States.

###### 14.2.2 Cloud/SaaS Services

Customer acknowledges that it will have exclusive responsibility for compliance with United States and multilateral export controls applicable to the data or software it uploads through SaaS or Cloud Services. This responsibility extends to the controls applicable to the computations and derivations (output) from the use of the software or data through SaaS or Cloud Services. Quantum assumes no responsibility to screen the Customer or its own employees from access to such data or Software and their output, or to track or control their export or transfer. Customer agrees to strictly prevent access, export, or transfer of its data, Software, and related output on the Cloud that is controlled under the mentioned regimes to countries and individuals sanctioned by the US Office of Foreign Assets Control (OFAC), the US Export Administration Regulations (EAR), the US International Traffic in Arms Regulations (ITAR), and other related laws and regulations, as applicable. Customer also agrees to prevent its Software and data uploaded to the Cloud from being used in the development, production, use, or proliferation of weapons of mass destruction (as defined in the aforementioned laws and regulations), to include chemical, biological or missile technologies. Any violation of these and other applicable laws and regulations will be the exclusive responsibility of the Customer. The Customer will indemnify Quantum and its affiliates in the event of investigation or prosecution by any government or government agency responsible for such controls and compensate Quantum for any costs and hardship incurred during and as a result of such an event.

###### 14.2.3 Access Control



Customer acknowledges and agrees that any access to SaaS, Quantum's Cloud, or Cloud Services given by Customer to any person outside of the countries of the European Economic Area shall be considered as an express written consent to Quantum to supply such services and data, and such consent shall be deemed given by Customer and the relevant person/data subject.

### 14.3 Data Protection

Customer (a) acknowledges that Customer is the Data Controller and that Quantum is a Data Processor as defined in the European Data Protection Directive 95/46/EC; (b) agrees to comply with Customer's obligations under applicable United States Federal data protection legislation, processing and provision of personal data and sensitive personal data ("Data") provided to Quantum in connection with SaaS or Cloud Services; (c) reserved; and (d) acknowledges that Quantum is reliant on Customer

for direction as to the extent to which Quantum is entitled to use and process Data. Consequently, Quantum will not be liable for any claim brought by Customer or any Data subject arising from any action or omission by Quantum to the extent that such action or omission resulted from Customer's instructions. Customer shall be responsible to notify Quantum if any Customer data managed, accessed, hosted, or otherwise actively controlled by Quantum in conjunction with Cloud Services is subject to regulatory security or handling processes. Data residing in a customer environment shall not be considered managed, accessed, hosted, or otherwise actively controlled by Quantum.

#### 15. SaaS and Cloud Services

Quantum's SaaS and Cloud Services shall be provided under these Terms and Conditions supplemented by the terms of service, use policies, and other documents accompanying attached ("Supplemental Agreements"). The attached Supplemental Agreements are hereby incorporated by reference and to the extent the terms of the Supplemental Agreements conflict with these Terms and Conditions, the term of the Supplemental Agreement shall prevail. Nothing herein shall bind the Ordering Activity to any Supplemental Agreements terms unless the terms are provided for review and agreed to in writing by all parties. Customer's use of SaaS and/or Cloud Services shall be limited to the use parameters specified at the time of purchase including but not limited to capacity and/or bandwidth. Customer shall deploy Quantum recommended policies to ensure use within such limitations. Use beyond such limitations will result in additional charges to Customer following Quantum's assessment of the use.

#### 16. Excluded Uses

Customer acknowledges that Products, SaaS, and Cloud Services are not absolutely fault-tolerant, and are not designed for use in or resale into hazardous environments requiring fail-safe performance in which the failure of the products could lead directly to death, personal injury or severe physical or environmental damage such as, but not limited to, the operation of nuclear facilities, aircraft navigation or communication systems, direct life support systems, critical safety systems, medical devices, weapons systems or satellite equipment ("high risk activities"). Quantum disclaims any express or implied warranty of fitness for high risk activities. Quantum will have no liability for any claims or damages arising from high risk activities.

#### 17. Classified Environments

Purchases of Quantum Product or Services (of any kind) to be located, utilized or performed in US federally classified environments, and requiring response or services by cleared personnel, must be supported by a DD254 which must be generated by the Prime Contractor or the appropriate US Government Agency and issued to Quantum before services can be provided.

Failure to do so may result in a delay of or inability to provide service for which Quantum shall not and does not assume liability. Customer shall, at or before the time of purchase, (1) confirm to Quantum whether classified environments are involved,

(2) if so, that a DD254 will be issued, and (2) provide the name and contact information for the responsible Prime Contractor Contracting Officer.

#### 18. Software License and Software License Subscription

Software Products are licensed, not sold, for use solely on the Designated System under the terms of the license agreement included within the Software or the Software package, however titled. Software Products licensed and paid for on a subscription basis ("Software License Subscription") are licensed for use only during the paid-for period of a subscription term. Use of Software beyond the Designated System or following termination of the subscription shall constitute violation of the

License. If used or acquired by the U.S. government, then the U.S. government acknowledges that (a) the software constitutes “commercial computer software” and accompanying documentation constitutes “commercial computer software documentation” for purposes of 48 C.F.R. 12.212, and (b) the U.S. government’s rights are limited to those specifically granted to Customer pursuant to said license agreement. The contractor/manufacture is Quantum, 224 Airport Parkway, San Jose, CA 95110.

## 19. Support Services

### 19.1 Definitions

In addition to terms defined elsewhere in these Terms and Conditions, the following terms will have the following specified meanings when used throughout these Terms and Conditions:

"Business Day" means any day except a Saturday, Sunday, or a holiday observed by Quantum;

"Business Hours" means hours between 8:00 a.m. and 5:00 p.m. local time on a Business Day;

"Critical Error" means any Software or Firmware Error that is an emergency condition and that causes the Software or Firmware to completely fail to function in accordance with its applicable Documentation and where there is no work-around to temporarily resolve or lessen the problem;

"Designated System" means the specific capacity, hardware, workstations, servers, and/or devices enabled by one instance or copy of Software that is specified by Quantum at the time the Software is licensed;

"Documentation" means technical manuals describing the operation and use of Product;

"Error" means any reproducible failure of the Software or Firmware to substantially comply with its specifications as set forth in the applicable Documentation;

"Firmware" means software that resides in or is embedded in hardware, such as programmable read-only memory, and is not separately licensed by Quantum;

"Major Error" means any Software or Firmware Error that causes one or more material components to fail to function as specified in its applicable Documentation;

"Minor Error" means any Software or Firmware Error that is not a Major Error that causes one or more components of the Software to fail to function as specified in its applicable Documentation;

"Support Contract" means an agreement governed by these Terms and Conditions for Quantum to provide Support Services on designated Product;

"Software" means the Quantum branded software designated at the time of sale and sold and licensed separately for a Designated System. Software does not include any third party software;

"Support Term" means the period of the fully paid Support Contract, available for purchase on a one year or multi-year basis, as may be extended under the terms of a renewal;

"Update" means changes to Software or Firmware that Quantum designates as bug fixes, or as minor or incremental updates, and designated by a change in the number to the right of the decimal point of the version number such as 1.1, 1.2, 1.3, etc.; and,

"Upgrade" means changes to Software resulting in new functionality or features for which Quantum separately charges its customers in the normal course of its business, and designated by a change in the number to the left of the decimal point of the version number such as 1.0, 2.0, 3.0, etc.

## 19.2 Selection of Provider

Quantum shall determine, in its sole and absolute discretion, whether Quantum will provide the Support Services to Customer or whether Quantum will select a third party subcontractor to perform the Support Services. All requests for Support Services or communication regarding status or maintenance of the Product shall be made to Quantum.

### 19.3 Support Contract Term and Termination

Support Contracts will commence upon issuance of a purchase order by Customer, and will continue for the duration of the purchased Support Term. Thereafter, the Support Contract may be renewed for successive one-year periods under the terms of the then-current Quantum Sales and Support Terms and Conditions by both parties exercising an option in writing, or a new purchase order, and Customer will be invoiced for the then current list price in accordance with the GSA Schedule pricelist.

Quantum will not be obligated to provide any Support Services, Updates, or other support after the end of the Support Contract.

### 19.4 Product Support

Support Services shall include unscheduled, on-call Support Services during the hours specified for the level of Support purchased (“Designated Working Hours”), provided after receipt of notice from Customer that Product is malfunctioning or otherwise appears to require support and after Quantum technical support has determined that an on-site visit is necessary. Service on a Quantum recognized holiday will be deferred to the next Quantum Business Day unless 7x24 support is purchased. Recognition of holidays is per custom in each country. A list of Quantum holidays is available upon request from your local service representative. The above reference time frames shall not apply to delivery of non-critical spare parts to remote locations.

#### 19.4.1 Warranty Support

The warranty period and the level of service provided during the warranty period for each Product can be found in the Quantum Product Warranty Information Table at [www.Quantum.com](http://www.Quantum.com). At a minimum, Quantum warrants that the Product will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Product written materials accompanying it.

#### 19.4.2 Uplifted/Extended Support

Uplifted and/or extended Support Services shall be available for purchase subject to regional availability and Product applicability, and provided on an on-call basis in accordance with the level of Support purchased by the Customer.

#### 19.4.3 Parts Replacement

Replaceable parts shall be designated by Quantum as either a Customer Replaceable Unit (“CRU”) or a Field Replaceable Unit (“FRU”). CRU’s shall be replaced by Customer unless CRU replacement by Quantum is purchased pursuant to a Support Contract. FRU’s shall be replaced by Quantum. Subject to any non-excludable rights that you may have under local law, replacement parts shall be either new or reconditioned, and shipped or replaced in accordance with the terms of the level of service purchased.

Certain Product may include spare parts as part of the initial Product shipment (“Critical Spare Parts”). Critical Spare Parts shall be utilized only upon authorization by Quantum after diagnosis by Quantum of the reported service issue.

Customer shall be responsible to replace used Critical Spare Parts, and arrange for acceptance of replacement parts and make them available at the time of on-site service. Delays in acceptance and/or failure to maintain stock of Critical Spare Parts may result in additional cost and/or delay in delivery of onsite service. The Product or parts of Product that are removed or replaced, either by Customer or Quantum will become property of Quantum and must be return shipped to Quantum within 10 business days. All replacement parts shipped to Customer shall be shipped DAP Customer site in accordance with INCOTERMS 2010. All replaced parts returned to Quantum by Customer shall be shipped DAP designated Quantum return facility in accordance with INCOTERMS 2010. Risk of loss while parts are in the care, custody, and control of Customer shall be with Customer. Damage to, loss of, or failure to return ship replaced parts within 10 business days shall be charged to the Customer and may result in withholding of support until resolution.

Subject to any non-excludable rights that you may have under the laws in your country, IN ORDER TO HAVE ACCESS TO SPARE PARTS, INCLUDING CRITICAL SPARE PARTS, PRODUCT MUST BE COVERED UNDER WARRANTY OR A THEN-CURRENT SUPPORT CONTRACT.

#### 19.4.4 Exclusions

Support Services do not include: (a) replacement of parts and/or services to repair damage or errors resulting from accident, neglect, or misuse on the part of a party other than Quantum, or modification of Product not approved, authorized or directed by Quantum; (b) replacement of parts and/or services to repair damage resulting from any act of God, including but not limited to storms, fires, floods, and earthquakes; (c) replacement of parts and/or services to repair damage caused by failure to provide or maintain adequate or appropriate electrical power, air conditioning, humidity controls, electrical surge protection, or other facilities or environmental conditions unless such failure is caused by the negligent act or omission of Quantum; (d) replacement or reconditioning of Product which Quantum reasonably believes cannot be reliably maintained or repaired because of excessive wear or deterioration not resulting from any negligent act or omission on the part of Quantum; (e) services on Product which Customer has moved or relocated without notifying Quantum; (f) services requested after unauthorized resale, transfer, or other assignment (actual or constructive) of Product; (g) services required as a result of use of Product beyond its



rated capacity, not in accordance with manufacturer published specifications, or not in compliance with these Terms and Conditions or Documentation; (h) services performed outside of Designated Working Hours or after the term of these Terms and Conditions; provided, however, that if Quantum begins to perform services which would otherwise be covered Support Services less than two hours before the end of Designated Working Hours, the first two hours immediately following Designated Working Hours are considered covered by these Terms and Conditions; (i) on-site Software or Firmware Support; (j) services required for correcting Errors if Customer fails to implement any Error correction or Update made available by Quantum; (k) services in connection with removal, relocation or reinstallation of Product; (l) furnishing or replacing expendable supplies, including media such as cassettes, unless damaged by Quantum; (m) installation or maintenance on third party equipment or software, or on product not quoted by Quantum; and (n) production of written reports related to service performed. Service requested and agreed to in writing for any of the above exclusions shall be considered Professional Services for which Quantum will charge an additional fee. THE OCCURRENCE OF EVENTS (A)-(G) ABOVE SHALL RENDER THE WARRANTY VOID AND/OR SUBJECT A SUPPORT CONTRACT TO TERMINATION.

#### 19.4.5 Installation

Quantum Products or upgrades that are designated non-customer installable shall require purchase of Professional Services for installation from Quantum, and failure to do so and self-installing such Products or upgrades may void the applicable warranty and/or support contract.

#### 19.4.6 Movement of Product

If Customer plans to move, relocate, or delete any part of the Product from a Support Services contract, Customer must provide Quantum with 30 days prior written notice. If Customer requests that Quantum dismantle, supervise, inspect, remove or reinstall the Product as part of any move, Quantum will provide a quote for such services. Whether Product is moved by Customer or Quantum, Customer shall be responsible for shipment of Product to new location. Considering the new location of the Product, Quantum may, in its sole discretion: (i) continue performance of Support Services with the condition that Customer is responsible for any additional mileage charges; (ii) terminate the Support Services contract; or (iii) designate a different provider. Movement of Product that is designated non-customer installable as designated by Quantum without notifying Quantum prior to the move shall void the Product warranty and/or any then current Support Contract. Manufacturer supplied packaging is required to move all or partial units to a new location to ensure safe transit and can be purchased from Quantum if not retained by Customer.

#### 19.4.7 Customer Responsibilities

In addition to responsibilities for fees hereunder, Customer will be responsible for: (a) properly using and controlling access to the Product; (b) permitting Quantum's access to Customer's facilities consistent with Customer's security and operational requirements; (c) promptly notifying Quantum if Customer becomes aware of any unsafe conditions or hazardous materials to which Quantum's personnel may be exposed at any of Customer's facilities; (d) complying with all applicable government laws and regulations; (e) providing prompt notice to Quantum of any malfunction or request for services for the Product; (f) providing full and accurate Product and service installation descriptions as necessary to allow Quantum to fulfill its duties hereunder;

(g) performing visual inspection of Product; and, (h) performing standard operational activities. Upon Quantum's request, Customer will provide Quantum remote access to Quantum Product system performance data as reasonably required for Quantum to perform the Support Services and its other obligations hereunder. Obligations of Customer which must be fulfilled prior to Quantum performing any on-site services shall be communicated to Customer at the time services are scheduled.

#### 19.4.8 Firmware

Customer is required to maintain the product at no more than one Firmware revision removed from current production Firmware level to ensure proper operation and servicing of the product. The Customer may be required to install the latest Firmware Update prior to making any CRU or FRU replacements. Quantum will provide Customer with information on any upgrade charges prior to installation of the upgrade. Firmware upgrades may be available for download and able to be installed by Customer. At Quantum's discretion and upon prior notice to Customer, an additional fee may be levied for Firmware upgrades requiring an onsite visit.

#### 19.4.9 Telephone Support

Telephone support included with a support contract purchase provides the following: (i) assistance in identifying and verifying causes of suspected Errors; (ii) work-around for identified Errors; (iii) answering questions regarding Software installation and configuration; and, (iv) answering questions regarding differences between Software versions.

#### 19.4.10 Error Corrections

Quantum will use commercially reasonable efforts to correct any Errors reported by Customer (e.g., by providing a work-around or correction in a Update). If Customer encounters an Error with the Software, Customer must sufficiently define the Error to Quantum so that Quantum can reproduce the reported Error. Non-reproducible Errors may require dispatch of an engineer

on-site, which will be charged on a time and materials basis. After receipt of any such written notice of an Error from Customer, Quantum will promptly notify Customer if Quantum cannot reproduce the Error. If Quantum cannot reproduce the Error, Customer will provide such additional information regarding the Error as Quantum may request in order to assist Quantum with reproducing the Error. Customer will provide a separate written notice for each Error encountered by Customer. In its notice of an Error, Customer will reasonably classify for Quantum the initial priority of the Error. Customer will use the nature of the Error and Customer's business circumstances to initially classify each Error. Customer will classify each Error as a Critical Error, Major Error or Minor Error. To the extent that Quantum disagrees with any Error classification provided by Customer, Quantum will promptly advise Customer of the revised classification of any Error.

#### 19.4.11 Updates and Upgrades

During such periods that Customer purchases Support Services hereunder and pays all fees in connection therewith, Quantum will make available to Customer any and all Updates at no additional charge to Customer. Customer will install any and all Updates within a reasonable time after receipt of such Update or notice of availability. Support is available only for the Update that is currently shipping and the immediately prior Update. Support for the immediate prior Update shall be available for no longer than 12 months after a new Update is generally available. Quantum will provide Customer with access to Updates through Quantum's web site ([www.Quantum.com](http://www.Quantum.com)). These Updates and/or patches will be customer installable, with technical assistance available from Quantum's Technical Assistance Center. Changes to Software designated by Quantum as Up-grades are sold separately and not included in a contract for Support Services. Quantum on-site installation services for Updates and/or Upgrades shall be available to Customer for a fee as Professional Services.

#### 19.5 Limited Support Services

"Limited Support Services" means that the standard Support Services are no longer offered for Product. Limited Support contracts are offered by Quantum for the prices and duration quoted. Limited Support consists of support for errors which can be remedied utilizing the bug fixes and updates then known to Quantum, and does not include support for resolution of novel errors or bugs.

#### 20. Notices

All notices, demands, and other communications called for or required by these Terms and Conditions shall be in writing and shall be addressed to the parties at their respective corporate headquarter addresses or to such other address as a party may subsequently designate by ten days' advance written notice to the other party except as otherwise provided in these Terms and Conditions.

## 21. Integration and Notification

Each party acknowledges that it has read these Terms and Conditions, understands it, and agrees to be bound by it. The parties further agree that these Terms and Conditions are the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof, and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. Any provisions or conditions of any purchase order or other document submitted by Customer which are in any way inconsistent with or in addition to these Terms and Conditions are hereby rejected and shall not be binding upon Quantum unless Quantum agrees to them in writing. No waiver or modification of these Terms and Conditions or of any provision contained herein shall be valid unless in writing and duly executed by Quantum and Customer.

## 22. Choice of Law

These Terms and Conditions shall be governed by and construed in accordance with the Federal laws of the USA without regard to any conflict of laws rules thereof. In the event of any dispute arising under these Terms and Conditions, the parties agree to the exclusive jurisdiction of the courts located in Santa Clara County, California.

23. Severability and Waiver

In the event that any provision of these Terms and Conditions is held to be invalid, illegal, or unenforceable, such provision shall be enforced to the maximum extent permitted by applicable law and the remaining provisions shall continue in full force and effect. Failure or delay on the part of any party in exercising any rights, power, or privileges under these Terms and Conditions shall not be deemed a waiver of such right, power or privilege.

24. Force Majeure

Excusable delays shall be governed by FAR 52.212-4(f).

25. Assignment

Neither party may assign its benefits or delegate its obligations under these Terms and Conditions without the advance written consent of the other party.

Acknowledged and Agreed, by the following parties:

Quantum Corporation, by:

[Customer], by:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## QUANTUM MASTER SERVICE AGREEMENT

This Master Service Agreement (“**MSA**”) is made and entered into as of the final date executed by both parties (“**Effective Date**”) by and between Quantum Corporation, a Delaware, US corporation headquartered in San Jose, CA, USA (“**Quantum**”), and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“**Customer**”), and sets forth the terms governing the purchase and performance of Services (as defined below) from Quantum, and the limited warranty provided thereon. The terms of this MSA shall supersede any pre-printed or standard

terms accompanying the Customer’s purchase order or Quantum’s Quote. Capitalized terms shall have the meaning prescribed herein.

### 1. General Definitions

"**Business Day**" means any day except a Saturday, Sunday, or a holiday observed by Quantum;

"**Business Hours**" means hours between 8:00 a.m. and 5:00 p.m. local time on a Business Day;

"**Critical Error**" means any Software or Firmware Error that is an emergency condition and that causes the Software or Firmware to completely fail to function in accordance with its applicable Documentation and where there is no work-around to temporarily resolve or lessen the problem;

"**Designated System**" means the specific capacity, hardware, workstations, servers, and/or devices enabled by one instance or copy of Software that is specified by Quantum at the time the Software is licensed;

"**Documentation**" means Quantum published technical manuals describing the operation and use of Product;

"**Error**" means any reproducible failure of the Software or Firmware to substantially comply with its specifications as set forth in the applicable Documentation;

"**Firmware**" means software that resides in or is embedded in hardware, such as programmable read-only memory, and is not separately licensed by Quantum;

"**Major Error**" means any Software or Firmware Error that causes one or more material components to fail to function as specified in its applicable Documentation;

"**Minor Error**" means any Software or Firmware Error that is not a Major Error that causes one or more components of the Software to fail to function as specified in its applicable Documentation;

"**Product**" shall be defined as Quantum branded hardware and Software collectively.

"**Quote**" shall refer to the Quantum issued Sales Quote to which these terms apply, and against which Customer issues an order purchasing the items quoted therein.

“**Services**” shall mean the following, collectively:

“**Support Services**” shall be defined as repair, adjustments, and/or part replacements for the covered Quantum Product as Quantum deems necessary to bring Product in compliance with Product warranty or pursuant to the support plan purchased due to normal Product usage during the Support Term. Support Services do not include Professional Services or Limited Support Services (as defined herein).

“**Professional Services**” means services requested by Customer and provided by Quantum for an additional fee, and are excluded as part of Support Services or are specifically identified as Professional Services herein. Professional Services are quoted on the Quantum Sales Quote and may be supplemented by a statement of work detailing the deliverables of the services purchased.

“**Limited Support Services**” means services provided on Product for which standard Support Services are no longer offered.

“**Support Contract**” means an agreement governed by these Terms and Conditions for Quantum to provide Support Services on designated Product;



“**Software**” means the Quantum branded software designated at the time of sale and sold and licensed separately for a Designated System. Software does not include any third party software;

“**Support Term**” means the period of the fully paid Support Contract, available for purchase on a one year or multi-year basis, as may be extended under the terms of a renewal;

“**Update**” means changes to Software or Firmware that Quantum designates as bug fixes, or as minor or incremental updates, and designated by a change in the number to the right of the decimal point of the version number such as 1.1, 1.2, 1.3, etc.; and,

“**Upgrade**” means changes to Software resulting in new functionality or features for which Quantum separately charges its customers in the normal course of its business, and designated by a change in the number to the left of the decimal point of the version number such as 1.0, 2.0, 3.0, etc.

## 2. Prices and Payment

### 2.1 Generally

Quoted pricing will be valid for thirty days unless a different term is set forth in writing. Customer agrees to pay to Quantum the purchase price set forth in the Quote in accordance with the GSA Schedule Pricelist. Quantum shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

### 2.3 Fees for Training and Professional Services

Training and Professional Services may be purchased for the fees quoted in accordance with the GSA Schedule Pricelist.

### 2.4 Lapse of Support Contract

In the event that Customer fails to maintain a current and continuous Support Contract with Quantum or a Quantum Authorized Service Provider, and thereafter seeks to re-enroll into a current Support Contract, such re-enrollment shall be at Quantum's discretion and may require a re-enrollment fee in addition to the fees for the upcoming Support Term equal to the amount of the Support Fee for the lapsed period of support had support been maintained continuously. Quantum does not guarantee a level of support immediately following purchase of the renewal contract. Service calls received during this time will be addressed on a best effort basis.

### 2.5 Payment

Payment shall be due in full within thirty days from the receipt date of the invoice in the currency quoted. Payment terms are not guaranteed and are subject to approval and ongoing credit history and timely receipt of payment. Customer purchases from a Quantum Authorized Reseller shall be paid by the Customer pursuant to the payment terms between the Customer and the Reseller.

## 3. Provision of Services

### 3.1 Support Contract Term and Termination

Support Contracts will commence upon issuance of a purchase order by Customer, and will continue for the duration of the purchased Support Term. Thereafter, unless customer notifies Quantum at least 60 days prior to the expiration of the Support Term of Customer's decision not to renew, the Support Contract may renew for successive one-year periods under the terms of the then-current Quantum Sales and Support Terms and Conditions, and Customer will be invoiced for the then current list price, if Customer and Quantum execute a new agreement in writing. Quantum will not be obligated to provide any Support Services, Updates, or other support after the end of the Support Contract.

### 3.2 Product Support

Support Services shall include unscheduled, on-call Support Services during the hours specified for the level of Support purchased (“**Designated Working Hours**”), provided after receipt of notice from Customer that Product is malfunctioning or otherwise appears to require support and after Quantum technical support has determined that an on-site visit is necessary. Service on a Quantum recognized holiday will be deferred to the next Quantum Business Day unless 7x24 support is purchased. Recognition of holidays is per custom in each country. A list of Quantum holidays is available upon request from your local service representative. The above reference time frames shall not apply to delivery of non-critical spare parts to remote locations.

### 3.2 Selection of Provider

Quantum shall determine, in its sole and absolute discretion, whether Quantum will provide the Support Services to Customer or whether Quantum will select a third party subcontractor to perform the Support Services. All requests for Support Services or communication regarding status or maintenance of the Product shall be made to Quantum.

### 3.3 Warranty Support

The warranty period and the level of service provided during the warranty period for each Product can be found in the Quantum Product Warranty Information Table at [www.Quantum.com](http://www.Quantum.com).

### 3.4 Uplifted/Extended Support

Uplifted and/or extended Support Services shall be available for purchase subject to regional availability and Product applicability, and provided on an on-call basis in accordance with the level of Support purchased by the Customer.

### 3.5 Parts Replacement

Replaceable parts shall be designated by Quantum as either a Customer Replaceable Unit (“**CRU**”) or a Field Replaceable Unit (“**FRU**”). CRU’s shall be replaced by Customer unless CRU replacement by Quantum is purchased pursuant to a SupportContract. FRU’s shall be replaced by Quantum. Subject to any non-excludable rights that you may have under local law, re- placement parts shall be either new or reconditioned, and shipped or replaced in accordance with the terms of the level of ser-vice purchased.

Certain Product may include spare parts as part of the initial Product shipment (“**Critical Spare Parts**”). Critical Spare Parts shall be utilized only upon authorization by Quantum after diagnosis by Quantum of the reported service issue.

Customer shall be responsible to replace used Critical Spare Parts, and arrange for acceptance of replacement parts and make them available at the time of on-site service. Delays in acceptance and/or failure to maintain stock of Critical Spare Parts may result in additional cost and/or delay in delivery of onsite service. The Product or parts of Product that are removed or replaced, either by Customer or Quantum will become property of Quantum and must be return shipped to Quantum within 10 business days. All replacement parts shipped to Customer shall be shipped DAP Customer site in accordance with INCOTERMS 2010. All replaced parts returned to Quantum by Customer shall be shipped DAP designated Quantum return facility in accordance with INCOTERMS 2010. Risk of loss while parts are in the care, custody, and control of Customer shall be with Customer. Damage to, loss of, or failure to return ship replaced parts within 10 business days shall be charged to the Cus- tomer and may result in withholding of support until resolution.

Subject to any non-excludable rights that you may have under the laws in your country, IN ORDER TO HAVE ACCESS TO SPARE PARTS, INCLUDING CRITICAL SPARE PARTS, PRODUCT MUST BE COVERED UNDER WARRANTY OR A THEN-CURRENT SUPPORT CONTRACT.

### 3.6 Exclusions

Support Services do not include: (a) replacement of parts and/or services to repair damage or errors resulting from accident, neglect, or misuse on the part of a party other than Quantum, or modification of Product not approved, authorized or directed by Quantum; (b) replacement of parts and/or services to repair damage resulting from any act of God, including but not limited to storms, fires, floods, and earthquakes; (c) replacement of parts and/or services to repair damage caused by failure to provide or maintain adequate or appropriate electrical power, air conditioning, humidity controls, electrical surge protection, or other facilities or environmental conditions unless such failure is caused by the negligent act or omission of Quantum; (d)

replacement or reconditioning of Product which Quantum reasonably believes cannot be reliably maintained or repaired because of excessive wear or deterioration not resulting from any negligent act or omission on the part of Quantum; (e) services on Product which Customer has moved or relocated without notifying Quantum; (f) services requested after unauthorized resale, transfer, or other assignment (actual or constructive) of Product; (g) services required as a result of use of Product beyond its rated capacity, not in accordance with manufacturer published specifications, or not in compliance with these Terms and Conditions or Documentation; (h) services performed outside of Designated Working Hours or after the term of these Terms and Conditions; provided, however, that if Quantum begins to perform services which would otherwise be covered Support Services less than two hours before the end of Designated Working Hours, the first two hours immediately following Designated Working Hours are considered covered by these Terms and Conditions; (i) on-site Software or Firmware Support; (j) services required for correcting Errors if Customer fails to implement any Error correction or Update made available by Quantum; (k) services in connection with removal, relocation or reinstallation of Product; (l) furnishing or replacing expendable supplies, including media such as cassettes, unless damaged by Quantum; (m) installation or maintenance on third party equipment or software, or on product not quoted by Quantum; and (n) production of written reports related to service performed.

Service requested in writing for any of the above exclusions shall be considered Professional Services for which Quantum will charge an additional fee. THE OCCURRENCE OF EVENTS (A)-(G) ABOVE SHALL RENDER THE WARRANTY VOID AND/OR SUBJECT A SUPPORT CONTRACT TO TERMINATION.

### 3.7 Installation

Quantum Products or upgrades that are designated non-customer installable shall require purchase of Professional Services for installation from Quantum, and failure to do so and self-installing such Products or upgrades may void the applicable warranty and/or support contract.

### 3.8 Movement of Product

If Customer plans to move, relocate, or delete any part of the Product from a Support Services contract, Customer must provide Quantum with 30 days prior written notice. If Customer requests that Quantum dismantle, supervise, inspect, remove or reinstall the Product as part of any move, Quantum will provide a quote for such services. Whether Product is moved by Customer or Quantum, Customer shall be responsible for shipment of Product to new location. Considering the new location of the Product, Quantum may, in its sole discretion: (i) continue performance of Support Services with the condition that Customer is responsible for any additional mileage charges; (ii) terminate the Support Services contract; or (iii) designate a different provider. Movement of Product that is designated non-customer installable as designated by Quantum without notifying Quantum prior to the move shall void the Product warranty and/or any then current Support Contract. Manufacturer supplied packaging is required to move all or partial units to a new location to ensure safe transit and can be purchased from Quantum if not retained by Customer. Inadequate packaging may void the warranty, subject a support contract to termination and/or require Customer to recertify unit at Customer's cost.

### 3.9 Customer Responsibilities

In addition to responsibilities for fees hereunder, Customer will be responsible for: (a) properly using and controlling access to the Product; (b) permitting Quantum's access to Customer's facilities consistent with Customer's security and operational requirements; (c) promptly notifying Quantum if Customer becomes aware of any unsafe conditions or hazardous materials to which Quantum's personnel may be exposed at any of Customer's facilities; (d) complying with all applicable government laws and regulations; (e) providing prompt notice to Quantum of any malfunction or request for services for the Product; (f) providing full and accurate Product and service installation descriptions as necessary to allow Quantum to fulfill its duties hereunder;

(g) performing visual inspection of Product; and, (h) performing standard operational activities. Upon Quantum's request, Customer will provide Quantum remote access to Quantum Product system performance data as reasonably required for Quantum to perform the Support Services and its other obligations hereunder. Obligations of Customer which must be fulfilled prior to Quantum performing any on-site services shall be communicated to Customer at the time services are scheduled.

### 3.10 Firmware

Customer is required to maintain the product at no more than one Firmware revision removed from current production Firmware level to ensure proper operation and servicing of the product. The Customer may be required to install the latest Firmware Update prior to making any CRU or FRU replacements. Quantum will provide Customer with information on any upgrade charges prior to installation of the upgrade. Firmware upgrades may be available for download and able to be installed

by Customer. At Quantum's discretion and upon prior notice to Customer, an additional fee may be levied for Firmware upgrades requiring an onsite visit.

### 3.11 Telephone Support

Telephone support included with a support contract purchase provides the following: (i) assistance in identifying and verifying causes of suspected Errors; (ii) work-around for identified Errors; (iii) answering questions regarding Software installation and configuration; and, (iv) answering questions regarding differences between Software versions.

### 3.12 Error Corrections

Quantum will use commercially reasonable efforts to correct any Errors reported by Customer (e.g., by providing a workaround or correction in a Update). If Customer encounters an Error with the Software, Customer must sufficiently define the Error to Quantum so that Quantum can reproduce the reported Error. Non-reproducible Errors may require dispatch of an engineer

on-site, which will be charged on a time and materials basis. After receipt of any such written notice of an Error from Customer, Quantum will promptly notify Customer if Quantum cannot reproduce the Error. If Quantum cannot reproduce the Error, Customer will provide such additional information regarding the Error as Quantum may request in order to assist Quantum with reproducing the Error. Customer will provide a separate written notice for each Error encountered by Customer. In its notice of an Error, Customer will reasonably classify for Quantum the initial priority of the Error. Customer will use the nature of the Error and Customer's business circumstances to initially classify each Error. Customer will classify each Error as a Critical Error, Major Error or Minor Error. To the extent that Quantum disagrees with any Error classification provided by Customer, Quantum will promptly advise Customer of the revised classification of any Error.

### 3.13 Updates and Upgrades

During such periods that Customer purchases Support Services hereunder and pays all fees in connection therewith, Quantum will make available to Customer any and all Updates at no additional charge to Customer. Customer will install any and all Updates within a reasonable time after receipt of such Update or notice of availability. Support is available only for the Update that is currently shipping and the immediately prior Update. Support for the immediate prior Update shall be available for no longer than 12 months after a new Update is generally available. Quantum will provide Customer with access to Updates through Quantum's web site ([www.Quantum.com](http://www.Quantum.com)). These Updates and/or patches will be customer installable, with technical assistance available from Quantum's Technical Assistance Center. Changes to Software designated by Quantum as Up-grades are sold separately and not included in a contract for Support Services. Quantum on-site installation services for Up-grades and/or Upgrades shall be available to Customer for a fee as Professional Services.

### 3.14 Limited Support Services

Limited Support contracts are offered by Quantum for the prices and duration quoted. Limited Support consists of support for errors which can be remedied utilizing the bug fixes and updates then known to Quantum, and does not include support for resolution of novel errors or bugs.

## 4. Services Warranty

SUBJECT TO THE LIMITATIONS SET FORTH HEREIN, QUANTUM WARRANTS TO THE END-USER CUSTOMER THAT THE SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS WILL BE FREE



FROM DEFECTS IN MATERIALS OR WORKMANSHIP FOR SIXTY DAYS FROM THE DATE SUCH SERVICES ARE RENDERED, OR THE REMAINING TERM OF THE THEN CURRENT AND PAID FOR SUPPORT SERVICE PERIOD, WHICHEVER IS LONGER, AND WILL BE PERFORMED BY FULLY TRAINED AND COMPETENT PERSONNEL IN ACCORDANCE WITH INDUSTRY STANDARD TECHNICAL AND PROFESSIONAL PRACTICES AND PROCEDURES. IF A DEFECT COVERED UNDER THIS WARRANTY IS FOUND AND REPORTED TO QUANTUM, SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY, QUANTUM WILL, AT ITS DISCRETION AND AS ITS SOLE RESPONSIBILITY AND LIABILITY, AND AS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, USE COMMERCIALY REASONABLE MEANS TO CORRECT SUCH DEFECT OR IN THE CASE OF PROFESSIONAL SERVICES REFUND TO CUSTOMER THE SUMS PAID BY CUSTOMER FOR THE DEFECTIVE PROFESSIONAL SERVICES.

5. Disclaimers and Limitations on Liability

THE WARRANTIES EXPRESSED HEREIN ARE THE ONLY WARRANTIES MADE BY QUANTUM WITH RESPECT TO THE SERVICES. QUANTUM DOES NOT WARRANT THAT THE SERVICES WILL MEET ALL CUSTOMER REQUIREMENTS, OR THAT THEY WILL BE UNINTERRUPTED OR ERROR FREE. QUANTUM EXPRESSLY DISCLAIMS AND EXCLUDES

ALL OTHER WARRANTIES, OBLIGATIONS, LIABILITIES, CUSTOMER'S RIGHTS AND REMEDIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW OR OTHERWISE INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE. IN NO EVENT SHALL QUANTUM BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OR ALTERATION OF DATA, DELAYS OR LOST PROFITS OR SAVINGS, EVEN IF QUANTUM IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF THE EXCLUSIVE REMEDIES STATED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. CUSTOMER'S RIGHTS AS STATED HEREIN ARE ITS EXCLUSIVE REMEDIES. EXCEPT FOR QUANTUM'S LIABILITY BASED UPON GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR A VIOLATION OF LAW, QUANTUM'S CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING IN CONNECTION WITH THE PRODUCTS OR SERVICES MAY NOT EXCEED THE PRICE PAID FOR THE PURCHASE ORDER(S)

GIVING RISE TO THE CLAIM. Quantum and its subsidiaries, directors, officers, employees and providers shall in no way be liable for any and all actions, causes of action, liability, claims, suits, judgments, liens, awards or damages of any kind and nature whatsoever (hereinafter referred to as "**Claims**") for property damage, personal injury or death (including without limitation claims brought by and liabilities to employees of Customer or Quantum or to any other persons) and expenses, costs of

litigation and reasonable attorneys' fees related thereto, to the extent such claims arise from any negligent act or omission or willful misconduct of Customer or any of Customer's employees, agents, buyers or contractors (except for Quantum) arising out of or in any way relating to Quantum's presence on Customer's designated premises for the purposes of providing Services hereunder. No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of Services, may be brought by either party more than six (6) years after such cause of action accrued.

## 6. Proprietary Information

Pursuant to these Terms and Conditions, each party (the "**Disclosing Party**") may occasionally provide the other (the "**Receiving Party**") with its confidential and/or proprietary information (e.g., equipment, services, components, instruction manuals or installation information, trade secrets, know-how, ideas, concepts and methodologies, customers, prices, product roadmaps, operations and plans and data, etc.) ("**Proprietary Information**"). The Receiving Party acknowledges that use or disclosure of Proprietary Information of the Disclosing Party in any unauthorized manner will destroy its value to the Disclosing Party. Unless the Disclosing Party agrees otherwise in writing, the Receiving Party (including its employees, agents and contractors) (i) will not sell, disclose, copy or reproduce any Proprietary Information of the Disclosing Party; (ii) will only permit or allow access to Proprietary Information of the Disclosing Party to those employees or third parties who require such access in order to perform work on the Disclosing Party's behalf pursuant to these Terms and Conditions; (iii) agrees to protect the Proprietary Information of the Disclosing Party as carefully as it would protect its own proprietary information but never less than a reasonable standard of care; (iv) agrees to be responsible for any unauthorized use or disclosure of Proprietary Information of the Disclosing Party by any of its employees, agents or contractors; and (v) agrees to leave intact all copyright, patent, trademark, confidentiality and similar notices in connection with the Proprietary Information of the Disclosing Party. The parties agree to return all Proprietary Information to the Disclosing Party upon the termination of these Terms and Conditions. Quantum recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

## 7. Classified Environments

Purchases of Services (of any kind) to be located, utilized or performed in US federally classified environments, and requiring response or services by cleared personnel, must be supported by a DD254 which must be generated by the Prime Contractor or the appropriate US Government Agency and issued to Quantum before services can be provided. Failure to do so may result in a delay of or inability to provide service for which Quantum shall not and does not assume liability. Customer shall, prior to the time of purchase, (1) confirm to Quantum whether classified environments are involved, (2) if so, that a DD254 will be issued, and (3) provide the name and contact information for the responsible Prime Contractor Contracting Officer.

## 8. Notices

All notices, demands, and other communications called for or required by these Terms and Conditions shall be in writing and shall be addressed to the parties at their respective corporate headquarter addresses or to such other address as a party may subsequently designate by ten days' advance written notice to the other party except as otherwise provided in these Terms and Conditions.

## 9. Integration and Notification

Each party acknowledges that it has read these Terms and Conditions, understands it, and agrees to be bound by it. The parties further agree that these Terms and Conditions are the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof, and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. Any provisions or conditions of any purchase order or other document submitted by Customer which are in any way inconsistent with or in addition to these Terms and Conditions are hereby rejected and shall not be binding upon Quantum. No waiver or modification of these Terms and Conditions or of any provision contained herein shall be valid unless in writing and duly executed by Quantum and Customer.

## 10. Choice of Law

These Terms and Conditions shall be governed by and construed in accordance with the Federal laws of the USA without regard to any conflict of laws rules thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

## 11. Severability and Waiver

In the event that any provision of these Terms and Conditions is held to be invalid, illegal, or unenforceable, such provision shall be enforced to the maximum extent permitted by applicable law and the remaining provisions shall continue in full force and effect. Failure or delay on the part of any party in exercising any rights, power, or privileges under these Terms and Conditions shall not be deemed a waiver of such right, power or privilege.

## 12. Force Majeure

Excusable delays shall be governed by FAR 52.212-4(f) .

## 13. Assignment

Neither party may assign its benefits or delegate its obligations under these Terms and Conditions without the advance written consent of the other party.

Acknowledged and Agreed, by the following parties:

**Quantum Corporation,**

[Customer],

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**QuSecure, Inc.**

One Franklin Parkway  
Bldg 930/First Floor  
San Mateo, CA 94403

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached QuSecure, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting

Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



## SOFTWARE END USER LICENSE AGREEMENT

This End User License Agreement, including the Order Form which by this reference is incorporated herein (this “**Agreement**”), is a binding agreement between QuSecure, Inc. (“**Licensor**”) and the Ordering Activity under GSA Schedule contracts identified in the Order (“**Licensee**”).

LICENSOR PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY EXECUTING A WRITTEN ORDER FORM OR USER INTERFACE, YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE 18 YEARS OF AGE OR OLDER/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF LICENSEE IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, LICENSOR WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO LICENSEE AND YOU MUST NOT DOWNLOAD OR INSTALL THE SOFTWARE OR DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR LICENSEE’S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT LICENSEE DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF LICENSOR’S SOFTWARE.

1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

“**Authorized Users**” means solely those individuals authorized to use the Software pursuant to the license granted under this Agreement, as set forth on the Order Form.

“**Documentation**” means user manuals, technical manuals, and any other materials provided by Licensor, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Software.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Licensee**” has the meaning set forth in the preamble.

“**License Fees**” means the license fees, including all taxes thereon, paid or required to be paid by Licensee for the license granted under this Agreement.

“**Licensor**” has the meaning set forth in the preamble.

“**Open Source Software**” means code (including programs, applications, tools, utilities, libraries, and other programming code) that is designed to be publicly accessible; specifically, with respect to the Software that is the subject of this EULA, the Open Source Software elements are those listed at <https://oss.qusecure.com>.

“**Order Form**” means the order form filled out and submitted by or on behalf of Licensee, and accepted by Licensor, for Licensee’s purchase of the license for the Software granted under this Agreement.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“**Software**” means the software programs for which Licensee is purchasing a license, as expressly set forth in the Order Form.

“**Term**” has the meaning set forth in Section 11.

“**Third Party**” means any Person other than Licensee or Licensor.

“**Update**” has the meaning set forth in Section 7(b).

2. License Grant and Scope. Subject to and conditioned upon Licensee’s payment of the License Fees and Licensee’s strict compliance with all terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non- sublicensable (except as expressly set forth in Section 2(e)), limited license during the Term to use, solely by and through its Authorized Users, the Software and Documentation, solely as set forth in this Section 2 and subject to all conditions and limitations set forth in Section 4 or elsewhere in this Agreement. This license grants Licensee the right, exercisable solely by and through Licensee’s Authorized Users, to:

- (a) Download, copy, and install in accordance with the Documentation one (1) copy of the Software on, as applicable, the designated number of servers/computers/end devices set forth on the Order Form owned or leased, and controlled by, Licensee. In addition to the foregoing, Licensee has the right to make one copy of the Software solely for archival purposes and one copy of the Software solely for backup purposes, provided that Licensee shall not, and shall not allow any Person to, install or use any copy other than if and for so long as the copy installed in accordance with the preceding sentence is inoperable and, provided, further, that Licensee uninstalls and otherwise deletes such inoperable copy(ies). All copies of the Software made by the Licensee:
  - (i) will be the exclusive property of the Licensor;
    - will be subject to the terms and conditions of this Agreement; and
  - (iii) must include all trademark, copyright, patent, and other Intellectual Property Rights notices contained in the original, including without limitation notices for Open Source Software and all Third Party software integrated into the Software, as described further at link <https://oss.qusecure.com>.
- (b) Use and run the Software as properly installed in accordance with this Agreement and the Documentation, solely as set forth in the Documentation and solely for the business purposes set forth in the Master Software and Services Agreement.
- (c) Download or otherwise make one (1) copy of the Documentation per copy of the Software permitted to be downloaded, made, and installed in accordance with this Agreement and use such Documentation, solely in support of its licensed use of the Software in accordance herewith. All copies of the Documentation made by Licensee:
  - (i) will be the exclusive property of Licensor;
  - (ii) will be subject to the terms and conditions of this Agreement; and

- (iii) must include all trademark, copyright, patent, and other Intellectual Property Rights notices contained in the original.
  - (d) Transfer any copy of the Software from one computer to another, provided that:
    - (i) the number of computers on which the Software is installed at any one time does not exceed the number permitted under Section 2(a); and
    - (ii) Licensee notifies Licensor in writing of each such transfer, including in such notice the information required under this EULA for each computer on which the Software is installed.
  - (e) Grant sublicenses in the Software solely as permitted under the terms of this Agreement and subject to the following:
    - (i) all sublicenses shall be in form and substance as approved in advance by Licensor; and
    - (ii) Licensee will be responsible and liable pursuant to the terms and conditions of this Agreement for its sublicensees' actions and failures to take required actions with respect to the Software.
3. Third-Party Materials. The Software includes Open Source Software, content, data, or other materials, including related documentation, that are owned or licensed by Persons other than Licensor and that are provided to Licensee on licensee terms that are in addition to and/or different from those contained in this Agreement ("**Third-Party Licenses**"). Any fees charged by Licensor in connection with the Software, do not apply to the Open Source Software for which fees may not be charged under the applicable license terms. A list of all materials included in the Software and provided under Third-Party Licenses including without limitation Open Source Software can be found at <https://oss.qusecure.com>. Licensee is bound by and shall comply with all Third-Party Licenses, which are separate from the Licensor applications that are subject to the terms of this EULA. Any breach by Licensee or any of its Authorized Users of any Third-Party License is also a breach of this Agreement.
4. Use Restrictions. Licensee shall not, and shall require its Authorized Users not to, directly or indirectly:
- (a) use (including make any copies of) the Software or Documentation beyond the scope of the license granted under Section 2;
  - (b) except as may be permitted by Section 2(e) and strictly in compliance with its terms, provide any other Person, including any subcontractor, independent contractor, affiliate, or service provider of Licensee, with access to or use of the Software or Documentation;
  - (c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;
  - (d) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;
  - (e) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
  - (f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;
  - (g) except as expressly set forth in Section 2(a) and Section 2(c), copy the Software or Documentation, in whole or in part;
  - (h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;
  - (i) use the Software or Documentation in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including:

- (i) power generation systems; aircraft navigation or communication systems, air traffic control systems, or any other transport management systems;
- (iii) safety-critical applications, including medical or life-support systems, vehicle operation applications, or any police, fire, or other safety response systems; and
- (iv) military or aerospace applications, weapons systems, or environments;
- (j) use the Software or Documentation in violation of any law, regulation, or rule; or
- (k) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Licensor's commercial disadvantage.
5. Responsibility for Use of Software. Licensee is responsible and liable for all uses of the Software and Documentation through access thereto provided by Licensee, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by its Authorized Users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.
6. Compliance Measures.
- (a) The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against any use of the Software that is prohibited under Section 4. Licensee shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.
- (b) On a semi-annual basis, and otherwise on Licensor's written request, Licensee shall conduct a review of its and its Authorized Users use the Software and certify to Licensor in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance:
- (i) Licensee shall immediately remedy such noncompliance and provide Licensor with written notice thereof. Licensee shall provide Licensor with all access and assistance as Licensor requests to further evaluate and remedy such noncompliance.
- (ii) If Licensee's use of the Software exceeds the number of copies or Authorized Users permitted under the license, Licensor shall have the remedies set forth in Section 6(d).
- (c) During the Term, Licensor may, in Licensor's sole discretion, audit Licensee's use of the Software to ensure Licensee's compliance with this Agreement, provided that (i) any such audit shall be conducted on not less than ten days' prior notice to Licensee, and (ii) no more than two audits may be conducted in any six-month period except for good cause shown. Licensor also may, in its sole discretion, audit Licensee's systems within six months after the end of the Term to ensure Licensee has ceased use of the Software and removed all copies of the Software from such systems as required hereunder. The Licensee shall fully cooperate with Licensor's personnel conducting such audits and provide all reasonable access requested by the Licensor to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information.
- (d) If the audit/any of the measures taken or implemented under this Section 6 determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement then:
- (i) Licensee shall, within seven (7) days following the date of Licensor's written notification thereof, pay to Licensor the retroactive License Fees for such excess use and, unless Licensor terminates this Agreement pursuant to Section 6(d)(i), obtain and pay for a valid license to bring Licensee's use into compliance with this Agreement. In determining the Licensee Fee payable pursuant to the foregoing, (x) unless Licensee can demonstrate otherwise by documentary evidence, all excess use of

the Software shall be deemed to have commenced on the commencement date of this Agreement or, if later, the completion date of any audit previously conducted by Licensor hereunder, and continued uninterrupted thereafter, and (y) the rates for such licenses shall be determined without regard to any discount to which Licensee may have been entitled had such use been properly. If the use exceeds or exceeded the use permitted by this Agreement by more than ten (10) per cent, Licensee shall also pay to Licensor, within seven (7) days following the date of Licensor's written request therefor, Licensor's costs incurred in conducting the audit. If the use exceeds or exceeded the use permitted by this Agreement by more than twenty (20) percent, Licensor shall also have the right to terminate this Agreement and the license granted hereunder in accordance with the contract Disputes Clause (Contract Disputes Act).

Licensor's remedies set forth in this Section 6(d) are cumulative and are in addition to, and not in lieu of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

## 7. Maintenance and Support.

- (a) Subject to Section 7(c), the license granted hereunder entitles Licensee to the basic software maintenance and support services described on Schedule B or from time to time on Licensor's website located at <https://supportagreement/qusecure.com>:
- (i) for the term of the License set forth on the Order Form; and thereafter, solely if Licensee extends the applicable License and/or purchases additional support services.
- (b) Maintenance and support services will include provision of such updates, upgrades, bug fixes, patches, and other error corrections (collectively, "Updates") as Licensor makes generally available free of charge to all licensees of the Software then entitled to maintenance and support services. Licensor may develop and provide Updates in its sole discretion, and Licensee agrees that Licensor has no obligation to develop any Updates at all or for particular issues. Licensee further agrees that all Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Licensee acknowledges that Licensor may provide some or all Updates via download from a website designated by Licensor and that Licensee's receipt thereof will require an internet connection, which connection is Licensee's sole responsibility. Licensor has no obligation to provide Updates via any other media. Maintenance and support services do not include any new version or new release of the Software that Licensor may issue as a separate or new product, and Licensor may determine whether any issuance qualifies as a new version, new release, or Update in its sole discretion.
- (c) Licensor reserves the right to condition the provision of maintenance and support services, including all or any Updates, on Licensee's registration of the copy of Software for which support is requested. Licensor has no obligation to provide maintenance and support services, including Updates:
- (i) for any but the most current or immediately preceding version or release of the Software;
- (ii) for any copy of Software for which all previously issued Updates have not been installed;
- (iii) if Licensee is in breach under this Agreement; or
- (iv) for any Software that has been modified other than by Licensor, or that is being used with any hardware, software, configuration, or operating system not specified in the Documentation or expressly authorized by Licensor in writing.

## 8. Collection and Use of Information.

- (a) Licensee acknowledges that Licensor may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, through:
- (i) the provision of maintenance and support services; and
- (ii) security measures included in the Software as described in Section 6.

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- (b) Licensee agrees that the Licensor may use such information for any purpose related to any use of the Software by Licensee or on Licensee's equipment, including but not limited to:
- (i) improving the performance of the Software or developing Updates; and
  - (ii) verifying Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software.
9. Intellectual Property Rights. Licensee acknowledges and agrees that the Software and Documentation are provided under license, and not sold, to Licensee. Licensee does not acquire any ownership interest in the Software or Documentation under this Agreement, or any other rights thereto, other than to use the same in accordance with the license granted and subject to all terms, conditions, and restrictions under this Agreement. Licensor and its licensors and service providers reserve and shall retain their entire right, title, and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software, except as expressly granted to the Licensee in this Agreement. Licensee shall safeguard all Software (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Licensee shall promptly notify Licensor if Licensee becomes aware of any infringement of the Licensor's Intellectual Property Rights in the Software and fully cooperate with Licensor, at Licensor's sole expense, in any legal action taken by Licensor to enforce its Intellectual Property Rights.
10. PAYMENT. All License Fees and Support Fees are payable upon delivery in the manner set forth in the Order Form. Any renewal of the license or maintenance and support services hereunder shall not be effective until an order has been executed for such renewal.
11. Term and Termination.
- (a) This Agreement and the license granted hereunder shall remain in effect for the term set forth on the Order Form or until earlier terminated as set forth herein (the "Term").
  - (b) Licensee may terminate this Agreement by ceasing to use and destroying all copies of the Software and Documentation.
  - (c) Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee, breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for thirty (30) days after Licensor provides written notice thereof.

- (d) Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.
- (e) Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Licensee shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect Licensee's obligation to pay all Licensee Fees and, if charged separately, Support Fees that may have become due before such expiration or termination, or entitle Licensee to any refund, in each case except as set forth in Section 12(c)(ii).

12. Limited Warranties, Exclusive Remedy, and Disclaimer/Warranty Disclaimer.

- (a) Solely with respect to Software for which Licensor receives a License Fee, Licensor warrants that, for a period of one (1) year (or such other period mandated by local law) following the license date set forth on the Order Form:
  - (i) any media on which the Software is provided will be free of material damage and defects in materials and workmanship under normal use; and
  - (ii) the Software will substantially contain the functionality described in the Documentation, and when properly installed on a computer meeting the specifications set forth in, and operated in accordance with, the Documentation, will substantially perform in accordance therewith.

THE FOREGOING WARRANTIES DO NOT APPLY, AND LICENSOR STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY MATERIALS.

- (b) The warranties set forth in Section 12(a)(i) and Section 12(a)(ii) will not apply and will become null and void if Licensee breaches any provision of this Agreement, or if Licensee, any Authorized User, or any other Person provided access to the Software by Licensee or any Authorized User, whether or not in violation of this Agreement:
  - (i) installs or uses the Software on or in connection with any hardware or software not specified in the Documentation or expressly authorized by Licensor in writing;
  - (ii) modifies or damages the Software, or the media on which it is provided, including abnormal physical or electrical stress; or
  - (iii) misuses the Software, including any use of the Software other than as specified in the Documentation or expressly authorized by Licensor in writing. (c) If, during the period specified in Section 12(a), any Software covered by the warranty set forth in such Section fails to perform substantially in accordance with the Documentation, and such failure is not excluded from warranty pursuant to the Section 12(b), Licensor will, subject to Licensee's promptly notifying Licensor in writing of such failure, at its sole option, either:
    - (i) repair or replace the Software, provided that Licensee provides Licensor with all information Licensor requests to resolve the reported failure, including sufficient information to enable the Licensor to recreate such failure; or
    - (ii) refund the License Fees paid for such Software, subject to Licensee's ceasing all use of and, if requested by Licensor, returning to Licensor all copies of the Software.

If Licensor repairs or replaces the Software, the warranty will continue to run from the initial date specified on the Order Form, and not from Licensee's receipt of the repair or replacement. The remedies set forth in this Section 12(c) are Licensee's sole remedies and Licensor's sole liability under this Agreement/the limited warranty set forth in Section 12(a).

(d) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 12(a), THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES



AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

13. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

(b) IN NO EVENT WILL LICENSOR'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE LICENSOR PURSUANT TO THIS AGREEMENT FOR THE SOFTWARE THAT IS THE SUBJECT OF THE CLAIM DURING THE TWELVE MONTHS PRIOR TO THE INCIDENT GIVING RISE TO THE CLAIM..

(c) THE LIMITATIONS SET FORTH IN SECTION 13(a) AND SECTION 13(b) SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

14. Export Regulation. The Software and Documentation may be subject to U.S. export control laws, including without limitation the Export Control Reform Act and its associated regulations, the International Traffic in Arms Regulations. The Licensee shall not, directly or indirectly, export, re-export, or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. The Licensee shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software or Documentation available outside the US.

15. US Government Rights. The Software is commercial computer software, as such

term is defined in 48 C.F.R. §2.101. Accordingly, if the Licensee is the U.S. Government or any contractor therefor, Licensee shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with

48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

16. Miscellaneous.

- (a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the Federal laws of the United States. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.
- (b) In accordance with GSAR 552.212-4(f), Licensor will not be responsible or liable to Licensee, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Licensee equipment, loss and destruction of property, or any other circumstances or causes beyond Licensor's reasonable control.
- (c) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order Form (or to such other address as may be designated by a party from time to time in accordance with this Section 16(c)).
- (d) This Agreement, together with the Order Form, and all other documents that are incorporated by reference herein (including the Master Software and Services Agreement, if any), constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
- (e) Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Licensor's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 16(e) is void. Licensor may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- (f) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- (g) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (h) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- (i) For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections and Exhibits refer to the Sections of, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to

time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Form and all Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

- (j) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**RAPIDRATINGS INTERNATIONAL, INC.**  
**86 CHAMBERS ST**  
**SUITE 701**  
**NEW YORK, NY 10007**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

**Scope.** This Rider and the attached Rapid Ratings International, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates antideficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the AntiDeficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

#### ATTACHMENT A

### CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

#### RAPIDRATINGS

### RAPIDRATINGS LICENSE, WARRANTY AND SUPPORT TERMS

#### CUSTOMER AGREEMENT

#### SECTION 1. DEFINITIONS.

1.1 "API Services" mean the set of application programming interfaces and related functionality that enables Customer to obtain information from the Subscription Services.

1.2 "Confidential Information" means all information regarding a Party's business or affairs, including, business concepts, processes, methods, systems, know-how, devices, formulas, product specifications, marketing methods, customer lists, methods of operation, or other information, whether in oral, written, or electronic form, designated as confidential or that is disclosed under circumstances such that a reasonable person would know it is confidential.



- 1.3 **“Documentation”** means the user manuals, standard policies, training materials, and other materials describing the use and function of the Subscription Services. Documentation does not include the Subscription Reports.
- 1.4 **“Order Form”** means the ordering document specifying the Subscriptions Services purchased by Customer that is signed by Customer.
- 1.5 **“Subscription Fees”** means the fees stated on the applicable Order Form in accordance with the GSA pricelist.
- 1.6 **“Subscription Reports”** means the reports authored by RapidRatings and made accessible through the Subscription Service, such as FHR® reports. Subscription Reports does not include the Documentation.
- 1.7 **“Subscription Services”** means the products and services purchased by Customer under an Order Form for a number of Users and made available through the RapidRatings electronic functionality accessible via the internet and telecommunications applications, including applicable Subscription Reports, technical support, solicitation or survey services, API Services, and Documentation.
- 1.8 **“Subscription Term”** means the period of time during which the Customer may access the applicable Subscription Services as set forth in the applicable Order Form and commencing upon the Order Effective Date.
- 1.9 **“Third Party Platform Provider”** means the third-party service provider and infrastructure used with the Subscription Services.
- 1.10 **“User”** means an individual who is authorized by Customer to use the Subscription Service and has a login credential. A User may be an employee, contractor, or agent of Customer.

## **SECTION 2. SUBSCRIPTION SERVICES.**

2.1 **Access to Subscription Service.** Subject to the terms and conditions of this Agreement, RapidRatings hereby grants the undersigned Ordering Activity under GSA Schedule contracts (“Customer” or “Ordering Activity”) a limited, revocable, non-exclusive, non-transferable, non-sublicensable right for the Subscription Term to access and use the Subscription Services as set out herein for Customer’s internal business purposes. Customer’s access and use under this Section extends only to the number of Users described in the applicable Order Form.

2.2 **Restrictions.** Without limitation, Customer shall not, and shall not permit any third party to: (a) use the Subscription Services in a manner not expressly permitted by this Agreement or in violation of applicable law; (b) attempt to access or access data, research, or software services that Customer is not expressly permitted to access in the Subscription Services or any database owned or maintained by RapidRatings, such as to access information of third parties without express written authorization or to benchmark or develop a competitive product or service; (c) copy, reproduce, distribute, publish, or otherwise make available copies or extracts in any medium of the Subscription Services, except that Users may download, use, and copy Subscription Reports for Customer’s internal (confidential) use only; (d) sell, resell, rent, license, sublicense, rent, lease, or otherwise commercialize (such as in a service bureau offering) the Subscription Services; (e) use the Subscription Services to store or transmit malicious code (meaning code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses) or transmit malicious code to RapidRatings; (f) decompile, disassemble or reverse engineer any aspect of the Subscription Services or RapidRatings’ software generally (except to the extent that Customer cannot by law waive its right to do so); or (g) permit direct or indirect access to or use of any Subscription Service or database owned or maintained by RapidRatings in a way that circumvents a contractual usage limit, is excessive, or otherwise interferes with RapidRatings’ ability to provide the Subscription Services or other customers’ use or enjoyment of the Subscription Services.

2.3 **API Services.** Customer’s use of the API Services are additionally subject to the provisions of Exhibit A, which is attached and hereby incorporated in its entirety into this Agreement.

2.4 **Users.** Customer shall have the right to increase the number of Users by providing RapidRatings with written notice and paying the additional Subscription Fees set forth on the applicable Order Form. At RapidRatings’ option, RapidRatings reserves the right to prorate a new User for the portion of a Subscription Term remaining at the time a new User was added, such that any added User access will terminate or expire on the same date as a prior User group. Customer will be responsible for each User’s, and for its other employees’ and contractors’, compliance with this Agreement. It is Customer’s responsibility to monitor credentials, password usage, and otherwise prevent unauthorized access to or use of the Subscription Services and to promptly notify RapidRatings if unauthorized access or use is detected or suspected.

2.5 **Monitoring and Audit Rights.** RapidRatings reserves the right to use tracking software and similar technology that automatically collects information about Customer’s use of the Subscription Services to ensure Customer’s compliance with the restrictions in this Agreement and to confirm the access to the Subscription Service does not exceed the purchased number of Users. On not less than thirty (30) days’ advance written notice to Customer, no more than once a year, and at RapidRatings’ cost and expense, RapidRatings will have the right to audit Customer’s and any of its employee’s and contractor’s use of the Subscription Services to assure compliance with the terms of this Agreement. Customer will be responsible for assuring reasonable cooperation with RapidRatings in connection with such audits and will provide RapidRatings with or obtain for RapidRatings access to such properties, records, and personnel as RapidRatings may reasonably require for such purpose. RapidRatings will comply with Customer’s Government security policies provided to RapidRatings in writing reasonably in advance of any such audit and will take commercially reasonable steps to avoid material disruption of Customer’s business. Any audit will occur during Customer’s normal business hours. If RapidRatings reasonably determines that Customer used the Subscription Services in excess of its number of purchased Users or otherwise in excess of its rights hereunder, RapidRatings may invoice Customer for such overuse and Customer will pay such invoice within thirty (30) days of receipt.

2.6 **Modifications.** RapidRatings reserves the right, in its sole discretion, to amend, change, modify, update, or discontinue any aspect of the Subscription Services at any time without notice to Customer, provided such changes are not material and will not decrease the overall level of service. RapidRatings reserves the right to implement and update minimum system requirements from time to time, and Customer acknowledges that it is Customer’s responsibility to maintain reasonably current systems and software to access the Subscription Services. For clarity, nothing in this Section supersedes the warranty provisions of Section 5.

2.7 **Affiliates.** This Agreement is between the expressly named Parties and does not extend to any affiliates or subsidiaries of the Parties without the express, written agreement of the Parties.

## **SECTION 3. RESERVED**

### **SECTION 4. PROPRIETARY RIGHTS.**

4.1 **Ownership of Intellectual Property Rights; Feedback.** RapidRatings, including RapidRatings licensors, own all intellectual property rights in and to the Subscription Services. Subject to the limited rights expressly granted hereunder, RapidRatings, including RapidRatings licensors, hereby reserve all rights not expressly granted to Customer in this Agreement, and Customer will not acquire any such rights, whether by virtue of this Agreement, operation of law, estoppel, or otherwise. Customer shall not contest, directly or indirectly, the validity or RapidRatings’ ownership of any intellectual property rights in and to the Subscription Services. Customer shall not do anything that may adversely affect the validity or enforceability of any intellectual property right licensed to or owned by RapidRatings, including any act, or assistance to any act, that may infringe or misappropriate or lead to the infringement or misappropriation of any such intellectual property right. Customer hereby irrevocably assigns to RapidRatings all right, title, and interest in and to any suggestions, enhancement requests, recommendations, or corrections (collectively “Feedback”) related to the Subscription Services, and agrees to provide RapidRatings with any assistance required to document, perfect, and maintain the rights in the Feedback at RapidRatings’ expense. RapidRatings will not be obligated to compensate or credit Customer or any third party for such Feedback or hold any Feedback in confidence. RapidRatings acknowledges that the ability to use this Agreement and any Feedback in advertising is limited by GSAR 552.203-71.

4.2 **Enforcement.** To the extent practicable, Customer shall make a good faith attempt to notify Rapid Rating promptly in writing if it has knowledge of a suspected infringement or misappropriation of an intellectual property right of RapidRatings by a third party, and shall provide RapidRatings with a copy

of all documents and information relating thereto as long as such production is not proscribed by contract or other reason. RapidRatings shall have the right, but not the obligation, to take action in its own name to secure the cessation of any infringement or misappropriation of any intellectual property right or to bring an action against an alleged infringer. Customer shall cooperate with RapidRatings in RapidRatings' enforcement of its intellectual property rights. Nothing in this Agreement or otherwise will be construed to impair or limit RapidRatings' right to enforce its intellectual property rights against any third party. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

**4.3 Confidential Information.** Each Party shall use commercially reasonable efforts to prevent the unauthorized use, disclosure, or publication of the other Party's Confidential Information and treat the other Party's Confidential Information with the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but not less than reasonable care); provided, however, that each Party may disclose the Confidential Information of the other Party to third parties who: (i) have a need to know such Confidential Information for purposes of carrying out this Agreement, but only to the extent that such Confidential Information is needed to perform their obligations under this Agreement, and (ii) have entered into a written confidentiality agreement with a substantially similar standard of care. Each Party will use the other Party's Confidential Information only as expressly permitted in this Agreement or as necessary to perform its obligations or enforce its rights in this Agreement. Customer grants RapidRatings a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, transferable, sublicensable license to store, host, reproduce, access, use, transmit, create derivative works of and display all Customer data provided to RapidRatings for use with the Subscription Services Subscription Reports. The following information will not be deemed Confidential Information: (i) information that is or becomes publicly available through no fault of either Party; (ii) information with regard to a Party that was rightfully known by the other Party prior to commencement of discussions regarding the subject matter of the Agreement; (iii) information that was independently developed by a Party without use of the Confidential Information of the other Party; or (iv) information rightfully disclosed to a Party by a third party without continuing restrictions on its use or disclosure. Each Party shall notify the other Party immediately if it becomes aware of any unauthorized use, disclosure, or publication of such other Party's Confidential Information. Each Party shall have the right to disclose the other Party's Confidential Information as required by law or legal process or under the applicable rules of a securities market or exchange; provided, however, that the disclosing Party shall use reasonable efforts to give the other Party a reasonable opportunity to intervene to prevent such disclosure or to obtain a protective order, and that any Confidential Information so disclosed otherwise remains subject to the confidentiality obligations set forth in this Section. Neither the terms of this Agreement nor the pricing are Confidential Information. The Subscription Service, including any Feedback, is considered Confidential Information of RapidRatings. This provision expressly survives the expiration or termination of this Agreement in perpetuity with respect to the Subscription Services, Feedback, and Subscription Reports or other information downloaded, copied, or removed from the Subscription Service. RapidRatings recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552.

#### **SECTION 5. REPRESENTATIONS AND WARRANTIES.**

**5.1 Customer Warranties.** Customer hereby represents and warrants to RapidRatings that (i) Customer has the full right, power, and authority to enter into this Agreement and perform its obligations under this Agreement; (ii) Customer has not made any prior commitment that is inconsistent with the rights granted to RapidRatings in this Agreement; (iii) provision of Customer data, including any data provided by Customer licensed from or belonging to a third party, to RapidRatings for the uses contemplated in this Agreement will not violate the rights of any third party; and (iv) Customer will comply with all laws, rules, and regulations in its exercise of its rights and performance of its obligations under this Agreement.

**5.2 RapidRatings Warranties.** RapidRatings hereby represents and warrants to Customer that (i) RapidRatings has the full right, power, and authority to enter into this Agreement and perform its obligations under this Agreement; (ii) RapidRatings has not made any prior commitment that is inconsistent with the rights granted to Customer in this Agreement; (iii) RapidRatings will comply with all laws, rules, and regulations in its exercise of its rights and performance of its obligations under this Agreement, and (iv) the Subscription Services will perform substantially in accordance with the applicable Documentation. Customer's sole remedy for a breach of Section 5.2(iv) is termination pursuant to Section 8.2 (Termination).

**5.3 DISCLAIMER OF WARRANTIES.** RAPID RATINGS MAKES NO WARRANTIES OTHER THAN THOSE MADE EXPRESSLY IN THIS AGREEMENT, AND HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT. RAPIDRATINGS PROVIDES THE SUBSCRIPTION SERVICE ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, RAPIDRATINGS DOES NOT REPRESENT OR WARRANT THAT THE SUBSCRIPTION SERVICES OR ANY THIRD-PARTY CONTENT: (I) WILL BE UNINTERRUPTED OR FREE OF HARMFUL COMPONENTS; (II) WILL BE FREE OF DEFECTS, INACCURACIES, OR ERRORS; (III) WILL BE COMPLETE; (IV) IS DESIGNED TO OR WILL MEET CUSTOMER'S REQUIREMENTS OR SPECIFICATIONS OR ENABLE CUSTOMER TO ACHIEVE ANY PARTICULAR RESULTS; OR (V) WILL OPERATE IN THE HARDWARE OR SOFTWARE CONFIGURATION USED BY CUSTOMER. RAPIDRATINGS DOES NOT REPRESENT OR WARRANT THAT ANY COMPONENT OF THE SUBSCRIPTION SERVICES DEPENDENT ON THE ACTIONS OR INACTIONS OF A THIRD PARTY, SUCH AS A THIRD-PARTY PLATFORM PROVIDER, SHALL OCCUR, NOR THAT ANY INFORMATION OBTAINED FROM ANY THIRD PARTY IN PERFORMING ANY SOLICITATION SERVICES UNDER THE SUBSCRIPTION SERVICES WILL BE ACCURATE, COMPLETE, TRUTHFUL, OR FREE FROM DEFECTS OF ANY KIND. CUSTOMER ACKNOWLEDGES THAT DATA USED TO PROVIDE THE SUBSCRIPTION SERVICES CONTAINS THIRD-PARTY DATA, AND RAPIDRATINGS WILL NOT BE LIABLE IN CONNECTION WITH ANY THIRD-PARTY DATA.

#### **SECTION 6. DISCLAIMERS.**

**6.1 DISCLAIMER OF FORWARD-LOOKING STATEMENTS.** THE SUBSCRIPTION SERVICES, INCLUDING THE SUBSCRIPTION REPORTS, MAY CONTAIN FORWARD-LOOKING STATEMENTS THAT REFLECT RAPIDRATINGS' CURRENT EXPECTATION REGARDING FUTURE EVENTS AND BUSINESS DEVELOPMENTS. THE FORWARD-LOOKING STATEMENTS INVOLVE RISKS AND UNCERTAINTIES. ACTUAL DEVELOPMENTS OR RESULTS COULD DIFFER MATERIALLY FROM THOSE PROJECTED AND DEPEND ON A NUMBER OF FACTORS, SOME OF WHICH ARE OUTSIDE RAPIDRATINGS' CONTROL.

**6.2 DISCLAIMER OF INVESTMENT RELATED INFORMATION.** CUSTOMER ACKNOWLEDGES THAT ANY INFORMATION PROVIDED BY THE SUBSCRIPTION SERVICE, INCLUDING THE SUBSCRIPTION REPORTS, IS NOT INTENDED TO BE A SUBSTITUTE FOR A FINANCIAL ADVISOR'S OR INVESTOR'S INDEPENDENT ASSESSMENT OF WHETHER TO BUY, SELL, OR HOLD ANY FINANCIAL PRODUCTS. RAPIDRATINGS IS NOT AN INVESTMENT ADVISOR. THE INFORMATION PROVIDED IN THE SUBSCRIPTION SERVICE IS DERIVED OBJECTIVELY BY RAPIDRATINGS FROM PUBLIC AND NONPUBLIC INFORMATION PROVIDED TO RAPIDRATINGS BY CUSTOMER AND THIRD PARTIES. IF CUSTOMER CHOOSES TO USE THIS INFORMATION IN FORMING THE BASIS FOR AN INVESTMENT DECISION, CUSTOMER SHOULD USE THE INFORMATION IN CONJUNCTION WITH OTHER INFORMATION. RAPIDRATINGS PROVIDES NO GUARANTEE WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF SUBSCRIPTION SERVICES, NOR THE INFORMATION OR CONCLUSIONS DERIVED FROM THE THEM. RAPIDRATINGS WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY TRADING OR INVESTMENT DECISIONS OR ANY OTHER BUSINESS DECISION BASED ON THE SUBSCRIPTION

SERVICES. Customer represents and warrants to RapidRatings that it understands the methodology by which RapidRatings produces Subscription Services as follows: Subscription Reports are statements of opinion objectively created through the application of RapidRatings' proprietary software logic to information about an entity from publicly available information, or with respect to private company ratings, information provided by Customer or a third party. RapidRatings' software is a proprietary quantitative system that analyzes financial information contained in publicly available company filings made by issuers pursuant to applicable securities laws or private company financial statements provided by Customer or a third party. Periodically, RapidRatings randomly selects a small number of public company filings used in the ratings process to test the accuracy of the information provided by the third party(ies) by comparing the information received from the third party to the public filings posted on the relevant governmental websites. RapidRatings is not responsible for either the accuracy or completeness of any public filings or any private company financial statements provided by Customer or a third party. Customer hereby acknowledges and agrees that RapidRatings has conducted a reasonable investigation of the factual elements relied upon in determining Subscription Reports, and that RapidRatings' procedures to verify a company's financial information are reasonable.

#### **SECTION 7. RESERVED.**

#### **SECTION 8. TERM AND TERMINATION.**

8.1 Term. The term of this Agreement will commence as of the Effective Date set forth in the Order Form and will continue for one year (the "Initial Term"), unless terminated sooner. Thereafter, the term of this Agreement may be renewed for unlimited, successive one-year periods (each a "Renewal Term"), by Customer issuing an Order Form for such Renewal Term.

8.2 Termination. Termination shall be governed by the FAR and the Contract Disputes Act. Recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, RapidRatings shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

8.3 Suspension. RapidRatings may temporarily suspend Customer access to or use of the Subscription Services if Customer or Users violate any provision within Sections 2.1 (Access to the Subscription Services), 2.2 (Restrictions), 2.3 (API Services), 2.4 (Users), 4.1 (Ownership of Intellectual Property Rights; Feedback), or 4.2 (Enforcement) in the Agreement, or if in RapidRatings' reasonable judgment, the Subscription Services or any component thereof are about to suffer a significant threat to security or functionality. RapidRatings will provide advance notice to Customer of any such suspension in RapidRatings' reasonable discretion based on the nature of the circumstances giving rise to the suspension. RapidRatings will use reasonable efforts to re-establish the affected Subscription Services promptly after RapidRatings determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured.

8.4 Effect of Termination. Upon the termination of this Agreement: (i) Customer shall immediately pay Rapid Ratings all amounts due to Rapid Ratings under this Agreement for Subscription Services up to the date of termination; (ii) all access to and use of the Subscription Services will automatically and immediately terminate; (iii) Customer shall, at Rapid Ratings' option, return or destroy all Confidential Information belonging to Rapid Ratings in its possession and shall certify to Rapid Ratings that it has done so no later than 10 days after the termination of this Agreement; and (iv) the following Sections: 1, 2.3, 2.5, 4.1, 4.3, 6, 8, and 9, and those Sections which by their nature are intended to, will survive. For clarity, if any Order Form survives the expiration or termination of this Agreement, the provisions of this Customer Agreement will remain in effect and fully incorporated into the Order Form until the Order Term expires.

#### **SECTION 9. GENERAL.**

9.1 Marketing. Rapid Ratings may, in connection with the RapidRatings website, marketing, advertising, press release or other publicity, identify Customer as a customer of RapidRatings by use of Customer's name and trademark logo in a manner no more prominent than RapidRatings other customers, to the extent permitted by GSAR 552.203-71.

#### 9.2 Reserved.

9.3 Force Majeure. Except as may be otherwise provided herein, this Agreement is subject to FAR 52.212-4 (f) Excusable delays. (JUN 2010).

9.4 Severability. If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable, then the provisions held invalid or unenforceable will be deemed amended, and the court or other government body is authorized to reform the provision(s) to the minimum extent necessary to render them valid and enforceable in conformity with the Parties' intent as manifested herein.

9.5 Notice, Execution, Construction. Any notice given by either Party to the other shall be in writing and will be sent by personal delivery, internationally recognized overnight courier with delivery confirmation, electronic notification (such as email), or U.S. Mail, certified or registered, postage prepaid, return receipt requested, to the respective address set forth in this Agreement, or such other address(es) as specified in writing by the Party in accordance with this Section. All notices will be deemed effective upon delivery (or attempted delivery), except that electronic notification shall be deemed effective upon receipt acknowledgement by the receiving Party. This Agreement may be executed in counterparts, all of which together will constitute the entire fully-executed instrument. If there is any conflict of terms between this Agreement and an Order Form, the Order Form will control for the subject matter of the Order Form. Facsimile, photocopy, or electronic signatures will be given the same effect as originals or ink signatures. The headings to Sections of this Agreement are for convenience or reference only and do not form a part of this Agreement and will not in any way affect its interpretation. All capitalized terms not defined in this Agreement are defined as set forth in the Order Form and vice versa. Neither Party will be afforded or denied preference in the construction of this Agreement, whether by virtue of being the drafter or otherwise. The terms "including", "includes", and "include" will be deemed to be followed by "without limitation".

9.6 Use by U.S. Government. The Subscription Services, including any Feedback or derivatives thereof, made available by RapidRatings under this Agreement may be subject to export control, procurement, and/or other laws and regulations of the United States and other jurisdictions applicable to government contractors. Customer agrees to comply with all applicable laws and regulations. Customer represents that it is not currently debarred, suspended, or proposed for debarment by any government entity, including U.S. federal, state, and local government entity. Customer specifically acknowledges that it must comply with all applicable export control laws and agrees that it shall not permit Users to access or use any Subscription Services in a U.S. embargoed country (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation. The Subscription Services provided by RapidRatings under this Agreement constitute a "commercial item," as defined at FAR 2.101 and FAR Part 12. Consistent with this classification, use, modification, reproduction, release, transfer, performance, display, disclosure, or distribution of the software by Customer and any other end user, including a government entity, are restricted by the terms of this Agreement, and the software service and any related documentation are licensed hereunder (i) only as "commercial items," and (ii) with only those rights as are granted to other commercial end users pursuant to the terms and conditions of this Agreement. Use of any RapidRatings software is restricted by the terms of this Agreement and, in accordance with FAR Section 12.212, is further restricted in accordance with the terms of RapidRatings' commercial end user license agreement/terms of use as displayed in the Subscription Services. Except as described herein, all other use is strictly prohibited. This section describing government use, consistent with FAR 12.212, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in software as a service, computer software, computer software documentation, or technical data related to RapidRatings (here, the Licensor) under this Agreement and in any contract or subcontract under which this software service is acquired or licensed. Neither Customer nor the government is entitled to the software's object code or source code.

9.7 Assignment. Neither Party shall assign, delegate, or otherwise transfer its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other Party (to be granted or withheld in its reasonable discretion). This Agreement will be binding upon and will inure to the benefit of the Parties and their permitted successors and assigns.



9.8 Merger and Amendment. This Agreement (including the applicable Order Form(s), which are hereby incorporated herein) together with the underlying GSA Schedule Contract, Schedule price list and Purchase Order(s) constitutes the entire understanding and agreement, and supersedes any and all prior or contemporaneous representations, understandings, and agreements between the Parties with respect to the subject matter of this Agreement, all of which are hereby merged into this Agreement. No amendment to this Agreement or waiver of any provision hereof will be valid or binding unless reduced to writing and duly executed by the Party or Parties to be bound thereby.

9.9 Waiver, Relationship, Third Parties. A Party's failure to enforce a right or remedy in this Agreement will not constitute a waiver of such right or remedy. Nothing contained in this Agreement will be deemed to create, or be construed as creating, a joint venture or partnership between the Parties. Neither Party is, by virtue of this Agreement or otherwise, authorized as an agent or legal representative of the other Party, except that Customer authorizes Rapid Ratings to collect information from third parties on Customer's behalf. There are no third-party beneficiaries of this Agreement.

## EXHIBIT A

### RapidRatings API Services Terms

Customer has requested access to RapidRatings application programming interface (API) and associated services and software (collectively, "API Services"). The API Services include a API that provides access to RapidRatings computed ratings and other computed quantitative metrics. The scope of data available using the API Services is as described in API Services Documentation. The API Services will facilitate Customer's extraction of Subscription Service content and data as defined in the Customer Agreement and the API Services Documentation. The scope of the Subscription Services, including the Subscription Reports of companies to which Customer may have access via the API Services, is additionally limited by applicable Order Form(s).

Customer agrees to these terms and conditions as fully incorporated into the Customer Agreement (the "API Services Terms"). If there is a conflict between these API Services Terms and the Customer Agreement, the API Services Terms will control only for the applicable API Services. All capitalized terms have the definitions as provided in the Customer Agreement above, unless otherwise expressly stated herein.

#### Section 1. API Services, Limitations.

1.1 API Services. According to the terms and conditions of these API Services Terms and any applicable Order Form, Customer may access and use the API Services. For clarity, the API Services are provided pursuant to the Subscription Services terms and restrictions in the Customer Agreement and the API Services are provided on a non-exclusive basis.

1.2 Access Limitations. Customer may allow any employee or contractor to view the API Services. However, any use of any other Subscription Services content, such as Subscription Reports, obtained through access or use of the API Services, is limited to valid Users of Customer. Customer will require Users to comply with (and not knowingly enable them to violate) applicable law, regulation, and the API Service Terms. Customer will only access (or attempt to access) the API Services by the means described in the Documentation. If RapidRatings assigns Customer any credentials (e.g. client IDs, tokens, etc.), Customer must use them with the applicable API Services per the Order Form and Documentation. Customer will not misrepresent or mask either Customer's or any User's identity or any Customer's API client identity when using the API Services.

1.3 Data Limitations. Customer agrees that data provided by RapidRatings through the API Services is provided on a company by company basis. All API Services queries shall be per permitted frequencies in the API Services Documentation and caching is not permitted, without the written consent of RapidRatings. Customer agrees that the API Services facilitate access and use of highly confidential third-party data that must be handled in accordance with the terms of these API Services Terms. Data must also be stored separately in the case of third-party application providers or data aggregators who are acting on behalf of (or contracted by) Customer to display the API Services. Customer understands that the API Services provide access to data that is deemed highly confidential by RapidRatings and third-parties. Customer further understands that release of this information may irreparably harm RapidRatings. Customer will use industry best-practices and comply with any applicable laws related to data security to prevent unauthorized access or use of the data available through the API Services.

1.4 Usage Limitations. RapidRatings may set and enforce limits on Customer's use of the API Services (e.g. limiting the number of API requests that Customer may make in a given interval or the data that is returned), in RapidRatings sole discretion. Customer agrees to not circumvent or disable any such limitations. If Customer intends to use the API Service beyond the limitations, Customer must obtain RapidRatings' express written consent. RapidRatings may decline such request or condition acceptance on Customer's agreement to additional terms and/or charges for that use. RapidRatings may request reasonable information regarding any third-party contractor of Customer performing integration services or other services related to the API Services. When using the API Services, Customer will not (and will not allow others acting on Customer's behalf to): a) sublicense the API Services for use by a third party, b) create an API Application that functions substantially the same as the API Services and offer it for use by third parties, c) perform an action or inaction with the intent of introducing any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature, d) use the API Services to defame, abuse, harass, stalk, or threaten others, in violation of the law or industry self-regulatory rules or principles, e) interfere with or disrupt the API Services or the servers or networks providing the API Services, f) promote or facilitate online gambling, equities or derivatives trading of any kind, g) reverse engineer or attempt to extract the source code of the API Services, h) copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third party any of the API Services content therefrom; i) use the API Services for any activities where the use or failure of the API Services could lead to death, personal injury, or environmental damage (such as the operation of nuclear facilities, air traffic control, or life support systems), or i) remove, obscure, or alter any RapidRatings terms of service or any communications or links to notices of those terms.

#### Section 2. Customer Applications.

2.1 API Applications and Monitoring. Customer may use the API Services content obtained through access or use of the API Services in Customer applications/user interfaces, where such applications may be created by Customer, Rapid Ratings, or a third party, as applicable ("API Applications"). Customer agrees that RapidRatings may, subject to applicable Government security requirements, monitor use of the API Services and API Applications, for reasons including to ensure quality, improve RapidRatings products and services, and verify Customer's compliance with the API Services Terms. Customer agrees to not interfere with this monitoring. RapidRatings may use any technical means to overcome any interference RapidRatings may encounter. For clarity, any provisions from the Customer Agreement regarding monitoring and audit rights expressly apply to the API Services.

2.2 Privacy Policy. Customer will comply with all applicable Federal privacy laws of the United States and regulations reasonably relating to the API Application including those applying to personally identifying information. Customer will provide and adhere to a privacy policy for the API Application that clearly and accurately describes what information is collected, how it is used, and that it is shared with third parties (and for what purposes it is shared with third parties), including RapidRatings if applicable.

2.3 Ownership. By using RapidRatings API Services, Customer does not acquire ownership of any rights to the API Services or the content that is accessed through the API Services. RapidRatings, including RapidRatings' licensors, own all intellectual property rights in and to the API Services and content. Customer acknowledges that RapidRatings may develop products or services that may compete with the API Applications or any other products or services. Some of the software required by or included in RapidRatings' API Services, or provided in a good-faith effort to assist Customer (e.g. code stubs, configuration tools), may be offered under an open source license or other license. These licenses constitute separate written agreements, and Customer should consult the appropriate Documentation. RapidRatings makes no representation or warranty for any third-party tools. If Customer provides Feedback regarding the API Services, then RapidRatings may use such information without obligation to Customer, per the Customer

Agreement. Customer agrees to not misrepresent the source or ownership of the API Services. When the API Services or data or document content are displayed through any end point device, whether web-based, mobile, print or audio, this content must have the attribution, "All data and analysis provided by Rapid Ratings International." and, if the display is visual, the RapidRatings logo as provided by RapidRatings. RapidRatings will work with Customer to provide logos appropriate for Customer's delivery endpoint format and user experience. All use by Customer of RapidRatings trademarks (including any goodwill associated therewith) will inure to the benefit of RapidRatings. Customer shall not remove, obscure, or alter any copyright, trademark, or other proprietary rights notices; or falsify or delete any author attributions, legal notices, or other labels of the origin or source of material. Except as expressly stated, these API Services Terms do not grant either party any right, title, or interest in or to the other party's trademarks.

2.4 Linking. The API Services data must be displayed per the API Services Documentation, which RapidRatings reserves the right to update, modify, or change from time to time. Any third-party company name or data point displayed in the API Application using the API Services must be linked to a RapidRatings client portal. For example, if a link is provided with the RapidRatings FHR® data point, Customer will hyperlink the FHR data to the discrete URL provided.

### **Section 3. Communications.**

3.1 Communication of Changes. RapidRatings may send Customer notices in connection with use of the API Services. These may contain important API Services changes that RapidRatings may make at its sole discretion that require action by Customer for uninterrupted API Services or Subscription Services access. While RapidRatings will work to ensure Customer is notified in advance of any such changes, Customer is responsible for evaluating whether a change affects the API Application. Customer is solely responsible for evaluating and reacting to these notices. RapidRatings makes no representation that API Services changes will not affect or disrupt the API Application. Any updates to this agreement or the API Services Terms or Documentation shall be presented to Customer for review and will not be effective unless and until both parties sign a written agreement updating the terms. If RapidRatings issues a new version of the API Services, Customer must update their API Services and RapidRatings will continue to support and maintain the previous version for no more than six (6) months. If Customer does not agree to the changes or updates, Customer should discontinue use of the API Services.

3.2 Confidential Communications. Customer credentials (such as passwords, keys, and client IDs) are intended to be used by Customer and to identify Customer's organization (entity), API Application, and other potentially unique or personally identifying information. Customer will use industry best practices and efforts to keep credentials confidential and to prevent and discourage other API clients from using Customer's credentials. RapidRatings' communications to Customer and RapidRatings' API Services contain RapidRatings Confidential Information, pursuant to the Customer Agreement.

3.3 Reporting Requirements. Customer is responsible for providing reports to RapidRatings that disclose the usage of the API Services ("Reporting Requirements") upon the request of RapidRatings. The Reporting Requirements may be met by submission of at least the following information: a) time/date(s) of access/use, b) frequency of access/use, and c) what content has been accessed. The Reporting Requirements may be automated for delivery of such information to RapidRatings. The technical details of this procedure and a preferred format for the submission of information will be provided in the API Services Documentation.

### **Section 4. Warranties, Limitation of Liability.**

IN ADDITION TO THE WARRANTIES AS PER THE CUSTOMER AGREEMENT ABOVE, NEITHER RAPIDRATINGS NOR ITS SUPPLIERS OR DISTRIBUTORS MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE API SERVICES OR ANY CONTENT ACCESSED THROUGH OR TRANSMITTED TO THE API SERVICES, THE SPECIFIC FUNCTIONS OF THE API SERVICES, OR THEIR RELIABILITY, AVAILABILITY, OR SECURITY OR ABILITY TO MEET CUSTOMER'S NEEDS. THE API SERVICES AND CONTENT ARE PROVIDED "AS IS" AND "AS AVAILABLE". Customer represents and warrants that Customer will not violate the API Services Terms. The limitations on liability in the GSA Schedule Contract expressly apply to these API Services Terms.

### **Section 5. Indemnity.**

The indemnity obligations in the GSA Schedule Contract expressly apply to these API Services Terms.

RED HAT, INC.  
1801 VARSITY DRIVE  
RALEIGH, NC 27606

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Red Hat, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**RED HAT, INC.**

**RED HAT, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**RED HAT  
ENTERPRISE AGREEMENT  
U.S. GOVERNMENT SUPPLEMENT**



This U.S. Government Supplement ("**Supplement**"), the attached Red Hat Enterprise Agreement (extracted from [www.redhat.com/licenses/us.html](http://www.redhat.com/licenses/us.html) on January 3, 2018), with the applicable product appendix ("**Enterprise Agreement**"), establish the terms and conditions enabling Red Hat, Inc. ("**Red**



**Hat**) to provide Red Hat products to U.S. Government agencies, including an "Ordering Activity," defined as an entity authorized to order under GSA contracts as set forth in GSA Order 4800.2I ADM, as amended (the "**Client**"). The applicable product appendices are listed below:

Red Hat Learning Subscriptions ("**RHLS**"): Section 1.5 of Appendix 2 (extracted from [https://www.redhat.com/cms/managed-files/Appendix\\_2\\_Global\\_English\\_20171108.pdf](https://www.redhat.com/cms/managed-files/Appendix_2_Global_English_20171108.pdf) on January 3, 2018)  
 Non-RHLS subscription products: Appendix 1 (extracted from [https://www.redhat.com/cms/managed-files/Appendix\\_1\\_Global\\_English\\_20171108.pdf](https://www.redhat.com/cms/managed-files/Appendix_1_Global_English_20171108.pdf) on January 3, 2018)

The Enterprise Agreement and this Supplement cover the use of Software or Services by any Ordering Activity. Notwithstanding anything to the contrary, the use of Software or Services from Red Hat by an Ordering Activity *does not* constitute that Ordering Activity's assent or acceptance of the Enterprise Agreement. Red Hat agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; and 41 U.S.C. 423 relating to procurement integrity. This Supplement modifies the terms and conditions of the Enterprise Agreement for U.S. Government agencies as follows:

**1.0 Enterprise Agreement Section 2.2, Changes to Work and Delays**, is replaced with the following: "**2.2 Changes to Work and Delays**. Changes to the Services will be made only through a written change order signed by both parties consistent with GSAR Clause 552.23881 Modification (Federal Supply Schedule) (APR 2014) (Alternate I – JUN 2016) or GSAR 552.238-81 Modification (Federal Supply Schedule) (APR 2014) (Alternate II – JUN 2016). In the event that (a) Client fails to timely fulfill its obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party's reasonable control cause a delay in or otherwise affect Red Hat's ability to perform its obligations under an Order Form, Red Hat will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services subject to GSAR Clause 552.238-81, as applicable, , and GSAR 552.212 -4(f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).

#### **2.0 Enterprise Agreement Section 3.0 Fees:**

The following is deleted from **Section 3.1, Fees and Expenses**: "Client will reimburse Red Hat for all reasonable expenses Red Hat incurs in connection with the performance of Services."

**Section 3.2.1 is replaced with the following:** If credit terms are provided to Client, Red Hat will invoice Client for the Fees upon Red Hat's acceptance of the applicable Order Form and upon acceptance of any future order in accordance with GSAR 552.212-4(g) and GSAR 552.212-4(i). Unless otherwise specified in an Order Form and subject to Red Hat's approval of credit terms, Client will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice. Except as otherwise provided in this Agreement, any and all payments made by Client pursuant to this Agreement are non-refundable.

**Section 3.3, Taxes**, is deleted in its entirety.

#### **3.0 Enterprise Agreement Section 5.0, Reporting and Inspection:**

The following is deleted from **Enterprise Agreement Section 5.1, Reporting**, "no later than thirty (30) days from the date of the invoice", and replaced with, "as provided in the Agreement".

**Enterprise Agreement Section 5.2, Inspection**, is replaced with the following: "**5.2 Inspection**. During the term of this Agreement and for one (1) year thereafter: (a) If Client's security requirements are met, Red Hat or its designated agent may inspect Client's facilities and records to verify Client's compliance with this Agreement. Any such inspection will take place only during Client's normal business hours and upon no less than ten (10) days prior written notice from Red Hat. Red Hat will give Client written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Client security requirements are not met and upon Red Hat's request, Client will run a self-assessment with tools provided by and at the direction of Red Hat ("Self-Assessment") to verify Client's compliance with this Agreement. Within thirty (30) days from Red Hat's request, Client will finalize the Self-Assessment and provide Red Hat with the results in the form of a written report certified by Client's authorized officer including the number of underreported Units of Software or Services (the "Report"). In either event, after providing Notice(s) or Report(s) and receipt of an invoice, Client will make payment to Red Hat or its authorized channel partner for the applicable Services provided with respect to the underreported Units.

Notwithstanding the foregoing, nothing in this section prevents the Government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109)."

#### **4.0 Enterprise Agreement Section 6, Term and Termination:**

**Enterprise Agreement Section 6.1** is replaced with the following: "**6.1 Term and Termination of Agreement**. The term of this Agreement will begin on the Effective Date and will terminate at the expiration of all Order Forms issued hereunder."

**Enterprise Agreement Section 6.2.1:** The following is deleted: "Thereafter, the term for Subscription Services will automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the commencement of the next renewal term."

**Enterprise Agreement Section 6.2.2** is replaced with the following: "**6.2.2 Termination** shall be governed by the GSAR 552.212-4 (l) Termination for the Government's Convenience, and (m) Termination for Cause. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of Red Hat and consistent with GSAR 552.212-4 (l) Termination for the Government's Convenience, and (m) Termination for Cause, in the event an Order Form is terminated, Client will pay Red Hat (or the Business Partner from whom Client purchased such Software or Services) for all Services provided up to the effective date of termination."

**5.0 Enterprise Agreement Section 8.1:** The following is added to the end of **Section 8.1, Limitation of Liability:** “..., **EXCLUDING REPROCUREMENT COSTS.** This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733.”

**6.0 Enterprise Agreement Section 9.1:** The following is added to **Section 9.1, Obligations:** “Confidential Information may be subject to full or partial disclosure under the Freedom of Information Act, 5 U.S.C. §552.”

**7.0 Enterprise Agreement Section 11, Open Source Assurance Program,** is deleted in its entirety.

**8.0 Enterprise Agreement Section 12, Governing Law/Consent to Jurisdiction,** is replaced with the following: “**12. Governing Law/Consent to Jurisdiction.** The validity, interpretation and enforcement of this Agreement, including end user license agreement for Software, will be governed by and construed in accordance with the laws of the United States without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.”

#### **9.0 Enterprise Agreement Section 13 Miscellaneous**

Enterprise Agreement **Section 13.2, Assignment** is replaced with the following: “**13.2 Assignment.** Assignments are subject to GSAR 552.212-4(w)(1)(xi) Non-assignment, FAR 52.232-23, Assignment of Claims and FAR 42.12 Novation and Change-of-Name Agreements.”

Enterprise Agreement **Section 13.4, Force Majeure** is replaced with the following: “**13.4 Force Majeure.** Except as may be otherwise provided herein, this Agreement is subject to GSAR 552.212 -4 (f) Excusable delays.”

Enterprise Agreement **Section 13.5, Non-solicitation,** is replaced with the following: “**13.5 Reserved.**”

The third and fourth sentences of **Section 13.6, Export and Privacy,** are deleted in their entirety.

The following is deleted from Enterprise Agreement **Section 13.7, Dispute Resolution,** “No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.”, and replaced with, “No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than six (6) years after the cause of action has accrued.”

The following is deleted from **Section 13.11, Complete Agreement,** “of the State of New York and”.

**10.0 Enterprise Agreement Section 14, Waiver of Jury Trial,** is deleted in its entirety.

**11.0 Red Hat Products** purchased under the Enterprise Agreement and this Supplement may require access to certain Red Hat websites or portals covered by “terms of use” (e.g. [https://access.redhat.com/site/help/terms\\_conditions.html](https://access.redhat.com/site/help/terms_conditions.html)) (“**Red Hat Portal Terms of Use**”). In the event of any conflict between this Red Hat Terms of Use and this Supplement, this Supplement will take precedence. In the event Red Hat Terms of Use include terms requiring Client to indemnification obligation of Client, such indemnification obligations shall be deleted and the remaining terms and conditions shall be interpreted so as to be consistent with U.S. federal law.

#### **Red Hat Enterprise Agreement - US License Agreement**

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING SOFTWARE OR SERVICES FROM RED HAT. BY USING RED HAT SOFTWARE OR SERVICES, CLIENT SIGNIFIES ITS ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CLIENT DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE RED HAT SOFTWARE OR SERVICES. This

Agreement incorporates those appendices at the end of this Agreement.

This Red Hat Enterprise Agreement, including all referenced appendices and documents located at URLs (the “**Agreement**”), is between Red Hat, Inc. (“**Red Hat**”) and the purchaser or user of Red Hat software and services who accepts the terms of this Agreement (“**Client**”). The effective date of this Agreement (“**Effective Date**”) is the earlier of the date that Client signs or accepts this Agreement or the date that Client uses Red Hat’s software or services.

#### **Scope of Agreement**

**Framework.** This Agreement establishes a framework that will enable Red Hat to provide Software and Services to Client. “**Software**” means Red Hat Enterprise Linux,

JBoss Enterprise Middleware and other software programs branded by Red Hat, its Affiliates and/or third parties including all modifications, additions or further enhancements delivered by Red Hat. The specific services (the “**Services**”) and/or Software that Red Hat will provide to Client will be described in an Order Form, signed by the parties or otherwise accepted by Red Hat, which may consist of (a) one or more mutually agreed order forms, statements of work, work orders or similar transaction documents, or (b) an order placed by Client through Red Hat’s online store accessible from a Red Hat website. The parties agree that the terms of this Agreement will govern all purchases and use by Client of Software and Services unless otherwise agreed by the parties in writing.

**Affiliates.** Red Hat and Client agree that Affiliates of Client may acquire Software and Services from Red Hat or its Affiliates by entering an Order Form with Red Hat (or a Red Hat Affiliate) that incorporates the terms and conditions of this Agreement. The parties acknowledge that adjustments to the terms of this Agreement may be made in a

particular Order Form (for example, to address disparate tax and/or legal regimes in other geographic regions). “**Affiliate**” means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where “**control**” is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

**Business Partners.** Red Hat has entered into agreements with other organizations (“**Business Partners**”) to promote, market and support certain Software and Services. When Client purchases Software and Services through a Business Partner, Red Hat confirms that it is responsible for providing the Software and Services to Client under the terms of this Agreement. Red Hat is not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to Client, or (c) any products or services that Business Partners supply to Client under any separate agreements between a Business Partner and Client.

#### **Obligations of the Parties**

**On-Site Obligations.** If Red Hat personnel are working on Client's premises (a)

Client will provide a safe and secure working environment for Red Hat personnel, and (b) Red Hat will comply with all reasonable workplace safety and security standards and policies, applicable to Client's employees, of which Red Hat is notified in writing by Client in advance.

**Changes to Work and Delays.** Changes to the Services will be made only through a written change order signed by both parties. In the event that (a) Client fails to timely fulfill its obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party's reasonable control cause a

delay in or otherwise affect Red Hat's ability to perform its obligations under an Order Form, Red Hat will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services.

**Assistance.** Client may provide Red Hat access to Client information, systems, and software (“**Client Information**”), and resources such as workspace, network access, and telephone connections as reasonably required by Red Hat in order to provide the Services. Client understands and agrees that (a) the completeness, accuracy of, and extent of access to, any Client Information provided to Red Hat may affect Red Hat's ability to provide Services, and (b) if reasonable access to Client Information is not provided, Red Hat will be relieved from providing any Services dependent upon such access. Client will obtain any third party consents necessary to grant Red Hat access to the Client Information that is subject to the proprietary rights of, or controlled by, any third party, or which is subject to any other form of restriction upon disclosure.

#### **Payment**

**Fees and Expenses.** Fees for the Services (the “**Fees**”) will be identified in an Order Form and are (a) due upon Red Hat's acceptance of an Order Form or, for renewal of

Services, at the start of the renewal term, and (b) payable in accordance with Section 3.2. Fees are stated in United States Dollars, must be paid in United States Dollars, and, unless otherwise specified in writing, do not include out-of-pocket expenses or shipping costs. Client will reimburse Red Hat for all reasonable expenses Red Hat incurs in connection with the performance of Services. Client agrees to pay Red Hat the applicable Fees for each Unit. “**Unit**” is the measurement of Software or Service usage defined in the applicable Order Form. Any renewal of Subscription Services will be at the same price per Unit listed in the applicable Order Form. “**Subscription Services**” mean feebearing subscriptions for a defined period of time for a certain scope of Services.

#### **Invoices**

If Client desires credit terms with respect to the payment of Fees, Client will reasonably cooperate with Red Hat in establishing and periodically re-confirming Client's credit-worthiness. If credit terms are provided to Client, Red Hat will invoice Client for the Fees upon Red Hat's acceptance of the applicable Order Form and upon acceptance of any future order. Unless otherwise specified in an Order Form and subject to Red Hat's approval of credit terms, Client will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice; provided, however, that Fees for professional services, training, training credits and other service credits are due prior to delivery. Except as otherwise provided in this Agreement, any and all payments made by Client pursuant to this Agreement are non-refundable. Red Hat reserves the right to suspend or cancel performance of all or part of the Services and/or change its credit terms if actual payment has not been received within thirty (30) days of the invoice date.

If Client is paying by credit card, Client (a) authorizes Red Hat to charge Client's credit card for the Services and for the amount due at the time of renewal of Subscription Services, and (b) agrees to provide updated credit card information to Red Hat for renewal purposes.

**Taxes.** All Fees are exclusive of Taxes. Client will pay Red Hat an amount equal to any Taxes arising from or relating to this Agreement or an applicable Order Form which are paid by or are payable by Red Hat. “**Taxes**” means any form of sales, use, value added or other form of taxation and any fines, penalties, surcharges or interest, but excluding any taxes based solely on the net income of Red Hat. If Client is required to withhold or deduct any portion of the payments due to Red Hat, Client will increase the sum payable to Red Hat by the amount necessary so that Red Hat receives an amount equal to the sum it would have received had Client made no withholdings or deductions.

#### **License and Ownership**

**Software.** Each type of Software is governed by a license grant or an end user license agreement, which license terms are contained or referenced in the appendices to this Agreement or the applicable Order Form.

**Freedom to Use Ideas.** Subject to Section 9 and Client's rights in Client Information and notwithstanding anything to the contrary contained in this Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of any Order Form may be used by Red Hat, without an obligation to account, in any way Red Hat deems appropriate, including by or for itself or its clients or customers.

**Marks.** Unless expressly stated in an Order Form, no right or license, express or implied, is granted in this Agreement for the use of any Red Hat, Red Hat Affiliate, Client or third party trade names, service marks or trademarks, including, without limitation, the distribution of the Software utilizing any Red Hat or Red Hat Affiliate trademarks.

#### **Reporting and Inspection**

**Reporting.** Client will notify Red Hat (or the Business Partner from whom Client purchased Software or Services) promptly if the actual number of Units of Software or Services utilized by Client exceeds the number of Units for which Client has paid the applicable Fees. In its notice, Client will include the number of additional Units and the date(s) on which such Units were first utilized. Red Hat (or the Business Partner) will invoice Client for the applicable Services for such Units and Client will pay for such Services no later than thirty (30) days from the date of the invoice.

**Inspection.** During the term of this Agreement and for one (1) year thereafter, Red Hat or its designated agent may inspect Client's facilities and records to verify Client's compliance with this Agreement. Any such inspection will take place only during Client's normal business hours and upon no less than ten (10) days prior written notice from Red Hat. Red Hat will give Client written notice of any noncompliance, including the number of underreported Units of Software or Services, and Client will have fifteen (15) days from the date of this notice to make payment to Red Hat for the applicable Services provided with respect to the underreported Units. If Client underreports the number of Units utilized by more than five percent (5%) of the number of Units for which Client paid, Client will also pay Red Hat for the cost of such inspection.

#### **Term and Termination**

**Term and Termination of Agreement.** The term of this Agreement will begin on the Effective Date and will terminate at the expiration of ninety (90) days following written notice of termination given by one party to the other. Termination of this Agreement will not operate to terminate any Order Form and the terms and conditions of this Agreement will continue in full force and effect to the extent necessary to give effect to any Order Form in effect at the time of termination of this Agreement and until such time as the applicable Order Form expires or is terminated in accordance with Section 6.2 below.

**Term and Termination of Order Form**

The term of an Order Form begins on the date the Order Form is executed (“**Order Form Effective Date**”) and continues for the term stated in the Order Form. Thereafter, the term for Subscription Services will automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the commencement of the next renewal term. Client must use any other Services set forth in an Order Form during the term specified in the Order Form or within one (1) year of the Order Form Effective Date, whichever is shorter; if unused, such Services will be forfeited.

If Client or Red Hat materially breaches the terms of an Order Form, and such breach is not cured within thirty (30) days after written notice of the breach is given to the breaching party, then the other party may, by giving written notice of termination to the breaching party, terminate the applicable Order Form and/or this Agreement; provided, however, that no cure period will be required for a breach of Section 9 of this Agreement. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of Red Hat, in the event either party terminates an Order Form, Client will pay Red Hat (or the Business Partner from whom Client purchased such Software or Services) for all Services provided up to the effective date of termination.

**Survival.** If this Agreement or an Order Form is terminated for any reason, Sections 3, 4, 5.2, 6.3, 7, 8, 9, 10.2, 12, 13.1, 13.5-13.14, and 14 of this Agreement (as the same are incorporated into each Order Form) will survive such termination.

**Continuing Business**

Nothing in this Agreement will preclude or limit Red Hat from providing software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, materials or services to those that might be delivered to Client. The terms of confidentiality in Section 9 will not prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under this Agreement.

**Limitation of Liability and Disclaimer of Damages**

**Limitation of Liability.** FOR ALL EVENTS AND CIRCUMSTANCES, RED HAT AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL ORDER FORMS, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNTS RECEIVED BY RED HAT DURING TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY, WITH RESPECT TO THE PARTICULAR ITEMS (WHETHER SOFTWARE, SERVICES OR OTHERWISE) GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT.

**8.2 Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO CLIENT OR ITS AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF RED HAT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

**Confidentiality**

**Obligations.** During the term of this Agreement, both parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (ii) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (iii) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. “**Confidential Information**” means all information disclosed by either Red Hat or Client (“**Disclosing Party**”) to the other party (“**Recipient**”) during the term of this Agreement that is either (i) marked confidential or (ii) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure.

**Exclusions.** Confidential Information will not include information which: (i) is or later becomes publicly available without breach of this Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (ii) is known to the Recipient at the time of disclosure by the Disclosing Party; (iii) is independently developed by the Recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the business of the Recipient; or (vi) is software code in either object code or source code form that is licensed under an open source license. The Recipient will not be prohibited from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement, it gives the Disclosing Party advance notice of the disclosure requirement.

**Representations and Warranties**

**General Representations and Warranties.** Red Hat represents and warrants that: (a) the Services will be performed in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Client; and (c) to Red Hat's knowledge, Red Hat branded Software does not, at the time of delivery to Client, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

**Disclaimer of Warranty.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1 OR BY A THIRD PARTY VENDOR DIRECTLY TO CLIENT UNDER A SEPARATE AGREEMENT, THE SERVICES, SOFTWARE AND ANY HARDWARE ARE PROVIDED BY RED HAT “AS IS” AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. RED HAT DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES, SOFTWARE OR HARDWARE WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE OR THAT RED HAT WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN SECTION 10.1, CLIENT'S



**EXCLUSIVE REMEDY, AND RED HAT'S ENTIRE LIABILITY, WILL BE THE REPERFORMANCE OF DEFICIENT SERVICES, OR IF RED HAT CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, CLIENT MAY TERMINATE THE RELEVANT SERVICES AND RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT SERVICES AS OF THE EFFECTIVE DATE OF**

**TERMINATION. Without limiting the generality of the foregoing disclaimer, the Software, Services and any hardware provided are not specifically designed, manufactured or intended for use in (a) the planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft navigation, control or communication systems, weapons systems, or (c) direct life support systems. Client agrees that it is solely responsible for the results obtained from the use of the Software and Services.**

**Open Source Assurance Program**

For Software that is Red Hat branded, purchases under this Agreement may entitle Client to participate in Red Hat's Open Source Assurance Program which is described at [www.redhat.com/rhel/details/assurance/](http://www.redhat.com/rhel/details/assurance/). The terms for this optional program are subject to a separate agreement which can be viewed at [www.redhat.com/legal/open\\_source\\_assurance\\_agreement.html](http://www.redhat.com/legal/open_source_assurance_agreement.html).

**Governing Law/Consent to Jurisdiction**

The validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the laws of the United States and of the State of New York without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the state or federal courts of competent jurisdiction located in Raleigh, North Carolina, and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.

**Miscellaneous**

**Notices.** Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent using a method that provides for positive confirmation of delivery to the respective addresses or facsimile numbers indicated in an Order Form; provided that any notice from Client to Red Hat includes a copy sent to: Red Hat, Inc., Attention: General Counsel, 100 East Davie Street, Raleigh, North Carolina 27601; Facsimile: (919) 754-3704.

**Assignment.** This Agreement is binding on the parties to this Agreement, and other than the rights conferred on Business Partners in Sections 5.1 and 6.2.2, nothing in this Agreement or in any Order Form grants any other person or entity any right, benefit or remedy of any nature whatsoever, except for the parties' Affiliates as expressly provided in this Agreement. This Agreement is assignable by either party only with the other party's prior written consent, which will not be unreasonably withheld, conditioned or delayed; provided, however, either party may, upon written notice and without the prior approval of the other party, (a) assign this Agreement to an Affiliate as long as the Affiliate has sufficient credit to satisfy its obligations under this Agreement and the scope of Service is not affected; and (b) assign this Agreement pursuant to a merger or a sale of all or substantially all of such party's assets or stock.

**Independent Contractor.** Red Hat is an independent contractor and nothing in this Agreement or related to Red Hat's performance of any Order Form will be construed to create an employment or agency relationship between Client (or any Client personnel) and Red Hat (or any Red Hat personnel). Each party will be solely responsible for supervision, direction, control and payment of its personnel, including applicable taxes, deductions, other payments and benefits. Red Hat may subcontract Services under an Order Form to third parties or Affiliates without the approval of Client; provided, however, that (a) subcontractors agree to protect Client Confidential Information, and (b) Red Hat remains responsible to Client for performance of its obligations hereunder.

**Force Majeure.** Neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, hurricanes, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control.

**Non-solicitation.** Client agrees not to solicit or hire any personnel of Red Hat involved with the delivery of Services in connection with any Order Form during the term of and for twelve (12) months after termination or expiration of such Order Form; provided that Client may hire an individual employed by Red Hat who, without other solicitation, responds to advertisements or solicitations aimed at the general public.

**Export and Privacy.** Red Hat may supply Client with technical data that is subject to export control restrictions. Red Hat will not be responsible for compliance by Client with applicable export obligations or requirements for this technical data. Client agrees to comply with all applicable export control restrictions. If Client breaches this Section 13.6 or the export provisions of an applicable end user license agreement for the Software, or any provision referencing these sections, Red Hat may terminate this Agreement and/or the applicable Order Form and its obligations thereunder without liability to Client. Client acknowledges and agrees that to provide the Services, it may be necessary for Client Information to be transferred between Red Hat, its Affiliates, Business Partners, and/or subcontractors, which may be located worldwide.

**Dispute Resolution.** Each party agrees to give the other a written description of any problem(s) that may arise and to make a good faith effort to amicably resolve any such problem before commencing any proceeding. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party's rights. No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.

**Headings.** All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.

**Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement.

**Waiver.** The delay or failure of either party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced.

**Complete Agreement.** Each Order Form (a) is a separate agreement and is deemed to incorporate this Agreement, unless otherwise expressly provided in that Order Form; (b) constitutes the exclusive terms and conditions with respect to the subject matter of that Order Form, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Client to place orders or otherwise effect transactions under this Agreement; and (c) represents the final, complete and exclusive statement of the agreement between the parties with respect thereto, notwithstanding any prior written agreements or prior and contemporaneous oral agreements with respect to the subject matter of the Order Form. In the event of any conflict between this Agreement, any Order Form and any end user license agreement for Software, this Agreement will take precedence unless otherwise expressly provided in the Order Form.

Notwithstanding any provision to the contrary in this Agreement, any applicable end user license agreement will be governed by the laws of the State of New York and of the United States, without regard to any conflict of laws provisions. Any claim relating to the provision of the Services by Red Hat, its Affiliates or their respective personnel will be made against Red Hat alone.

**Amendment.** Neither this Agreement nor any Order Form may be amended or modified except in a writing signed by the parties, which writing makes specific reference to this Agreement or the applicable Order Form.

**Counterparts and Facsimile Signature.** In the event this Agreement is executed with signatures, this Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The parties may exchange signature pages by facsimile and such signatures will be effective to bind the parties to all the terms contained in this Agreement.

**United States Government End Users.** The Software and its documentation are "Commercial items," "Commercial computer software" and "Computer software documentation" as defined by the Federal Acquisition Regulations ("**FAR**") and Defense Federal Acquisition Regulations Supplement ("**DFARS**"). Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, the U.S. Government acquires the Software and its documentation subject to the terms of this Agreement.

**Waiver of Jury Trial**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT.



**PRODUCT APPENDIX 1  
SOFTWARE AND SUPPORT SUBSCRIPTIONS**

This Product Appendix (which includes Exhibits applicable to specific Red Hat Products) contains terms that describe the parameters and govern your use of Software Subscriptions and Support Subscriptions. This Product Appendix does not apply to Red Hat hosted or on- line subscription offerings. When we use a capitalized term in this Product Appendix without defining it, the term has the meaning defined in the Agreement to which this Product Appendix applies, such as the Red Hat Enterprise Agreement. In the event of a conflict, inconsistency or difference between this Product Appendix and an Exhibit to this Product Appendix, the terms of the Exhibit control.

Red Hat may modify or update this Product Appendix either by posting a revised version of this Product Appendix at <http://www.redhat.com/agreements>, and/or by providing notice using other reasonable means. If you do not agree to the updated terms then, (a) the existing Product Appendix will continue to apply to Red Hat Products you have purchased as of the date of the update for the remainder of the then-current Subscription term(s); and (b) the updated or modified terms will apply to any new purchases or renewals of Red Hat Products made after the effective date of the updated terms.

This Product Appendix does not apply to generally available open source projects such as [www.wildfly.org](http://www.wildfly.org), [www.feedhenry.org](http://www.feedhenry.org), [www.fedoraproject.org](http://www.fedoraproject.org), [www.openstack.redhat.com](http://www.openstack.redhat.com), [www.gluster.org](http://www.gluster.org), [www.centos.org](http://www.centos.org), Ansible Project Software or other community projects.

**1. SUBSCRIPTION SERVICES**

**1.1 Subscription Unit Definitions.** Fees for Subscription Services are based on metrics that are referred to as “Units”. Table 1.1 below defines the various Units that are used to measure your use of Software Subscriptions. The specific Units that apply to the various Software Subscriptions are contained in the Order Form(s) applicable to your purchases and in the Exhibit(s).

**Table 1.1**

<b>Unit</b>	<b>Software Subscription Unit Definitions</b>
API Call	is one inbound message to your API backend server and a response, if any, from the server.
Core	is (a) a physical processing core located in a CPU or (b) a virtual processing core within a virtual machine or supporting a container, in each case, that contains or executes the Software running for Production Purposes.
Core Band	a group of processing Cores (16 or 64).
Customer User	your and your Affiliates’ third party end users with access to the Software.
Employee User	your and your Affiliates’ employee users acting on your behalf (including your independent contractors and those of your Affiliates) who are able to access the Software.
Full Time Equivalent or FTE	the sum of (a) the total number of full time faculty plus one third of the part time faculty and (b) the total number of full time staff plus one half of the part time staff.
GB of RAM	a gigabyte of processing memory that contains or executes the Software.
Managed Node	each Node managed by the Software. “Node” means a Virtual Node, Physical Node or other instance of software.
Module	use of the Software to manage one System, Virtual Node or Physical Node.
Physical Node	a physical system which contains or executes all or a portion of the Software including, without limitation, a server, work station, laptop, blade or other physical system, as applicable.
Power IFL (Integrated Facility for Linux)	a processor core on an IBM Power system that is activated and contains or executes all or a portion of the Software.
Socket	a socket occupied by a CPU.
Socket-pair	up to two Sockets.
Storage Band	an amount of Storage (measured in terabytes “TB” and/or petabytes “PB”), where “Storage” is the total capacity of storage available to each instance of the Software.
System	a system which contains or executes all or a portion of the Software including, without limitation, a server, work station, laptop, virtual machine, container, blade, node, partition, appliance or engine, as applicable.
System on a Chip or SOC(s)	a single integrated circuit that includes the major components of a computer and is generally recognized as a system on a chip.
System z IFL (Integrated Facility for Linux)	a mainframe CPU that is activated and contains or executes all or a portion of the Software.
vCPU	a physical CPU, in whole or in part, which is assigned to a virtual machine or container which contains or executes all or a portion of the Software.
Virtual Node or Virtual Guest	an instance of the Software executed, in whole or in part, on a virtual machine or in a container.

**1.2 Use of Subscription Services.**

**Basis of the Fees.** While you have Subscriptions entitling you to receive Subscription Services for a Red Hat Product, you are required to purchase the applicable Software Subscriptions and Support Subscriptions in a quantity equal to the total number and capacity of Units of that Red Hat Product. For



purposes of counting Units, Units include (a) non-Red Hat Products if you are using Subscription Services to support or maintain such non-Red Hat Products and (b) versions or copies of the Software with the Red Hat trademark(s) and/or logo file(s) removed.

**Supported Use Cases.** Subscription Services are provided for Software only when used for Supported Use Cases as described in the Exhibits to this Product Appendix. The Supported Use Case(s) associated with a Red Hat Product also determine the type of Subscription that is required. If your use of any aspect of the Subscription Services is contrary to or conflicts with a Supported Use Case, you are responsible for purchasing the appropriate Subscription(s) to cover such usage. For example, if you are using a Red Hat Enterprise Linux Desktop Subscription on a System that is a server, you are obligated to purchase Red Hat Enterprise Linux Server Subscription Services.

**Support Levels.** You agree not to use Software Subscriptions with support service levels (e.g. Standard and/or Premium) higher than the support levels (e.g. Self-support and/or Standard) you have purchased.

**Transferring Subscriptions.** You may transfer, migrate or otherwise move Software Subscriptions provided you are accountable for the number and types of Units associated with the Software Subscriptions.

**Scope of Use of Subscription Services.** The Agreement (including pricing) is premised on the understanding that you will use Subscription Services only for your internal use (which may include Affiliates). Your internal use may include running a web site and/or offering your own software as a service, provided that such use (a) does not include a distribution, sale or resale of any of the Subscription Services and (b) provides as the primary component of the web site or service a material value added application other than the Subscription Services. However, providing the Subscription Services to, or using them for the benefit of, a third party (for example, using Subscription Services to provide hosting services, managed services, Internet service provider (ISP) services, or third party access to or use of the Subscription Services) is a material breach of the Agreement.

**Use by Contractors.** Subscription Services may be used by third parties acting on your behalf, such as contractors or outsourcing vendors provided (i) you remain fully responsible for all of your obligations under the Agreement and this Product Appendix and for the activities and omissions of the third parties and (ii) in the case of a migration to a third party cloud or hosting provider, you are qualified for and comply with the terms of the Red Hat Cloud Access program as set forth in Section 3 below.

**Unauthorized Use of Subscription Services.** Any unauthorized use of the Subscription Services is a material breach of the Agreement, such as (a) only purchasing or renewing Subscription Services based on some, but not all, of the total number of Units, (b) splitting or applying one Software Subscription to two or more Units, (c) providing Subscription Services (in whole or in part) to third parties, (d) using Subscription Services in connection with any redistribution of Software and/or (e) using Subscription Services to support or maintain any non-Red Hat Software products without purchasing Subscription Services for each such instance.

**Subscription Start Date.** Unless otherwise agreed in an Order Form, Subscription Services will begin on the earlier of the date you purchase or first use the Subscription Services.

**End User and Open Source License Agreements.** The Red Hat Products are governed by the EULAs set forth at [www.redhat.com/licenses/eulas](http://www.redhat.com/licenses/eulas). Software Subscriptions and Subscription Services are term-based and will expire if not renewed. This Agreement establishes the rights and obligations associated with Subscription Services and is not intended to limit your rights to software code under the terms of an open source license.

**Red Hat Software Subscription Bundles.** Red Hat offers combinations of Software Subscriptions with complimentary feature sets and price discounts (“**Bundle(s)**”). The basis of the fees for these Bundles is the combined use of such Software Subscriptions on a single Unit. When any of the combined Software Subscriptions are used independently from the Bundle, the fees for such independent usage will be Red Hat’s standard fees associated with the Unit for the particular Software Subscription.

## 2. SUBSCRIPTION SERVICE SUPPORT TERMS

**2.1 Evaluations.** Red Hat may offer Evaluation Subscriptions for evaluation and not for Production Purposes. Evaluation Subscriptions may be provided with limited or no support and/or subject to other limitations. If you use the Evaluation Subscription(s) for any purpose other than evaluation, you are in violation of this Agreement and are required to pay the applicable subscription fees for such use in accordance with Section 1 above, in addition to any and all other remedies available to Red Hat.

**2.2 Support from a Business Partner.** If you purchase Software Subscriptions that include support provided by an authorized Red Hat Business Partner (not by Red Hat) then Section 2.3 does not apply to you and you should work with your Business Partner to obtain support services. Section 2.3 only applies if you have purchased Software Subscriptions with Support provided by Red Hat.

### 2.3 Support from Red Hat.

**Development Support.** Certain Software Subscriptions include Development Support. “**Development Support**” consists of assistance with architecture, design, development, prototyping, installation, usage, problem diagnosis and bug fixes, in each case, for the applicable Software when used for Development Purposes. Requests for deployment and maintenance assistance and/or assistance for Production Purposes are not included within the scope of Development Support, but may be available on a consulting basis under the terms of a separate agreement.

**Production Support.** Certain Software Subscriptions include Production Support. “**Production Support**” consists of assistance with installation, application testing, usage, problem diagnosis and bug fixes, in each case, for the applicable Software when used for Production Purposes. Production Support does not include assistance with (i) code development, system design, network design, architectural design, optimizations, tuning recommendations, development or implementation of security rules or policies, (ii) third party software made available with Red Hat Software, (iii) software on the supplementary, optional or Extra Packages for Enterprise Linux (“EPEL”) channels and/or (iv) preview technologies.

**Support Coverage.** Support is provided in the English language but may be available in other languages based on available resources. Red Hat does not provide support for (a) any underlying infrastructure or for any third party products; (b) Software that (i) you (or a third party) have modified or recompiled, (ii) is running on hardware or platforms that are not Supported Configurations or (iii) is not running in its Supported Use Case. You are responsible for testing the Software before deploying it in your environment, backing up your systems on a regular basis and having those backups available if needed for support purposes. Except as otherwise expressly stated, Support does not include data migration or data recovery support.

**Service Level Guidelines.** Red Hat will use commercially reasonable efforts to provide Support at one or more of the following support levels, depending on the Red Hat Product: Self-support, Standard or Premium, as set forth at <https://access.redhat.com/support/offerings/production/sla>. After the initial response to a support request, Red Hat will provide status updates on the issue consistent with the update guidelines applicable to the Severity Level (which may be downgraded to a lower Severity Level during the course of resolving the support request) until the issue is resolved or the parties agree on an alternative update schedule.

**Obtaining Support.** To receive Support, you must provide Red Hat with sufficient information to validate your entitlement to the relevant Support. Certain Support is provided only during Red Hat's local standard business hours. You may contact Red Hat through your designated Support Contacts. You may designate up to the number of contacts described at <https://access.redhat.com/support/offerings/production/contacts> based on the number of Standard and Premium Software Subscriptions you have purchased (other than for Academic Edition Customers with Campus Wide Subscriptions which are based on the number of FTEs).

**2.4 Software Subscription Lifecycle.** During the life cycle of Software, the scope of Software Maintenance and Support evolves and, after a number of years, we discontinue Software Maintenance and Support for older versions of Software. The life cycle for Software Maintenance and Production is described at [https://access.redhat.com/support/policy/update\\_policies.html](https://access.redhat.com/support/policy/update_policies.html) and, in certain instances, in the Exhibit(s). For certain versions of Software, you may purchase Extended Update Support ("EUS") and/or Extended Life Cycle Support ("ELS") Add-On Subscription(s) to extend your Subscription Services as further described at <https://access.redhat.com/support/policy/updates/errata/>, provided EUS Subscriptions are included in certain Software Subscriptions.

### 3. CLOUD ACCESS: DEPLOYING SOFTWARE SUBSCRIPTIONS IN A PUBLIC CLOUD

**3.1 Transferring Eligible Subscriptions to a Cloud.** You may transfer Eligible Subscriptions for use in a Vendor's Cloud under the Cloud Access program if you (a) complete the registration set forth at <https://engage.redhat.com/forms/cloud-access-registration> and (b) have a sufficient number of Eligible Subscriptions to transfer. For Eligible Subscriptions that you purchased for on-premises use and transfer to a Vendor's Cloud, the Unit of measurement will be the Unit as set forth in the conversion table located at <http://www.redhat.com/en/technologies/cloud-computing/cloud-access>. For Eligible Subscriptions that were originally purchased for use in a Vendor's Cloud, no conversion is required. The number of concurrent Units used under the Cloud Access program in the Vendor Cloud may not exceed the total number of Units (a) transferred from Eligible Subscriptions and/or (b) purchased for use in a Vendor Cloud. The transfer of Software Subscription(s) to a Vendor's Cloud via Cloud Access does not change the start date or the duration of the original Software Subscription(s). This means that when your Software Subscription expires, your access to the Software Subscription in the Vendor's Cloud will cease, unless renewed.

**3.2 Cloud Usage Reporting.** You consent to the Vendor reporting to Red Hat your usage of Red Hat Software Subscriptions in the Vendor's Cloud.

**3.3 Public Cloud Terms of Service.** Through the Cloud Access program, you may obtain access to Software images and/or updates to the Software, if and when available, either (a) via new images obtained from the Vendor's Cloud or (b) from a Red Hat Portal. Certain information (such as Software related notices) may only be available to you via the Red Hat Portal. Payments to Red Hat for Software Subscriptions do not include any fees that may be due to the Vendor for the Vendor's Cloud services. Red Hat is not a party to your agreement with the Vendor and is not responsible for providing access to the Vendor's Cloud or performing any other obligations of the Vendor. The Vendor is solely responsible and liable for the Vendor's Cloud. Red Hat may have a support relationship with the Vendor that enables Red Hat and the Vendor to collaborate and you consent to (i) Red Hat discussing your Software Subscriptions and related Support with the Vendor and (ii) Red Hat and the Vendor sharing information for the purpose of providing Services. Red Hat will provide Support to you for each Eligible Subscription pursuant to this Agreement. Certain software components or functionality of the Software contained in the original Software Subscription (or Add-on Subscription) may not be available or supported when used in the Vendor's Cloud.

**3.4 Vendor Specific Services.** Vendors may offer other services, offerings or commitments related to their Clouds, which may include the provision of services by US only personnel, compliance with various legal regimes or other Vendor Cloud specific obligations. Notwithstanding what may be offered by a Vendor, the Software Subscriptions are not provided subject to the terms of those Vendor offerings, and any Vendor offerings solely relate to the Cloud itself and not to the Software Subscriptions operated on the Cloud. As between Red Hat and you, you are solely responsible for complying with any applicable export laws or regulations related to your use of the Software Subscriptions and you agree not to transmit information, data or technology governed by the International Traffic in Arms Regulations to Red Hat in the course of your use of the Software Subscriptions.

**3.5 Vendor Termination.** Red Hat may terminate the availability of a particular Vendor that offers Cloud Access with sixty (60) day notice, provided you may continue to use any Software Subscription for the remainder of the term of the Software Subscription on another Vendor's Cloud or on your premises under the terms of this Agreement.

### 4. DEFINITIONS

**"Add-On Subscriptions"** are optional Software Subscriptions that may be purchased in addition to the base Software Subscription (e.g. a Red Hat Enterprise Linux Software Subscription).

**"Cloud"** means a Vendor's hosted computing infrastructure that provides systems, virtual machines or container hosts to end users. **"Cloud Access"** is the Red Hat program that allows you to use Eligible Subscriptions in a Vendor's Cloud under the terms set forth in Section 3.

**"Development Purposes"** means using the Software for development related tasks that are performed by a single-user acting in a standalone mode such as (a) an individual developer writing software code, (b) a single user performing prototyping or quality assurance testing, where neither involves any form of automated testing, multi-user testing and/or multi-client testing and (c) a user demonstrating software or hardware that runs with or on the Software.

**"Eligible Subscriptions"** means certain Software Subscriptions that meet the criteria for Cloud Access set forth at [www.redhat.com/solutions/cloud/access](https://www.redhat.com/solutions/cloud/access).

**"EULA"** means the end use license agreements for the Red Hat Products located at <https://www.redhat.com/en/about/red-hat-end-user-license-agreements>.

**"Evaluation Subscriptions"** means Red Hat Products offered without charge solely for evaluation and not for Production Purposes or Development Purposes, including offerings described as evaluation, preview or beta.

**“Product Appendix(ces)”** means the specific terms applicable to the Red Hat Products posted at <http://www.redhat.com/agreements> or otherwise attached to or incorporated into an Order Form.

**“Production Purposes”** means using the Software (a) in a production environment, (b) generally using live data and/or applications for a purpose other than Development Purposes, (c) for any automated quality assurance or testing, multi-user quality assurance or testing, and/or multi-client quality assurance or testing and/or (d) for backup instances.

**“Red Hat Portal”** means the Red Hat hosted delivery portal, such as Red Hat Customer Portal, Red Hat Container Catalog and/or Red Hat Update Infrastructure (“RHUI”) that provides Software Access and Software Maintenance.

**“Red Hat Products”** means Software, Subscription Services, and other Red Hat branded offerings made available by Red Hat.

**“Software”** means Red Hat branded software that Red Hat provides as part of a Red Hat Product.

**“Software Access”** means access to various Software versions if and when available.

**“Software Maintenance”** means access to updates, upgrades, corrections, security advisories and bug fixes for Software, if and when available.

**“Software Subscription”** means a Subscription that contains Software Access, Software Maintenance and Support.

**“Stacking”** (or **“Stacked”** or **“Stackable”**) means the use of more than one Subscription to account for the capacity of a System or Physical Node.

**“Standard Business Hours”** are listed at <https://access.redhat.com/support/contact/technicalSupport.html>.

**“Subscription”** means a time bound Red Hat Product offering, other than professional services.

**“Support”** means access to Red Hat support for issues relating to Software as described in Product Appendix 1.

**“Supported Configuration(s)”** means the supported Red Hat Product hardware and platform configurations that are listed at <https://access.redhat.com/supported-configurations>.

**“Support Contact(s)”** is a person authorized by you to open support requests and/or contact Red Hat support personnel.

**“Support Subscriptions”** means a Subscription that contains a specialized Support offering that is supplemental to Support provided in a Software Subscription.

**“Subscription Services”** means Red Hat offerings consisting of Software Access, Software Maintenance, Support and/or any other services associated with and during the term of a Subscription.

**“Supported Use Case”** means the manner and/or environment in which a particular Subscription(s) is used and supported as further defined in an applicable Exhibit.

**“Vendor”** means the Red Hat authorized third party from whom you purchase Cloud services and who is authorized by Red Hat to participate in this Cloud Access program.

**EXHIBIT 1.A  
RED HAT ENTERPRISE LINUX AND  
RELATED SOFTWARE SUBSCRIPTIONS**



This Exhibit 1.A. to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Enterprise Linux, Red Hat Virtualization, Red Hat OpenStack Platform product lines and related offerings.

**1. Unit of Measure and Purchasing Requirements for Red Hat Enterprise Linux Server, Red Hat Virtualization and Red Hat OpenStack Platform**

Table 1 sets forth the support level, Units of measure, capacity limitations, and stacking capabilities for various Red Hat Enterprise Linux Server, Red Hat Virtualization and Red Hat OpenStack Platform Software Subscriptions. You must purchase the appropriate number and type of these Software Subscriptions based on the Unit and other parameters described in Table 1 below.

**Table 1**

Software Subscription	Support Level	Unit of Measure	Capacity		Stackable
			Socket(s) or SOCs	Virtual Nodes	
Red Hat Enterprise Linux Server (Physical or Virtual Nodes) Red Hat Enterprise Linux for SAP HANA (see Note 1 below)	Standard or Premium	Physical Node or Virtual Node	Socket-pair for each Physical Node or 2 Virtual Nodes		Physical Node: Yes
Red Hat Enterprise Linux for Virtual Datacenters (see Notes 2 and 3 below)	Standard or Premium	Physical Node	Socket-pair	Unlimited Virtual Nodes running on a Socket-pair	Physical Node: Yes
Red Hat OpenStack Platform (formerly known as Red Hat Enterprise Linux OpenStack Platform) Red Hat OpenStack Platform for Atom	Standard or Premium	Physical Node	Socket-pair	Unlimited Virtual Nodes running on a Socket-pair	Physical Node: Yes
Red Hat Enterprise Linux for Real Time Red Hat Virtualization (see Note 4 below) Red Hat Enterprise Linux with Smart Virtualization Red Hat Enterprise Linux with Smart Virtualization for SAP Applications	Standard or Premium	Physical Node	Socket-pair	N/A	Physical Node: Yes

Red Hat Enterprise Linux for Power Red Hat Enterprise Linux for Power with Smart Virtualization	Standard or Premium	Power IFL	Up to 4 processor cores	N/A	Power IFL: Yes
Red Hat Enterprise Linux for System z	Standard or Premium	System z IFL	N/A	N/A	System z IFL: Yes
Red Hat Enterprise Linux for Hyperscale	Standard	Physical Node	Band of SOCs	None	Physical Node: No
Red Hat Enterprise Linux Server Entry Level (see Note 1 below)	Self-support	Physical Node	Socket-pair	None	Physical Node: No
Red Hat OpenStack Platform Red Hat Enterprise Linux with Smart Virtualization	Standard or Premium	Physical Node	Socket-pair	Unlimited Virtual Nodes running on a Socket-pair	Physical Node: Yes
Red Hat Enterprise Linux for PRIMEQUEST (see Note 1 below)	Premium	Physical Node	1-2 Sockets, 9 Logical Partitions 4 Sockets, 10 Logical Partitions 6 Sockets, 11 Logical Partitions or 8 Sockets, 12 Logical Partitions		Physical Node: No
Red Hat Enterprise Linux Desktop	Self-support, Standard or Premium	System	1 CPU Up to 8GB RAM	1 Virtual Guest	CPU: No
Red Hat Enterprise Linux Workstation	Self-support, Standard or Premium	System	2 CPU Unlimited RAM	1 Virtual Guest or 4 Virtual Guests	CPU: No
Red Hat Enterprise Linux Academic Site Subscription Red Hat Infrastructure for Academic Institutions - Site	Standard or Premium	Full Time Equivalent (FTE)	1-2 Sockets	1 Virtual Guest	N/A

Subscription					
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**Note 1:** Each Physical Node supports a maximum number of four (4) virtual instances that may consist of Red Hat Enterprise Linux Virtual Nodes, Virtual Guests or any other guest operating system, provided containers do not count towards the maximum four (4) virtual instances.

**Note 2:** Please note that Red Hat Enterprise Linux for Virtual Datacenters Subscriptions do not include an entitlement for the host operating system.

**Note 3:** Please note a Red Hat Enterprise Linux for Virtual Datacenters Subscription is limited when deployed on Red Hat Enterprise Linux Servers to the four (4) virtual instances support limit per Note 1, provided that limitation does not apply when Red Hat Enterprise Linux for Virtual Datacenters is deployed on either Red Hat Virtualization or Red Hat OpenStack Platform.

**Note 4:** A Red Hat Virtualization Subscription comes with RHEV-Manager, which requires the purchase of an underlying Red Hat Enterprise Linux Subscription for each Unit (i.e., Physical Node or Virtual Node) running RHEV-Manager.

**2. Red Hat Enterprise Linux Server Add-Ons**

Red Hat Enterprise Linux Server Subscriptions may be purchased with one or more optional Add-On Subscriptions. Add-On Subscriptions require a separate paid and active Software Subscription for each Unit that deploys, installs, uses or executes such Add-On. Each Unit of an Add-On Subscription (i) must match the Unit of Measure and capacity of the underlying Red Hat Enterprise Linux Unit and (ii) inherits the Support Level of the underlying Red Hat Enterprise Linux Unit. Add-On Subscriptions are not supported on Red Hat Enterprise Linux Subscriptions with a Self-support service level except Smart Management Add-Ons.

**3. Red Hat Enterprise Linux Server Supported Use Cases**

**Table 3**

Software	Supported Use Case
Red Hat Enterprise Linux Server (see Note 1 below) Red Hat Enterprise Linux for Power Red Hat Enterprise Linux Server for System z	Supported only for server computing on Supported Configurations, including delivery of services to other logical or physical client or server systems and the execution of multiuser applications.
Red Hat Enterprise Linux for Real Time	Supported only on systems running (a) operating environments identified at <a href="http://www.redhat.com/mrg/hardware">www.redhat.com/mrg/hardware</a> as Red Hat Enterprise Linux for Real Time compatible and (b) hardware systems identified as Red Hat Enterprise Linux for Real Time certified at <a href="https://hardware.redhat.com">https://hardware.redhat.com</a> will be supported.
Red Hat Enterprise Linux for PRIMEQUEST	Subscription Services are provided only on Fujitsu PRIMEQUEST systems.
Red Hat Enterprise Linux for SAP HANA	Subscription Services are provided only on Supported Configuration certified by SAP to run SAP's HANA platform.
Red Hat Enterprise Linux for Hyperscale	Subscriptions Services are provided only on Supported Configuration in the form of chassis that contain and use at least five (5) SOCs.

<p>Red Hat Enterprise Linux for HPC Compute Nodes Red Hat Enterprise Linux for HPC Head Nodes</p>	<p>Supported only for high performance computing (“HPC”) that consists of a minimum set of four Systems that are networked and managed to perform compute-intensive workloads (“cluster”) with all of the following characteristics: (a) the cluster is used for compute-intensive distributed tasks sent to individual compute nodes within the cluster, (b) the cluster works as a single entity or system on specific tasks by performing compute-intensive operations on sets of data (Systems running a database, web application, load balancing or file serving clusters are not considered HPC nodes), (c) the number of management or head nodes does not exceed one quarter of the total number of nodes in the cluster and (d) all compute nodes in the cluster have the same Red Hat Enterprise Linux configuration. When Red Hat Enterprise Linux for HPC Head Nodes (an optional Software Subscription for management of compute nodes) is combined with Red Hat Enterprise Linux for HPC Compute Nodes Software Subscriptions for the compute nodes in the same cluster, the compute node inherits the Service Level (as set forth in Section 2.3(d) of the Product Appendix) of the Head Node.</p>
<p>Red Hat Enterprise Linux for Grid Nodes</p>	<p>Supported only in a compute Grid where a “Grid” means a minimum of fifty (50) Socketpairs that are networked and managed to solve workloads with the following characteristics: (a) all the nodes in the group of systems have the same Red Hat Enterprise Linux configuration, (b) the group of systems is running a single application or is controlled by a single job scheduler, (c) the workloads are sent to the group of systems by a job scheduler, (d) the workloads are maintained in a single distributed application across the nodes in the group of systems, (e) the workloads are noninteractive, and (f) the production outage of the complete group of systems is defined as 30% of the nodes in the group of systems being unable to run the workload. This Supported Use Case does not include nodes running databases, web applications, load balancing, or file services.</p>
<p>Red Hat Enterprise Linux with Smart Virtualization Red Hat Enterprise Linux for Power with Smart Virtualization</p>	<p>Supported on physical hardware solely to support virtual guests. Red Hat Enterprise Linux with Smart Virtualization is designed to run and manage virtual instances. The included Red Hat Enterprise Linux Software Subscription is supported solely when used as the host operating system with the Red Hat Enterprise Virtualization Hypervisor or when used as the guest operating system with virtual machines.</p>
<p>Add-Ons: High Availability, Load Balancer, Resilient Storage, Scalable File System, Extended Update Support, Extended Life Cycle Support, and Red Hat Insights</p>	<p>Supported only on active Standard and Premium level Red Hat Enterprise Linux Server Software Subscriptions.</p>

Software	Supported Use Case
<p>Red Hat Enterprise Linux Server used as a Virtual Guest</p>	<p>Virtual Guests may be pooled or shared on any other System that has a Software Subscription with the same (a) Support Level (Standard or Premium) and (b) number of Virtual Guests (1, 4 or unlimited Virtual Guests), provided that you do not exceed the total number of Virtual Guests associated with the underlying Software Subscriptions.</p>
<p>Red Hat Enterprise Linux for Disaster Recovery</p>	<p>Supported only on Systems or Physical Nodes used intermittently for disaster recovery purposes such as systems receiving periodic backups of data from production servers, provided those disaster recovery systems have the same Service Levels (as set forth in the Subscription Appendix, Section 2.3(d)) and configurations (e.g. Socket-pairs, Virtual Guests, Cores).</p>
<p>Red Hat Enterprise Linux for Retail</p>	<p>Supported only on Systems used at retail store locations with the same application stack excluding any data center deployments.</p>
<p>Red Hat Virtualization</p>	<p>Supported on physical hardware solely to support virtual guests. Red Hat Virtualization is designed to run and manage virtual instances and does not support user-space applications. Red Hat Virtualization may be used as a virtual desktop infrastructure solution, however, the Subscription does not come with software or support for the desktop operating system. You must purchase the operating system for each instance of a desktop or server separately.</p>
<p>Red Hat Enterprise Linux Desktop</p>	<p>Supported only on personal computing systems with a primary purpose of executing applications and/or services for a single user who is typically working from a directly connected keyboard and display. Red Hat Enterprise Linux Desktop does not include support for open source server applications (e.g., Apache, Samba, or NFS), testing and development purposes or to share data with peers. Each Red Hat Enterprise Linux Desktop Software Subscription includes one Smart Management Module, each to be used solely with a single Red Hat Enterprise Linux Desktop System.</p>
<p>Red Hat Enterprise Linux Workstation</p>	<p>Supported only on personal computing systems with a primary purpose of executing applications and/or services for a single user who is typically working from a directly connected keyboard and display. Each Red Hat Enterprise Linux Workstation Software Subscription includes one Smart Management Module to be used solely with a single Red Hat Enterprise Linux Workstation System.</p>



Red Hat OpenStack Platform (Physical Node)	Supported only when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for running Red Hat OpenStack Platform or when used as the guest operating system with virtual machines created and managed with Red Hat OpenStack Platform. Red Hat Enterprise Linux is currently the only supported operating system for Red Hat OpenStack Platform.
Red Hat OpenStack Platform (without guest OS)	Supported only when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for running Red Hat OpenStack Platform. Red Hat Enterprise Linux is currently the only supported operating system for Red Hat OpenStack Platform.
Red Hat OpenStack Platform for Atom	Supported only when used on a Physical Node that is a server running an Intel Atom processor. Red Hat Enterprise Linux is supported solely when used as the host operating system for running Red Hat OpenStack Platform. Red Hat Enterprise Linux is currently the only supported operating system for Red Hat OpenStack Platform.
Red Hat Enterprise Linux – Academic Server Red Hat Enterprise Linux Academic Desktop Red Hat Enterprise Linux Academic Workstation	Supported only for use by qualified academic institutions for teaching and learning purposes that consist of (a) faculty, staff, or student laptops or desktops for personal and academic use, (b) computer labs available to faculty, staff, and students for general education use, (c) classroom desktops, (d) laboratories for technical and research use and/or (e) laboratories for software development use. Red Hat Enterprise Linux – Academic Edition is not supported when used for any purpose other than as described in (a) – (e) above. Qualified academic institutions must be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a> ). <b>Note:</b> When you use Red Hat Enterprise Linux – Academic Edition for non-qualified academic purposes as described above, standard Red Hat Enterprise Linux subscription rates apply.
Red Hat Enterprise Linux Academic Site Subscription	Supported only for use by qualified academic institutions. Qualified academic institutions must (a) be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a> ) and (b) have at least one thousand (1,000) FTEs.
Red Hat Infrastructure for Academic Institutions - Site Subscription	Supported only for use by qualified academic institutions. Qualified academic institutions must (a) be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a> ) and (b) have at least one thousand (1,000) FTEs.
Red Hat Enterprise Linux Developer Suite	Supported only for Red Hat Enterprise Linux Developer Suite for Development Purposes.

Note 1: The Red Hat Enterprise Linux Server Use Case applies to the Red Hat Enterprise Linux Server variants in this Table 3.

**3.1 Red Hat Enterprise Linux Server – Atomic Host.** Red Hat Enterprise Linux Server may be deployed using RPM package manager or in Atomic Host mode. Atomic Host mode is an optional image based delivery, deployment and updating mechanism designed to support container based environments. Each deployment of Red Hat Enterprise Linux, regardless of the method, constitutes a Unit.

**3.2 Red Hat Enterprise Linux Desktop and Workstation Software Subscriptions**

Production Support for Red Hat Enterprise Linux Desktop subscriptions is limited to Support Contacts that are helpdesk support personnel and not end users.

**3.3 Red Hat Enterprise Linux Extended Life Cycle Support Software Subscriptions**

**Limited Maintenance and Production Support.** Red Hat Enterprise Linux ELS entitles you to receive Software Maintenance and Production Support for Severity 1 and 2 problems on x86 architectures, but only for a limited set of software components excluding those listed at [http://www.redhat.com/rhel/server/extended\\_lifecycle\\_support/exclusions/](http://www.redhat.com/rhel/server/extended_lifecycle_support/exclusions/). Red Hat Enterprise Linux ELS Software Maintenance is limited to those Software updates that Red Hat considers, in the exercise of its sole judgment, to be (a) critical impact security fixes independent of customer support requests and (b) selected urgent priority defect fixes that are available and qualified for a subset of the packages in specific major releases of Red Hat Enterprise Linux beyond the end of its regular production cycles. The Red Hat Enterprise Linux ELS stream will be maintained for an additional period of time immediately after the end-date of the regular production cycles of the relevant release as set forth at <https://access.redhat.com/support/policy/updates/errata/>. Red Hat will only provide one code base for Red Hat Enterprise Linux ELS and will not make functional enhancements to versions of Red Hat Enterprise Linux during the ELS cycle.

**Red Hat Enterprise Linux ELS Unsupported Components.** Red Hat Enterprise Linux ELS covers components supported prior to the end of the life cycle but does not cover the following (in addition to those noted in Section 3.3(a) above): (a) desktop applications, (b) Red Hat Cluster Suite, (c) content from the Extras channel (“Extras” is a set of content with a shorter life cycle) and (d) Independent layered or Add-on products such as Directory Server, Red Hat Satellite Server, or Scalable File System. Red Hat reserves the right to exclude additional packages.

**Red Hat Enterprise Linux ELS Content Delivery.** Red Hat Enterprise Linux ELS Software Maintenance is delivered through separate Red Hat Portal base channels for the specific release and corresponding child channels if applicable. You must install a modified redhat- release package downloaded from Red Hat Portal to subscribe a Unit to a Red Hat Enterprise Linux ELS channel.

**4. Red Hat Enterprise Linux Developer Suite**

Red Hat Enterprise Linux Developer Suite provides an open source development environment that consists of Red Hat Enterprise Linux with built-in development tools, certain Red Hat Enterprise Linux Add-Ons, Red Hat Enterprise Linux for Real Time, Smart Management and access to Software Maintenance, but no Support. If you use any of the Subscription Services or Software associated with Red Hat Enterprise Linux Developer Suite for Production Purposes, you agree to purchase the applicable number of Units of the applicable Software Subscription.

**5. Red Hat Enterprise Linux Developer Workstation and Red Hat Enterprise Linux Developer Support Subscriptions**

For each paid, active Red Hat Enterprise Developer Workstation and/or Red Hat Enterprise Linux Developer Support Subscription, Red Hat will provide you with (a) access to the supported versions of Red Hat Enterprise Linux and updates through a Red Hat Portal; and (b) assistance for: (i) installation, usage and configuration support, diagnosis of issues, and bug fixes for Red Hat Enterprise Linux, but only for issues related to your use of Red Hat Enterprise Linux for Development Purposes and (ii) advice concerning application architecture, application design, industry practices, tuning and application porting (collectively, "**Developer Support**").

The Red Hat Enterprise Linux Developer Workstation and Red Hat Enterprise Linux Developer Support Subscriptions do not include support for (a) modified software packages, (b) wholesale application debugging or (c) software included in the Red Hat Extras repository, supplementary channels, preview technologies or software obtained from community sites.

**5.1 Red Hat Enterprise Linux Developer Support Subscription Levels.** You may purchase Professional (two (2) business day response time) or Enterprise (four (4) Standard Business Hours response time) with web and phone support for an unlimited number of requests for Red Hat Enterprise Developer Workstation (one (1) System) and/or Red Hat Enterprise Developer Support Subscriptions (twenty-five (25) Systems).



**EXHIBIT 1.B  
RED HAT MIDDLEWARE, OPENSIFT & APPLICATION PLATFORM  
SOFTWARE SUBSCRIPTIONS**



This Exhibit 1.B. to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat JBoss Middleware, Red Hat OpenShift Container Platform and Red Hat Application Platform product lines.

**Unit of Measure and Purchasing Requirements for Red Hat JBoss Middleware Software Subscriptions.**

Table 1 sets forth the Units of measure, stacking capabilities and Supported Use Cases for various Red Hat JBoss Middleware Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in Table 1.

**Supplemental JBoss Software.** During the term of a JBoss Middleware Software Subscription, you will receive access to certain additional Red Hat JBoss Middleware Software (“**Supplemental JBoss Software**”). The Software Access and Software Maintenance for Supplemental JBoss Software is for Development Purposes only and for up to twenty-five (25) users for each sixteen (16) Core Band or Socket-pair Subscription that you purchase. If you use the Supplemental JBoss Software for Production Purposes or for more than twenty- five (25) users, you agree to purchase the appropriate Software Subscriptions based on each such Unit that you use.

**Supported JBoss Middleware Software.** Using Red Hat JBoss Middleware Software Subscriptions, (or any portion thereof) to support software obtained from community sites without purchasing a corresponding Software Subscription for such community software, is a material breach of the Agreement.

**Red Hat JBoss Core Services Collection.** “**Red Hat JBoss Core Services Collection**” is a collection of components that provide common functionality (such as monitoring and management, load balancing, process control and single sign-on) across a majority of the JBoss Middleware portfolio and is subject to the following terms:

You will receive entitlements for Red Hat JBoss Core Services Collection in a quantity equal to the number of Cores of Red Hat JBoss Middleware Software Subscriptions you purchased (for Software Subscriptions where the Unit is a Core).

You will receive entitlements to Red Hat JBoss Core Services Collection equal to sixteen (16) Cores for each Red Hat JBoss Middleware Software Subscription you purchase on a per socket-pair basis.

Red Hat JBoss Web Server and Red Hat JBoss Web Server Plus Subscriptions (which only include the management components of the Core Services Collection) do not include Red Hat JBoss Core Services Collection.

**JBoss Middleware for OpenShift Container Platform.** Red Hat JBoss Middleware Software Subscriptions in Table 1 include access to the Red Hat JBoss Middleware Software enabled for Red Hat OpenShift Container Platform (i.e. the Software described in Table 3 below (“**JBoss OpenShift Enabled Software**”). The JBoss OpenShift Enabled Software is supported when deployed on Red Hat OpenShift Container Platform, which requires a separate active paid Software Subscription. The capacity restrictions in Table 3 below apply to the Red Hat JBoss OpenShift Enabled Software. Red Hat JBoss Middleware Software Subscriptions listed in Table 1 are not configured for use with Red Hat OpenShift Container Platform.

Red Hat’s Open Source Assurance Program applies only to the JBoss Middleware Software Subscription that you purchased and does not apply to Supplemental JBoss Software or JBoss OpenShift Enabled Software that may be provided (for no additional fee) with the Red Hat JBoss Middleware Subscription that you purchased.

**Table 1**

Software Subscription	Unit of Measure	Stackable	Supported Use Case
Red Hat JBoss Enterprise Application Platform	Core Band	No	These Red Hat Products are only supported on Supported Configurations.
Red Hat JBoss Web Server			
Red Hat JBoss Web Server Plus			
Red Hat JBoss Data Grid			
Red Hat JBoss Fuse			
Red Hat JBoss AMQ			
Red Hat JBoss Data Virtualization			
Red Hat JBoss BPM Suite			
Red Hat JBoss BRMS			
Red Hat JBoss Middleware Add On-Extended Life Cycle Support			

**2. Unit of Measure and Purchasing Requirements for Red Hat OpenShift Container Platform**

Table 2 sets forth the Units of measure, capacity limitations, stacking capabilities and Supported Use Cases for various Red Hat OpenShift Container Platform Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in Table 2. Red Hat OpenShift Container Platform for RHEL and Container Platform for RHEL are layered products and require a separate paid and active Software Subscription to Red Hat Enterprise Linux for Virtual Datacenters with matching Support Levels for each Unit that deploys, installs, uses or executes such layered products.

**Table 2**

Software Subscription	Unit of Measure	Capacity		Stackable	Supported Use Case
		Socket(s)	Virtual Nodes		
Red Hat OpenShift Container Platform	Virtual Guest	2 Cores	One Virtual Guest	Cores: Yes Virtual Guest: Yes	These Red Hat Products will only be supported when used as a platform as a service on Supported Configurations. Running other applications and/or programs of any type on the operating environment can have a negative impact on the function and/or performance.
Red Hat OpenShift Container Platform	Physical Node	Socket-pair	Unlimited Virtual Guests	Physical Node: Yes Virtual Guest: N/A	
Red Hat OpenShift Container Platform for RHEL	Physical Node	Socket-pair	Unlimited Virtual Guests	Physical Node: Yes Virtual Guest: N/A	
Container Platform for RHEL	Physical Node	Socket-pair	Unlimited Virtual Guests	Physical Node: Yes Virtual Guest: N/A	

**3. Unit of Measure and Purchasing Requirements for Red Hat JBoss Middleware for OpenShift Container Platform**

Table 3 sets forth the Units of measure, capacity limitations, and stacking capabilities for Red Hat JBoss Middleware for OpenShift Container Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in Table 3. Red Hat OpenShift Container Platform Subscriptions are sold separately.

**Table 3**

Software Subscription	Unit of Measure	Capacity	Stackable	Supported Use Case
Red Hat JBoss Middleware for OpenShift Container Platform	Cores or Physical Nodes	Minimum of 16 Virtual Guests on 2 Cores or for Physical Node a Socket-pair	Cores: Yes Physical Nodes: Yes	These Red Hat Products are only supported on Supported Configurations, on OpenShift Container Platform, or on a combination of the two so long as you have a minimum of sixteen (16) Cores (for Virtual Guest) or a Socket-pair (for Physical Node).
Red Hat JBoss Enterprise Application Platform for OpenShift Container Platform				
Red Hat JBoss Data Grid for OpenShift Container Platform				
Red Hat JBoss Fuse for OpenShift Container Platform				
Red Hat JBoss AMQ for OpenShift Container Platform				
Red Hat JBoss Data Virtualization for OpenShift Container Platform				
Red Hat JBoss BPM Suite for OpenShift Container Platform				
Red Hat JBoss BRMS for OpenShift Container Platform				

**4. Unit of Measure and Purchasing Requirements for Application Platform Software Subscriptions**

Tables 4.1 and 4.2 set forth the Units of measure, capacity limitations, and Supported Use Cases for various Red Hat Application Software Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in these Tables.

**4.1 Red Hat 3Scale API Management Subscriptions.** For purposes of calculating the total number of Units that you must purchase, you must include the number of API Calls generated in both Production Purposes and Development Purposes and during traffic spikes.

**Table 4.1**

Software Subscription	Unit of Measure	Capacity	Supported Use Case
Red Hat 3Scale API Management Platform On Premise	API Calls per day	Up to 2,000,000	The Subscription is supported (a) when used on a server, (b) on Supported Configurations, and (c) when used for the purpose of API Management. The OpenShift Container Platform Subscription provided with the Subscription Services is supported only in connection with use of the Red Hat 3Scale API Management Platform, On Premise Subscription.
		Up to 5,000,000	
		Up to 20,000,000	
		Up to 50,000,000	

**4.2 Red Hat Mobile Application Platform.** In connection with your Red Hat Mobile Application Platform Subscription Service, you will have access to an optional online service called the Red Hat Mobile Application Build Farm. Use of this optional online service is subject to the terms and conditions set forth at [www.redhat.com/licenses/buildfarm](http://www.redhat.com/licenses/buildfarm).

**Table 4.2**

Subscription Service	Unit Description		Supported Use Case
Red Hat Mobile Application Platform, Business to Employee, Unlimited	Employee User*	Unlimited Applications***	Support is provided for Software (a) when used on a System that is a server, (b) on platforms that are Supported Configurations and (c) that is within the supported Red Hat Mobile Application Platform Life Cycle. The OpenShift Container Platform Subscription that may be provided with the Subscription Services is supported only in connection with use of the Red Hat Mobile Application Platform
Red Hat Mobile Application Platform, Business to Employee, Limited	Employee User*	Up to 5 Applications***	
Red Hat Mobile Application Platform, Business to Customer, Limited	Customer User**	Up to 5 Applications***	
Red Hat Mobile Application Platform, Business to Customer, Single Use Application	Customer User**	One Application***	

Subscription Service	Unit Description		Supported Use Case
			Subscription.

\*Note: The number of "Employee Users" is equal to the number of unique Employee Users who are able to access an Application(s), regardless of whether the Employee User(s) actually access or the frequency with which they access the Application(s).

\*\*Note: The number of "Customer Users" is equal to the number of unique monthly active Customer Users who actually access an Application(s) in a calendar month regardless of the frequency with which they access the Application(s).

\*\*\*Note: For purposes of counting "Applications": (1) an Application is comprised of a project of various components dedicated to a single purpose regardless of the number of mobile operating systems on which it is provisioned or the number of other applications to which it may be connected and (2) only live production Applications are counted.



**EXHIBIT 1.C  
RED HAT STORAGE SUBSCRIPTIONS**

This Exhibit 1.C. to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Gluster Storage, Red Hat Ceph Storage product lines and related offerings. References to “Red Hat Storage Subscriptions” refer to both product lines.

**1. Unit of Measure and Purchasing Requirements.**

Table 1 sets forth the support level, Unit of measure, stacking capabilities and Supported Use Case for various Red Hat Storage Subscriptions. You must purchase the appropriate number and type of these Software Subscriptions based on the Unit and other parameters described in Table 1 below. In addition, the following terms apply:

Red Hat Gluster Storage includes management tools to manage one or more instances of Red Hat Gluster Storage.

Red Hat Ceph Storage Software Subscriptions are priced based on the total amount of storage capacity. Each Red Hat Ceph Storage Software Subscription supports up to a certain number of Physical Nodes or Virtual Nodes. Should the number of Physical or Virtual Nodes be consumed before the Storage Band capacity is reached, you may upgrade to the next Storage Band to receive additional Physical or Virtual Nodes.

**Table 1**

Software Subscription	Support Level	Unit of Measure	Stackable	Supported Use Case
Red Hat Gluster Storage	Standard or Premium	Physical Node or Storage Band	Yes	Red Hat Storage is intended to be used as a storage system and will be supported only when used as a storage node. These Subscriptions are not supported on non-server hardware such as desktops or workstations and are intended for use on a dedicated Physical Node; running other applications and/or programs of any type on the Physical Node can have a negative impact on the function and/or performance of the Subscription. Each Subscription includes one Software Subscription to Red Hat Enterprise Linux Server and the Scalable File System Add-on, which are supported solely in connection with the use of the respective Red Hat Storage Subscription. Red Hat Gluster Storage Module does not include a Red Hat Enterprise Linux Software Subscription which must be purchased separately.
Red Hat Gluster Storage Module	Standard or Premium		Yes	
Red Hat Ceph Storage	Standard or Premium		Yes	
Red Hat Gluster Storage Pre-Production	Standard		No	
Red Hat Ceph Storage Pre-Production	Standard		No	
Red Hat Gluster Storage for Public Cloud	Standard or Premium	Virtual Node	Yes	Red Hat Gluster Storage for Public Cloud is intended to be used as a storage system and will be supported only when used as a storage node. When running in Amazon Web Services, an EC2 M1 Large dedicated instance is required in order to be supported. Running other applications and/or programs of any type on the same instance can have a negative impact on the function and/or performance of the Red Hat Gluster Storage for Public Cloud and is not a Supported Use Case.
Red Hat Gluster Storage for Red Hat OpenStack Platform	Standard or Premium	Physical Node	No	This Subscription is intended to be used as a storage system with Red Hat OpenStack Platform and will be supported only when used as a storage node. It is not supported on non-server hardware such as desktops or workstations and is intended for use on a dedicated Physical Node; running other applications and/or programs of any type on the Physical Node can have a negative impact on the function and/or performance.
Red Hat Hyperconverged Infrastructure	Standard or Premium	Physical Node	No	Red Hat Hyperconverged Infrastructure is only supported when used as an integrated compute plus storage infrastructure. These Software Subscriptions are supported on server hardware but not on desktops or workstations. Support is provided for groups of 3 Nodes, which is the minimal deployment.

Container Storage Add On for OpenShift Container Platform	Standard or Premium	Physical Node or Virtual Node	No	This Subscription is only supported when used as a (a) storage system with Red Hat OpenShift Container Platform, (b) container inside OpenShift Container Platform or (c) storage node outside OpenShift Container Platform. The Subscription is supported on server hardware but not on desktops or workstations and is intended for use on a dedicated Physical Node or as containers inside OpenShift Container Platform clusters.
Red Hat Gluster Storage – Academic Edition Red Hat Ceph Storage – Academic Edition	Standard or Premium	FTE	n/a	Red Hat Storage – Academic Edition Subscriptions are supported for use by qualified academic institutions for teaching and learning purposes that consist of (a) faculty, staff, or student laptops or desktops for personal and academic use, (b) computer labs available to faculty, staff, and students for general education use, (c) classroom desktops, (d) laboratories for technical and research use and/or (e) laboratories for software development use. Red Hat Storage – Academic Edition is not supported when used for any purpose other than as described in (a) – (e) above. Qualified academic institutions must be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a> ). <b>Note:</b> When you use Red Hat Enterprise Linux – Academic Edition for non-qualified academic purposes as described above, standard Red Hat Enterprise Linux subscription rates apply.

**\*\*Pre-Production Purposes** consists of assistance with issues relating to the installation, configuration, administrative tasks and basic trouble-shooting of the Red Hat Ceph Storage or Red Hat Gluster Storage Software components prior to deployment in a production environment, but it does not include architectural design reviews or advice, advanced configuration topics, performance analysis or reviews.

**RED HAT INTEGRATED SOLUTIONS**

This Exhibit 1.D. to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Integrated Solutions product lines.

**1. Unit of Measure and Purchasing Requirements.** Table 1 sets forth the Unit of measure and Supported Use Cases for Red Hat Cloud Infrastructure Subscriptions. You must purchase the appropriate number and type of these Software Subscriptions based on the Unit and Supported Use Cases described in Table 1 below. A Red Hat Cloud Infrastructure Software Subscription comes with a Red Hat CloudForms Software Subscription but if you are managing any virtual machines with the Red Hat Cloud Infrastructure Subscription that are not running on the same Physical Node as the active Red Hat CloudForms Software Subscription, you must purchase additional Red Hat CloudForms Subscriptions for such use.

**Table 1**

Software Subscription	Unit	Supported Use Cases
Red Hat Cloud Infrastructure	System	Red Hat only provides Subscription Services for the Software when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for Red Hat OpenStack Platform or when used as the guest operating system on virtual machines created and managed with this Subscription. Red Hat Virtualization is supported solely when used to run and manage virtual guests for this Subscription. Red Hat Enterprise Linux is the only supported operating system for Red Hat OpenStack Platform. If the Red Hat Cloud Infrastructure product contains an entitlement for Satellite, Satellite is only supported for managing Physical Nodes within the Red Hat Cloud Infrastructure private cloud.
Red Hat Cloud Infrastructure (without guest OS)	System	Red Hat only provides Subscription Services for the Software when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for Red Hat OpenStack Platform. Red Hat Virtualization is supported solely when used to run and manage virtual guests for this Subscription. Red Hat Enterprise Linux is the only supported operating system for Red Hat OpenStack Platform. If the Red Hat Cloud Infrastructure product contains an entitlement for Satellite, Satellite is only supported for managing Physical Nodes within the Red Hat Cloud Infrastructure private cloud.

Red Hat Cloud Suite	System	Red Hat only provides Subscription Services for the Software when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for Red Hat Cloud Suite or when used as the guest operating system on virtual machines created and managed with this Subscription. Red Hat Enterprise Linux is the only supported operating system for Red Hat Cloud Suite.
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**MANAGEMENT SUBSCRIPTIONS**

This Exhibit 1.E. to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Satellite, Red Hat CloudForms, Red Hat Ansible product lines and related offerings.

**1. Red Hat Satellite, Red Hat Capsule and Smart Management**

**1.1 Units of Measure and Purchasing Requirements.** You must purchase the appropriate number and type of Red Hat Management Subscriptions based on the Unit and Supported Use Cases described in Table 1 below.

**Table 1**

Software	Unit	Supported Use Case
Red Hat Satellite, Red Hat Satellite Capsule and Red Hat Satellite Proxy	System	Red Hat only provides Subscription Services for Red Hat Satellite, Red Hat Satellite Capsule or Red Hat Satellite Proxy when used on a System or Physical Node that is a server.
Red Hat Satellite Capsule Red Hat Satellite Proxy	System	Red Hat only provides Subscription Services for Red Hat Satellite Capsule and Red Hat Satellite Proxy when deployed with Red Hat Satellite.
Red Hat Smart Management	Module	Red Hat Smart Management entitlements are required for each Unit of Red Hat Enterprise Linux that is managed by Red Hat Satellite Capsule, Red Hat Satellite Proxy and/or Red Hat Satellite. Red Hat Smart Management entitlements may be used with Red Hat Portal directly.
Red Hat Satellite Starter Pack	Module	Red Hat does not provide Subscription Services for Red Hat Satellite Starter Pack if at the time of renewal, more than 50 Units (whether Systems, Physical Nodes and/or Virtual Nodes) are managed.

**2. Red Hat CloudForms**

**2.1 Units of Measure and Purchasing Requirements.** Table 2 sets forth the Unit of measure, stacking capabilities and Supported Use Cases for various Red Hat Management Subscriptions. You must purchase the appropriate number and type of these Subscriptions based on the Unit and other parameters described in Table 2. For Virtual Nodes managed by CloudForms in a CloudForms enabled public cloud, you need to purchase Units equal to either (at your option), (a) the actual number of Units or (b) the average daily maximum Virtual Nodes managed by CloudForms in the previous 365 days. If 365 days of usage history is not available, you may use the average usage history period that is available. If managing Virtual Nodes on a public cloud, you must confirm that a specific public cloud is Red Hat CloudForms enabled.

**Table 2**

Software Subscription	Unit of Measure	Capacity		Stackable	Use Case
		Socket(s)	Managed Nodes		
Red Hat CloudForms	Managed Node: (Physical Node or Virtual Node)	Socket-pair for each Physical Node or Sixteen (16) Virtual Nodes		Physical Node: Yes Virtual Node: Yes	Red Hat only provides Subscription Services for Red Hat CloudForms Software when deployed on (a) a System or Physical Node that is a server and (b) Virtual Nodes if they are running on-premise or on a Red Hat CloudForms enabled public cloud. Red Hat Enterprise Linux is the only supported operating system for Red Hat CloudForms Subscriptions.

**3. Red Hat Ansible Tower and Red Hat Ansible Engine Subscriptions**

The Red Hat Ansible Tower offering consists of the Red Hat branded graphical application and REST API, designed for use with (i) Red Hat Ansible Engine or Ansible Project Software. Red Hat Ansible Tower does not include the Ansible Project. “**Ansible Engine**” means the installed package, which consists of the connection plugins, inventory plugins, fact plugins, Ansible-playbook language and directives, core modules, and other miscellaneous core or plugins provided in the package. “**Ansible Project Software**” means the community version of the Ansible deployment and configuration management engine.

Red Hat Ansible Engine Subscriptions provide access to additional software components (Certified Components and Community Components) with varying levels or no support as set forth at <https://access.redhat.com/articles/3166901> (“**Ansible Support Matrix**”). “**Certified Components**” means third party components listed on the Ansible Support Matrix and maintained by such third party. “**Community Components**” means components (e.g., modules, plugins...etc.) that are created and submitted by community members. Red Hat will provide limited assistance for Certified Components solely to the extent required to run Red Hat Ansible



Engine and/or Red Hat Ansible Tower Software but otherwise does not provide Support or Software Maintenance for Certified Components or Community Components.

**3.1 Units of Measure and Purchasing Requirements.** Table 3 sets forth the Unit of measure and Supported Use Cases for Red Hat Ansible Engine and Red Hat Ansible Tower Software. You must purchase the appropriate number and type of these Subscriptions based on the Unit and other parameters described in Table 3 below.

**Table 3**

Software Subscription	Unit	Supported Use Case
Red Hat Ansible Tower	Managed Node	Red Hat only provides Subscription Services for this Software (a) when used on a system that is a server, (b) on platforms that are Supported Platforms (set forth at:
Software Subscription	Unit	Supported Use Case
		<a href="http://docs.ansible.com/ansible-tower/latest/html/quickinstall/prepare.html#prerequisites">http://docs.ansible.com/ansible-tower/latest/html/quickinstall/prepare.html#prerequisites</a> <a href="http://docs.ansible.com/ansible-tower/latest/html/quickinstall/prepare.html">http://docs.ansible.com/ansible-tower/latest/html/quickinstall/prepare.html</a> - prerequisites and requirements) and (c) that is within the supported Ansible Tower Life Cycle. Support of Red Hat Ansible Tower Software does not include Subscription Services for Ansible Engine or Ansible Project Software. Red Hat may provide assistance with Ansible Project Software, solely to the extent required to run Red Hat Ansible Tower Software.
Red Hat Ansible Engine	Managed Node	Red Hat Subscriptions Services for this Software is limited to Support for the Ansible Engine and components that make-up the Ansible Engine. Red Hat provides Subscription Services for Software (a) on systems that are Supported Platforms, (b) modules identified via Section 4 above, and (c) that is within the supported Red Hat Ansible Engine Life Cycle. The Support of Ansible Engine does not include the creation, maintenance, support, or services related to customer playbooks, and/or roles or Ansible Project Software.

**3.2 Data Analytics.** Red Hat Ansible Tower Software versions 2.4 or later may collect and transmit usability data (including information identifying the source of that data) to Red Hat. Red Hat intends to use the data to enhance future releases of the Red Hat Ansible Tower Software and help streamline customer experience and success. Usability data includes information such as dashboard items clicked in the Tower Software, amount of time spent on individual pages and paths taken throughout the Red Hat Ansible Tower Software. Usability data is collected and transmitted to Red Hat via a javascript file that is downloaded to a customer’s web-browser. The collection and transmission of such usability data is optional and you may (a) completely opt-out by editing the Red Hat Ansible Tower Software configuration and restarting the Red Hat Ansible Tower Software, or (b) choose between two opt-in scenarios: (i) “anonymous mode” that will provide usability data to Red Hat without any information identifying the source of that data, or (ii) “detail mode” that will provide usability data with the customer name to Red Hat. For Red Hat Ansible Tower Software (versions 2.4 or later) you may opt-out from usability data collection and transmission by following the directions found at: [http://docs.ansible.com/ansible-tower/latest/html/administration/usability\\_data\\_collection.html](http://docs.ansible.com/ansible-tower/latest/html/administration/usability_data_collection.html)

**3.3 Red Hat Ansible Tower and Red Hat Ansible Engine Software Life Cycle.** The supported life cycle for Red Hat Ansible Engine and Red Hat Ansible Tower Software are set forth at: [https://access.redhat.com/support/policy/update\\_policies](https://access.redhat.com/support/policy/update_policies).

**3.4 Red Hat Ansible Engine Networking Add-On**

Red Hat Ansible Engine Networking Add-On provides Support to networking modules listed on the Ansible Support Matrix. You are required to purchase a Unit of Red Hat Ansible Engine Networking Add-On for each Red Hat Ansible Engine Software Subscription (regardless of the number of Managed Nodes). Red Hat Ansible Engine Networking Add-On Subscription is only supported on Red Hat Ansible Engine Subscriptions with Premium support.

4.

Software	Unit	Supported Use Case
Red Hat Insights	System, Physical Node or Virtual Node	Red Hat Insights provides predictive analytics and remediation steps for Red Hat Enterprise Linux 6.4 and later versions, Red Hat OpenStack® Platform 7 and later versions, Red Hat Virtualization 3.6 and later versions and Red Hat OpenShift Container Platform.

**Red Hat Insights.** Red Hat Insights is an optional Add-On hosted service designed to help you proactively identify and resolve technical issues in Red Hat Enterprise Linux and Red Hat Cloud Infrastructure environments. **Table 4**

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**5. Red Hat Directory Server Software Subscriptions**

Table 5 sets forth the Unit of measure and Supported Use Cases for Red Hat Directory Server. You must purchase the appropriate number and type of these Subscriptions based on the Unit and other parameters described in Table 5 below. The Service Level(s) for Directory Server is determined by the Service Level of the underlying Red Hat Enterprise Linux Subscription for the System, Physical Node or Virtual Node running Directory Server (for example, if the Service Level for the underlying Red Hat Enterprise Linux Software Subscription is Premium, then Directory Server would receive Premium level support).

**Table 5**

Software	Unit	Supported Use Case
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Red Hat Directory Server	System	A Replica Red Hat Directory Server must have an active Software Subscription for a Master Red Hat Directory Server and Red Hat Directory Server must be installed on a physical server with a standard Red Hat Enterprise Linux Software Subscription (not a Red Hat Enterprise Linux Desktop, Red Hat Enterprise Linux for HPC or Red Hat Enterprise Linux Workstation Software Subscription). “ <b>Replica</b> ” means a second instance of a Directory Server configured as a slave to the first instance of Directory Server. Red Hat Enterprise Linux Server is supported solely for the purpose of running Red Hat Directory Server Software. “ <b>Master</b> ” means the authoritative Red Hat Directory Server from which Replica Red Hat Directory Servers derive Red Hat Directory Server information.
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**EXHIBIT 1.F  
SUPPORT SUBSCRIPTIONS**



This Exhibit 1.F. to Product Appendix 1 contains terms that describe the parameters and govern your use of TAM Services.

**1. Technical Account Management (“TAM”) Service**

The TAM Service is a Support Subscription that you may purchase in addition to your underlying Standard or Premium Software Subscription in order to receive enhanced Support. The TAM Service does not include support for (1) Self-support Software Subscriptions, (2) any Unit of Software (such as a System, Physical Node, Core, etc.) for which you do not have an active paid Software Subscription or (3) any Software Subscription for which support is provided by a Business Partner. When you purchase a TAM Service, you receive access to a Red Hat support engineer to provide you with (a) access to Red Hat’s technology and development plans, including beta testing and bug/feature escalation, (b) weekly review calls, (c) up to two (2) on-site technical review visits per year, (d) up to four Support Contacts, (e) quarterly service performance metrics via the TAM electronic dashboard, and (f) a subscription to Red Hat’s TAM monthly newsletter.

Support Subscription	Unit Description
TAM Service TAM Extension	<b>Point of Contact:</b> a Red Hat associate whom you are authorized to contact to request support for a particular team, geography or Red Hat product line.

**1.1 TAM Service Coverage.** Each TAM Service Subscription will be limited to certain parameters (that is, a region, a customer team and/or a product line) and will be listed in the Order Form and, if not listed, the TAM parameters will be established upon the initiation of the TAM Service.

**Regions:** North America, Latin America, EMEA, Asia-Pacific (excluding Japan, China and India), China, India or Japan.

**Customer Team:** The customer team supported by the TAM, such as your development team, your system administration team, your support team, etc.

**Red Hat Product Line:** The supported Red Hat product line, such as the Red Hat Enterprise Linux, Red Hat JBoss Middleware, Red Hat Mobile Application Platform, OpenShift, Red Hat Storage, Ansible or Red Hat Cloud product lines.

**TAM Service Level.** The TAM Service is offered during local Red Hat Support Standard Business Hours as set forth at <https://access.redhat.com/support/contact/technicalSupport.html> (based on the physical location of the TAM representative). If you have purchased Premium Red Hat Software Subscriptions, you will receive 24x7 Support for Severity 1 and 2 issues through Red Hat’s 24x7 Production Support teams and not necessarily from your assigned TAM representative. Red Hat’s 24x7 Production Support team will be responsible for addressing issues, but will consult with your TAM representative, as your TAM representative is available, for advice and to gain a better understanding of your infrastructure, environment and specific needs. If you have purchased multiple TAM Service Subscriptions in each of Red Hat’s primary Support Regions, you will receive the benefit of extended TAM Service coverage hours, but you should follow the same process and contact the Red Hat 24x7 support numbers at <https://access.redhat.com/support/contact/technicalSupport.html>.

**TAM Extension Service.** The TAM Extension Service is an extension of a Red Hat Enterprise Linux TAM Service to provide additional technical knowledge such as SAP implementations on Red Hat Enterprise Linux. The TAM Extension Service requires a separate active and paid standard TAM Service Subscription.

**Relativity ODA LLC****EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Relativity ODA LLC, (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
  
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

### RELATIVITYONE END USER LICENSE AGREEMENT

Relativity is a software manufacturer and subcontractor to various prime contractors (each a "Prime Contractor"). Pursuant to a purchase order ("Order") authorized by governmental authority (the "Customer"), Relativity grants Prime Contractor a limited, non-exclusive license ("License") for the sole purpose of transferring such License to the Customer on a non-exclusive, non-sub-sublicensable, nontransferable, basis and as described in each Order. The Order, the corresponding buyer's guide attached to, or otherwise provided by, the Prime Contractor in connection with any Order (the "Buyer's Guide"), and this End User License Agreement ("EULA") shall be referred to collectively as the "Agreement". Capitalized terms used herein shall have the meanings ascribed to them in this EULA, any Appendix attached hereto, or the Buyer's Guide.

1. **SaaS Software License, Customer Data.** The License includes permission to import, process, review, use, copy, store, and transmit Customer Data to, in and from the products set forth in the applicable Order (collectively, the "SaaS Software" or "RelativityOne"), subject to the additional terms set forth in the Buyer's Guide, by Customer or any other parties whom Customer enables to use the SaaS Software, subject to the provisions hereof. "Customer Data" means all documents, files and other data that Customer or its end users, import into the SaaS Software, and all work product results of all work that Customer and such parties perform respecting such data in the SaaS Software; provided, however, Customer Data does not include system and data usage metrics and billing information, or any systems operations, performance or security information.
2. **SaaS Software Warranties and Support Services.**

a. Warranties. Relativity warrants to Customer that: (i) Relativity will provision and configure the RelativityOne Infrastructure to make the SaaS Software "Available" as further described in Appendix 1; (ii) Customer shall be entitled to claim service level credits from the Prime Contractor for Unexcused Downtime under Appendix 1; (iii) the SaaS Software will perform substantially in conformance with Relativity's Documentation which Relativity will always make available on Relativity's website and is currently available via this link: <https://help.relativity.com>; (iv) Relativity will, without additional charge, provide the maintenance and support services set forth in Appendix 2 ("Support Services"); and (v) Relativity will maintain its Authorization to Operate (ATO) status via the Federal Risk and Authorization Management Program (FedRAMP) with a minimum Impact Level of Moderate, including public trust security clearance for any Relativity personnel providing Support Services under the Agreement or any Relativity personnel who would otherwise have access to Customer Data.

b. Clarifications and Limitations. The warranties and Support Services herein do not apply to the extent of any non-conformance or problems arising from: (i) abuse, misapplication, or other user errors by Customer (or by any person to whom Customer has provided access to RelativityOne); or (ii) any combination or operation of the SaaS Software with other software, components, or equipment not provided by Relativity. Relativity does not warrant that: (1) the functions or the results of using the SaaS Software will be suitable for Customer's intended use (beyond the purposes described in the Documentation); (2) the operation of the SaaS Software will be timely, uninterrupted or error-free (although Customer will be entitled to claim service level credits for Unexcused Downtime under Appendix 1 and Relativity will provide Support Services under Appendix 2); or (3) the SaaS Software will be secure from unauthorized access or hacking or free of viruses or malware that could not reasonably be prevented or detected by the security programs employed by Relativity. Customer shall use its own choice of commercial virus and malware protection software programs on Customer Data before sending or exporting such Customer Data to Relativity or the SaaS Software. The express warranties made herein are in lieu of, and to the exclusion of, all other warranties, conditions or representations of any kind, express or implied, statutory or otherwise, relating to the SaaS Software or Support Services. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, RELATIVITY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES OR OTHER OBLIGATIONS ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, AND ALL SUCH WARRANTIES, CONDITIONS AND REPRESENTATIONS ARE EXCLUDED FROM THE AGREEMENT AND WAIVED TO THE FULLEST EXTENT NOT PROHIBITED BY LAW. THIS CLAUSE DOES NOT LIMIT OR

DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, CUSTOMER RESERVES ALL RIGHTS AND REMEDIES UNDER THE AGREEMENT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

- 3. Proprietary Rights.** Relativity and its third-party vendors own and shall continue to own the entire title and interest in and to all intellectual property rights and other proprietary rights related to the SaaS Software and all Derivative Works therefrom, the Documentation, and any know-how, methodologies or other materials Relativity provides. Nothing in the License, or the negotiation or performance thereof, shall be construed as transferring to Customer or any other party any intellectual property or other proprietary rights of Relativity or its third-party vendors. The License is not intended to, and does not, convey any license, by implication, estoppel or otherwise, under any patent, copyright or other intellectual property not expressly granted hereunder. All rights not expressly granted to Customer are reserved by Relativity. Customer shall retain and not cover-up or obscure any trademark, trade name, copyright notice or other proprietary notice on the SaaS Software or Documentation. The License is limited to accessing and using the SaaS Software on a hosted basis through Relativity and does not include source code nor permission to download the SaaS Software in any format. Relativity may use any suggestions, ideas, enhancement requests, feedback, or recommendations relating to Relativity or the SaaS Software for purposes of modifying the SaaS Software, creating Derivative Works, or creating new products (all of which Relativity will own exclusively without any obligation to pay any royalty or other compensation); however, Relativity's use of such information shall be at Relativity's sole risk without any representations, warranties or liability of Customer. All SaaS Software and documentation that are provided to Customer are provided with restricted rights as contained herein. Customer MAY NOT in any fashion modify, combine with other software products, reproduce and/or distribute, other than as specifically permitted by these terms, any SaaS Software or documentation. The SaaS Software and documentation are "commercial items" as that term is defined in 48 C.F.R. 2.101 (October 1995) consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (September 1995). Consistent with 48 C.F.R. 12.212, the Software and documentation are licensed hereunder (i) only as a commercial item, and (ii) with only those rights as are granted pursuant to the terms and conditions herein.
- 4. License Restrictions.** Except as expressly permitted in the Agreement, Customer shall not, directly or indirectly (through any other party), while the Order is in effect or thereafter, engage or permit any other person or party to copy, reverse engineer, decompile, disassemble, modify, translate, or make any attempt to discover the source code of, or create Derivative Works from, the SaaS Software. "Derivative Works" means every translation, portation, modification, correction, addition, extension, upgrade, improvement, compilation, abridgment or other form in which an existing work may be recast, transformed or adapted. Derivative Works also includes derivative technology and any materials derived from existing trade secret material, including materials protected by copyright, patent and/or trade secret, and all documentation and software of Relativity and its vendors. If at any time, Customer or anyone else makes any modification to the SaaS Software, whether authorized or unauthorized, such modification shall be considered Derivative Works and owned by Relativity or its applicable third-party vendor.
- 5. Limitations of Liabilities.** IN NO EVENT WILL RELATIVITY, ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR OTHER DAMAGES OR LOSSES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, DATA, GOODWILL OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE SAAS SOFTWARE, PROBLEMS WITH THE SAAS SOFTWARE, OR ANY BREACH OF RELATIVITY'S WARRANTIES OR OBLIGATIONS, EVEN IF SUCH DAMAGES OR LOSSES WERE FORESEEABLE OR RELATIVITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; CUSTOMER WAIVES, RELEASES AND AGREES NOT TO ASSERT ALL SUCH CLAIMS. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, RELATIVITY'S AGGREGATE TOTAL LIABILITY UNDER ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY (INCLUDING BUT NOT LIMITED TO STATUTORY, TORT, STRICT LIABILITY, WARRANTY, INDEMNITY, CONTRIBUTION, AND CONTRACT THEORIES) WILL BE LIMITED TO: (a) TERMINATION OF THE LICENSE IF RELATIVITY FAILS TO CURE A DEFECT OR OTHER PROBLEM WITH THE SAAS SOFTWARE OR RELATIVITY'S SUPPORT SERVICES WITHIN THIRTY (30) DAYS AFTER RECEIVING WRITTEN NOTICE OF THE PROBLEM AND REASONABLE COOPERATION BY CUSTOMER IN RELATIVITY'S EFFORTS TO CURE; AND (b) IN SUCH CASE OF TERMINATION, A REFUND OF THE FEES PAID BY CUSTOMER FOR THE PERIOD DURING WHICH CUSTOMER WAS UNABLE TO USE THE SAAS SOFTWARE BEFORE THE TERMINATION OCCURRED AND ANY FEES PREPAID FOR ANY PERIOD FOLLOWING THE TERMINATION. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN FAR 52.212-4(O) AND FAR 52.212-4(P). IN THE EVENT OF A BREACH OF WARRANTY, CUSTOMER MAY RESERVE ALL RIGHTS AND REMEDIES UNDER THE AGREEMENT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.
- 6. Termination.** If Relativity fails to cure (a) a breach of any representation or warranty provided in Section 2, or (b) any breach of its obligations to provide Support Services as required under this EULA, in each case within ten (10) days after Customer delivers a notice describing such breach in reasonable detail, Customer may terminate the Agreement in whole (or in part with respect to any SaaS Software product or Service which is the



subject of the failure and for which there are separate fees under the Agreement) by delivering a termination notice to Relativity within the next thirty (30) days. Customer may also terminate the Agreement in accordance with FAR 52.212-4. Following termination of the License: (i) Customer will discontinue using the SaaS Software; and (ii) Customer will export or otherwise delete all Customer Data in the applicable SaaS Software. If Customer fails to export or delete any Customer Data by the time required hereunder, Relativity reserves the right to delete the Customer Data from the SaaS Software. In the event of a breach of warranty, Customer may reserve all rights and remedies under the Agreement, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. 7101-7109.

## 7. Miscellaneous Terms

- a. Publicity, Trademarks and Restrictions. While the License is in effect, either party ("Listing Party") may include the name, logo and trademark of the other party ("Other Party") to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71 on the Listing Party's website alongside an attributed quote (if provided by the Other Party), and in other publicly disseminated marketing materials; provided: (i) the Other Party's name, logo and trademark shall only appear alongside the names, logos and trademarks of other customers or vendors; (ii) the Listing Party will comply with all of the Other Party's guidelines and requirements for such matters; and (iii) the Listing Party will remove the Other Party's name, logo and trademark promptly after the Other Party's written request which provides a reasonable basis for objecting to continued use. For the avoidance of doubt, Listing Party's identification of the Other Party's name, logo and trademark, the identification and value of the contract, and the goods/services procured under the contract by the Other Party shall be considered to be in compliance with GSAR 552.20371.
- b. Anonymized Aggregated Data. Notwithstanding anything to the contrary in the Agreement, but subject to the restrictions in this paragraph: (i) as between Relativity and Customer, Relativity shall solely own Aggregated Data and all intellectual property rights therein; and (ii) accordingly, Relativity may collect, reproduce, distribute, modify, and otherwise use and publish Aggregated Data, including any data and other information derived therefrom. The term "Aggregated Data" herein means data and other information relating to or arising from the performance or use of the SaaS Software by customers and their authorized users that Relativity compiles or derives in an anonymized and aggregated manner, including statistics, metrics and analytic data; provided, Aggregated Data shall never contain any information by which any person would reasonably be able to identify the Confidential Information of Customer, Customer, or any other person or party.
- c. Interpretation; Language. Capitalized terms not defined in the body of this EULA shall have the meanings set forth in the Order, the Buyer's Guide, or in the Appendices attached hereto. Under no circumstances will the "Uniform Computer Information Transactions Act," the American Law Institute's "Principles of the Law of Software Contracts," act as model laws or as adopted in any jurisdiction, or the United Nations Convention on Contracts for the International Sale of Goods, or similar acts, laws and conventions have any bearing on the interpretation or enforcement of this Agreement and the parties hereby elect to opt out of all such acts, laws and conventions.

**APPENDIX 1: RELATIVITYONE AVAILABILITY AND CREDITS**

1. **Introduction.** The separate RelativityOne General Support Terms (“General Support Terms”) set forth in Appendix 2, apply to support issues respecting the SaaS Software and RelativityOne infrastructure (“Infrastructure”). For example, the Severity Levels and Response Times in the General Support Terms also apply to Infrastructure support issues. In addition, this Appendix 1 establishes credits to be paid to Customer for downtime caused by problems with the RelativityOne Infrastructure as described below.
  
2. **Definitions.**
  - a. “Availability SLA” means ninety-nine and seventy-five hundredths percent (99.75%) of the total number of minutes in a given calendar month.
  
  - b. “Availability Deficiency” means the number of minutes when the SaaS Software is not Available in any given calendar month, excluding Excused Downtime.
  
  - c. “Available” means Customer can log into and access the core Relativity Review functionality at the RelativityOne production data center’s Internet connection points.
  
  - d. “Cloud Vendor” means the cloud vendor Relativity uses to provide the infrastructure environment to run the SaaS Software.
  
  - e. “Excused Downtime” means twenty-five hundredths of a percent (0.25%) of the total number of minutes in a given calendar month, and any other time when RelativityOne is not Available due to Relativity’s planned service maintenance time of up to sixteen (16) hours per month or due to emergencies or other circumstances beyond Relativity’s reasonable control, including without limitation force majeure, general Internet outages, actions of Customer or any third-party providing services or software to Customer, failure of Customer’s infrastructure or connectivity to the Internet or other issues with Customer’s Internet connectivity to the SaaS Software, other telecommunications or computer failures and delays, network intrusions, or denial-of-service or other criminal attacks.
  
3. **Credits.** If Customer’s RelativityOne production instance (“RelOne Instance”) has an Availability SLA Deficiency for a given calendar month, Customer’s remedy for such failure is to request that the Prime Contractor issue a service credit to Customer equal to the dollar value of the number of minutes of the Availability SLA Deficiency (determined at a per minute rate for Customer’s use of the affected SaaS Software for Customer’s applicable RelOne Instance). For clarity, Customer will be entitled to service credits for an Availability Deficiency regardless of whether the unavailability is caused by Relativity or the Cloud Vendor. If there are problems with infrastructure that the Cloud Vendor must handle, Relativity will use commercially reasonable efforts to obtain responses and resolutions from Cloud Vendor. Nothing contained herein limits Customer’s rights and remedies under the Agreement, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. 7101-7109.
  
4. **Credit Requests.** Customer must request all service credits in writing to Prime Contractor within thirty (30) days of the end of the period in which the Availability SLA was not met and the credits applied, identifying the support requests relating to such period. Failure to make a timely request will constitute a waiver to the extent permitted Federal Acquisition Regulations Part 33, and the Contract Disputes Act, 41 U.S.C. 7101-7109.
  
5. **Planned Maintenance Time.** Currently, planned service maintenance for the RelOne Instance is scheduled for two (2) hours weekly (“Weekly Maintenance”) and eight (8) hours monthly (“Monthly Maintenance”) as follows:

**Planned Maintenance Schedule**

Weekly Maintenance	Monthly Maintenance
22:00 - 24:00	22:00 - 06:00
Saturday	Saturday-Sunday
CDT / CST	CDT / CST

Except in emergencies or other non-standard circumstances, Relativity will keep planned maintenance schedules on weekend nights and will provide reasonable notice of any changes (which may be an email to Customer’s regular point of contact respecting support for the RelOne Instance). Customer may request a deferral of planned maintenance in accordance with the procedures set forth in Relativity’s Documentation.

**6. RTO and RPO.** In the event of prolonged RelativityOne downtime, Relativity will declare a disaster and implement disaster recovery procedures. During disaster recovery, Customer continues to accrue downtime service credits as applicable under the above provisions, and Relativity endeavors to achieve: (i) the recovery



time objective (“RTO”) in the schedule below measured from the end of the disaster occurrence (i.e. the moment from when Relativity’s access to the system is restored) until Availability of RelativityOne is restored; and (ii) the recovery point objective (“RPO”) that is no more than the stated number of hours prior to the disaster in the schedule below.

EVENT TYPE	RTO	R 'O BASED ON DATA LOCATION		
		SQL	File Server and Analytics Indexes	Other
Data Restore	24 hours	1 hour	24 hours	4 hours
Partial DR	24 hours	1 hour	24 hours	4 hours
Full DR	72 hours	1 hour	24 hours	4 hours

“Data Restore” means only Customer’s RelOne Instance is down in a data center.

“Partial DR” means one or more RelOne Instances are down in a data center and Relativity is able to restore Customer’s RelOne Instance without requiring Relativity’s cloud vendor to assist in restoring the applicable RelOne Instances.

“Full DR” means Relativity’s cloud vendor declares a data center disaster (or in any event, Relativity declares a disaster because more than a majority of the RelOne Instances in the data center are down, regardless of whether Relativity’s cloud vendor declares a disaster).

**APPENDIX 2: RELATIVITYONE GENERAL SUPPORT TERMS**

**1. Free Support Services.** There are no additional fees for the services that are included under this Appendix 2 (“Support Services”) while the Order is in effect.

**2. Customer Admins.** Customer may designate up to five (5) Relativity Support Administrators (each an “Admin”) as points of contact for support. Customer may update the contacts as needed via email to [support@relativity.com](mailto:support@relativity.com). Customer will use reasonable efforts to escalate support issues within Admins and to minimize duplicative support requests. Customer may designate additional Admins, provided that once Customer exceeds ten (10) Admins in total, at least one (1) out of every ten (10) Admins must be a full-time Customer employee who has passed the Relativity Certified Administrator exam (i.e., one at 11 Admins, two at 21 Admins, and so forth).

**3. Support Services.**

**3.1 Relativity Customer Support Team**

The Relativity customer support team (“Customer Support Team”) will provide technical support for the SaaS Software, subject to the exclusions set forth below, via telephone and email 24 hours per day, 7 days per week. The telephone numbers for the Customer Support Team are located at <https://www.relativity.com/support/>. Alternatively, Customer may send support requests via email to [support@relativity.com](mailto:support@relativity.com). Requests for support are entered into the Customer Support Team’s tracking system, which typically logs the requestor’s name, email address and phone number. Customer will receive a case number from the Customer Support Team for each support request which Customer should reference when requesting any update on the status.

**3.2 Covered Support**

Technical support includes providing technical services to Customer to enable users to log into and access the core functionality of the SaaS Software, assisting Customer in diagnosing Errors in the SaaS Software, and providing Corrections of diagnosed Errors. “Error” means an error, defect, or malfunction in the SaaS Software or a mistake in the Documentation that prevents one or more material functions of the SaaS Software or Customer’s use thereof from functioning in substantial conformance to the Documentation. “Correction” means a change to a function of the SaaS Software or to the Documentation that reestablishes or maintains substantial conformity between the SaaS Software and the Documentation.

**3.3 Certain Exclusions**

Relativity is not responsible for and is under no obligation to resolve any issues, errors, or other events impacting the SaaS Software or its availability to Customer which are caused by Customer or Customer's third-party products or services. At its sole discretion and for additional fees, Relativity may assist Customer and its third-party providers in diagnosing and resolving such issues or errors.

### 3.4 Severity Levels and Response Times.

Relativity will assign a severity level to issues identified in each support request as they are received. Relativity may, upon further review, reclassify the severity level at its reasonable discretion. Initial responses may be provided by phone or email and will contain the assigned severity level for the request and initial questions to begin troubleshooting or a potential resolution.

- Severity 1 – Catastrophic: System is not operational and no work can take place in the production environment. Catastrophic severity level will be assigned when a production failure results in a debilitating impact to business operations. The Customer Support Team will provide an initial response to a Catastrophic issue report within one (1) hour, dedicate staff to work on the issue until resolved, and provide continual status updates until the issue

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is resolved. Recipients of all updates to Catastrophic issue reports will include the requestor, as well as the appropriate Customer account and support leads.

- Severity 2 – Critical: System is operational, but at least one mission critical function or one entire case is not operational. Critical severity level will be assigned when a critical service interruption or degradation is encountered which creates difficulty but not total impairment in business operations. The Customer Support Team will provide an initial response to a Critical issue report within two (2) hours, work continually on the issue during normal business hours until resolved, and provide continual status updates until the issue is resolved. Recipients of all updates to Critical issue reports will include the requestor, as well as the appropriate Customer account and support leads.
- Severity 3 – Serious: System is operational, but at least one non-mission critical function is not operational. Serious severity level will be assigned when some functionality is impaired, but overall Customer operations continue to function. The Customer Support Team will provide an initial response to a Serious issue report within four (4) hours, work on the issue during normal business hours, and provide daily status updates until the issue is resolved.
- Severity 4 – Minor: All functions are operational; the nature of request is cosmetic, a product enhancement, or a general question. Minor severity level will be assigned to all cosmetic defects, enhancement requests regarding the product, or general questions. The Customer Support Team will provide an initial response to a Minor issue within 24 hours (if a response is required), address the issue during normal business hours, and provide status updates if and as necessary.

### 3.5 Escalating Issues.

If Customer believes the severity level assigned to an issue is insufficient, Customer may request that the severity level be upgraded. If Customer believes that a Catastrophic issue is not being adequately addressed, Customer may contact Relativity's VP, Global Support, or their designee, at +1 (816) 604-9393.

#### 4. Additional Support.

At its discretion, the Customer Support Team may make additional support services available upon request for additional fees, including:

- Training and certifications
- Customer requested enhancements and features
- Troubleshooting issues with the environment not associated with the SaaS Software
  - Troubleshooting issues with data not formatted per Relativity's standard load file specifications
  - Data migration services.



RIVERBED TECHNOLOGY, INC.  
501 SECOND STREET, SUITE 410  
SAN FRANCISCO, CA 94107

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Riverbed Technology, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**RIVERBED TECHNOLOGY, INC.**

**RIVERBED TECHNOLOGY, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

These terms and conditions ("Attachment A") shall apply to the sale or license of Products or Services from Contractor to the customer on the applicable Order ("Ordering Activity"). This Attachment A constitutes the agreement between Contractor and Ordering Activity with respect to such Products and Services, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior discussions, understandings or representations between the parties. "Products" are Riverbed's currently generally available products, including hardware, software and documentation, listed on Contractor's GSA price list. "Services" means Riverbed's currently generally available maintenance and support services and any professional services listed on Contractor's GSA price list or that are otherwise sold to Ordering Activity hereunder. "Software" means machine readable software provided by Riverbed, whether incorporated into or provided for use in or with a hardware Product or provided as a Product separate from any hardware (whether initially, as part of maintenance or support or otherwise), and any related documentation.

Ordering Activity will purchase from Contractor the Products and/or Services by submitting a written purchase order to Contractor (an "Order"). The terms and conditions of this Attachment A will apply to the Order and supersede any different or additional terms on Ordering Activity's purchase orders. The Products and Services are not for resale.

Contractor warrants to Ordering Activity that the Services will be provided in a professional manner in accordance with generally accepted industry standards. Contractor warrants to Ordering Activity that the Products, upon original shipment by Contractor, will conform in all material respects to the applicable published specifications for such Products for a period of one (1) year with respect to hardware and ninety (90) days with respect to Software from the date of original shipment by Contractor of the nonconforming Product (but not replacements). Products obtained from Contractor that do not comply with the warranty and are returned by Ordering Activity to Contractor during the warranty period (and for which a Contractor through Riverbed RMA has been issued) will be repaired or replaced at Contractor's option. Contractor will bear the cost of freight and insurance for return of goods to Ordering Activity. If Contractor cannot, or determines that it is not practical to, repair or replace the returned Product, the price paid by Ordering Activity therefor will be credited to Ordering Activity. Contractor MAKES NO OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS OR ANY SERVICES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS. The above warranty does not extend to any Product that is modified or altered, is not maintained to Riverbed's maintenance recommendations, has its serial number removed or altered or is treated with abuse, negligence or other improper treatment (including, without limitation, use outside the recommended environment). Ordering Activity's remedy with respect to any nonconformity, deficiency, warranty or defect with respect to the Products and/or Services is as stated above.

Any Software is not sold, but rather is licensed pursuant to the applicable Riverbed license agreement, Exhibit A herein, that governs use of the Software solely for Ordering Activity's internal use in or with that Product strictly in accordance with the accompanying documentation and any other use restrictions applicable for that Product. Such license is non-exclusive, non-transferable, non-sublicensable and does not include the right to (and Ordering Activity will not) modify, reverse engineer (except to the extent applicable law prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software, or use the software or Product for the benefit of any third party. If a Product is provided to any unit or agency of the United States Government ("U.S. Government"), the following provisions shall apply: All software and accompanying documentation are deemed to be commercial, including computer databases, related documentation, technical data and manuals as defined in FAR 2.101. Therefore, pursuant to FAR 12.212 and DFARS 227.7202, any use, modification, reproduction, release, performance, display or disclosure of the software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this Attachment A and shall be prohibited except to the extent expressly permitted by the terms herein.

Subject to Ordering Activity's compliance with all terms of this Attachment A and payment of Contractor's support and maintenance fees for the level of Riverbed support purchased (i.e., Silver Gold, or Platinum Level), Contractor through Riverbed will provide its then standard corresponding support and maintenance Services, the current version of which is located under Exhibit C herein ("Support Services"). Contractor through Riverbed will not provide, and Ordering Activity will not request, any Support Services for any Product with respect to which a Support contract is not then in effect and with respect to which Support fees have not been timely and fully paid to Contractor. Ordering Activity will not escalate calls to Contractor through Riverbed for Support Services nor install updates, upgrades, bug fixes or the like on any Product with respect to which a Support contract is not then in effect and with respect to which Support fees have not been timely and fully paid to Contractor. Contractor obligations under any Support plan with respect to any Product is subject to payment of applicable Support fees. The purchase or renewal of Support for any Product purchased by Ordering Activity requires the purchase or renewal of Support for all Products purchased by Ordering Activity. Riverbed retains ownership of any intellectual property resulting from Services. Ordering Activity may renew Support by submitting an Order for renewal of that Support. Ordering Activity may purchase annual Support for a Product that provides for one (1) to five (5) years of support subject to Riverbed's end of sale policy at [www.riverbed.com/supportpolicy](http://www.riverbed.com/supportpolicy). If Ordering Activity purchases Support for a Product that provides for more than one year of support, the support period in excess of one year may be cancelled by Ordering Activity at any time without cause by providing written notice to Contractor, and any unused, prepaid amount (reduced by the amount of any additional discount provided because Ordering Activity purchased more than one (1) year of Support) will be refunded to Ordering Activity within 45 days of Contractor's receipt of such written notice. For example, if Support is cancelled after one year of a three year period, Contractor will refund two years of prepaid, unearned support. All obligations of Contractor to provide support services will be terminated on receipt of the cancellation notice.

#### **EXHIBIT A – LICENSE AND PRODUCT WARRANTY TERMS**

**LICENSE GRANT.** Subject to the terms of this Attachment A and provided Ordering Activity has paid the applicable fees, Contractor hereby grants Ordering Activity a limited, personal, non-sublicensable, non-transferable, nonexclusive license to use or access the Product solely for Ordering Activity's internal business use in accordance with the Riverbed documentation that accompanies it and any other use restrictions applicable for that Product, including without limitation any additional use restrictions set forth as Exhibit B herein. Except as expressly set forth in Exhibit B herein, Ordering Activity may use each licensed copy of the Software only as embedded in or for execution on a specific unit (or replacement thereof) of Riverbed hardware ("Hardware") owned or leased by Ordering Activity (including any units of replacement Hardware provided as part of warranty or support services). Ordering Activity may copy configurations of the Software solely for backup purposes. Without granting any additional licenses hereunder, Ordering Activity may authorize its contractors and outsourcers to use or operate the Products solely on Ordering Activity's behalf and provided Ordering Activity obtains such third parties' binding consent to abide by the terms of this Attachment A and provided Ordering Activity shall be responsible for such parties' use and compliance. Such parties are not, and shall not be deemed to be, third party beneficiaries under this Attachment A for any reason. See Exhibit B for any additional Product or service specific use rights or restrictions or limitations.

**LICENSE RESTRICTIONS.** Except as permitted by this Attachment A, Ordering Activity shall not, nor authorize anyone else to, directly or indirectly: (i) copy, modify, or distribute the Product; (ii) reverse engineer, disassemble, decompile or attempt to discover the source code or structure, sequence and organization of the Product (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited); (iii) rent, lease, or use the Product for timesharing or service bureau purposes for third parties, or otherwise use the Product on behalf of any third party; or (iv) publish or disclose any information or results relating to performance, performance comparisons or other "benchmarking" activities. Notwithstanding anything to the contrary herein, Ordering Activity may utilize the Software pursuant to a leasing arrangement whereby the Ordering Activity leases the Product from a third party. Ordering Activity shall maintain and not remove or obscure any proprietary notices on the Product. As between the parties, title of and all ownership rights in the intellectual property rights in and to the Software, and any copies or portions thereof, shall remain in Riverbed and its suppliers or licensors. The Software is protected by the copyright laws of the United States and international copyright treaties. This Attachment A does not give Ordering Activity any rights not expressly granted herein.



GOVERNMENT USE. If Ordering Activity is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Product and documentation qualify as "commercial items" "commercial computer software" and "commercial computer software documentation." In accordance with such provisions and as such any use of the Product or documentation by the Government shall be governed solely by the terms of this Attachment A. All other use is prohibited.

SUPPORT AND UPGRADES. This Attachment A does not entitle Ordering Activity to any support, upgrades, patches, enhancements or fixes for the Product (collectively, "Support"). Ordering Activity must make separate arrangements for Support and pay any fees associated with such Support. Any software upgrades, patches, enhancements or fixes provided as part of Support for the Software that may be made available by Contractor through Riverbed shall become part of the Software and subject to this Attachment A. The terms of Riverbed's standard support services are located under Exhibit C herein.

### **Product Warranty Statement**

STANDARD WARRANTY; WARRANTY DISCLAIMER. Contractor warrants only to Ordering Activity that the Products, when shipped by Contractor, will conform in all material respects to the applicable published specifications for such Products. Such warranty does not apply to units that have been damaged, mishandled, mistreated or used or maintained or stored other than in conformity with such specifications and Contractor's instructions. EXCEPT FOR BODILY INJURY, ORDERING ACTIVITY'S REMEDY FOR ANY BREACH OF THE FOREGOING WARRANTY SHALL BE THE REPAIR OR REPLACEMENT OF OR (AT CONTRACTOR'S OPTION OR IF REPAIR OR REPLACEMENT IS IMPRACTICAL) REFUND OF THE FEES RECEIVED BY CONTRACTOR FOR RETURNED NON-CONFORMING UNITS OF PRODUCT FOR WHICH FULL DOCUMENTATION AND PROOF OF NON-CONFORMITY IS PROVIDED TO CONTRACTOR (AND FOR WHICH A SUPPLIER RMA HAS BEEN ISSUED) WITHIN ONE YEAR IN THE CASE OF HARDWARE COMPONENT, OR NINETY DAYS IN THE CASE OF SOFTWARE (WHETHER OR NOT EMBEDDED), AFTER THE ORIGINAL NON-CONFORMING UNITS (BUT NOT REPLACEMENTS) ARE SHIPPED BY CONTRACTOR. SUCH REFUND SHALL BE PAID TO THE ORDERING ACTIVITY MAKING THE WARRANTY CLAIM. EXCEPT FOR THE FOREGOING, CONTRACTOR PROVIDES THE PRODUCT "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS ATTACHMENT A. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO ORDERING ACTIVITY. THE PRODUCT IS NOT DESIGNED FOR USE IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION OF THE PRODUCT WOULD RESULT IN FORESEEABLE RISK OF INJURY OR DEATH TO ANY PERSON. THIS INCLUDES OPERATION OF NUCLEAR FACILITIES, LIFE-SUPPORT SYSTEMS, AIRCRAFT NAVIGATION OR EMERGENCY COMMUNICATION SYSTEMS AND AIR TRAFFIC CONTROL.

### **EXHIBIT B – ADDITIONAL USE RIGHTS**

The following additional terms apply to any Riverbed products designated as a "spare" or "cold spare":

If a Riverbed product is being provided as a "spare" or "cold spare" as identified at the time of sale or on Contractor's GSA price list ("Spare"), then such Spare is provided solely as a replacement unit and is not supplied for independent productive use. Ordering Activity agrees to use any Spare solely for replacement of a fully licensed product that is no longer operational and has been disconnected from Ordering Activity's network and power supply. Ordering Activity must contact Riverbed Support to transfer any applicable support service plans from the fully licensed product to the Spare. Upon replacement, the Spare shall become a fully licensed product subject to this Attachment A terms, whereupon the product removed from production shall become a Spare. Any use by Ordering Activity contrary to the foregoing is prohibited.

The following additional terms apply to any Riverbed products designated as a "lab unit" or "lab product" or "development license":

If a Riverbed product is being provided as a "lab unit", "lab product" or "development license" as identified at the time of sale or on Contractor's GSA price list ("Lab Unit"), then such Lab Unit is provided solely for Ordering Activity's internal lab testing and not in a production environment. Lab Units may not be resold or transferred or used for the benefit of any third party. Any use by Ordering Activity contrary to the foregoing is prohibited.

Steelhead Mobile client software:

Steelhead Mobile client software may be copied onto Ordering Activity's laptops or other personal computers, provided that the total number of concurrent users does not exceed the number of concurrent user licenses acquired by Ordering Activity.

CMC-VE software:

Each instance of CMC-VE software licensed by Ordering Activity may be (a) installed on a single server or cluster of servers operating as a single entity running a supported operating system or computing platform and used in production to manage Riverbed devices, and (b) installed on a single backup server or cluster of backup servers operating as a single entity running a supported operating system or computing platform and used only if the primary server or server cluster specified in (a) above fails. Only one copy of a single CMC-VE instance may be running or used at any time. Ordering Activity may use CMC-VE software instance(s) purchased by Ordering Activity to manage Riverbed devices only up to the total number of CMC-VE management licenses purchased by Ordering Activity, and CMC-VE management licenses can only be used with a single CMC-VE instance at a time. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes. For Ordering Activities who are using CMC-VE software to manage Riverbed devices used to deliver a managed or outsourced service to its end customers, such CMC-VE software may not be resold, transferred, sublicensed or distributed to the end customer, and each instance of such CMC-VE software may be used to manage Riverbed devices for only one end customer.

Virtual Steelhead software:

Each instance of Virtual Steelhead software licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"). Only one copy of a single Virtual Steelhead instance may be running or used at any time. Provided that the Virtual Steelhead software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Virtual Steelhead software from the



designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Virtual Steelhead software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use each Virtual Steelhead instance(s) purchased by Ordering Activity to optimize the amount of bandwidth and number of TCP connections licensed by Ordering Activity for that instance. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

AirPcap, Pilot PE, Cascade Pilot, WiFi Pilot:

Each instance of Software may be installed on a single server or device and only one copy of a single software instance may be running or used at any time.

Whitewater:

Each instance of Virtual Whitewater software licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"). Only one copy of a single Virtual Whitewater instance may be running or used at any time. Provided that the Virtual Whitewater software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Virtual Whitewater software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Virtual Whitewater software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use the Whitewater appliance and Virtual Whitewater instance(s) purchased by Ordering Activity to transmit data to and from designated service provider cloud environments up to the number of terabytes licensed by Ordering Activity from Riverbed. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

Cloud Steelhead:

Each instance of Cloud Steelhead software licensed by Ordering Activity (a) may be installed in either a designated service provider cloud environment or at a Ordering Activity site, and may be used for the term of the license purchased by Ordering Activity to optimize the amount of bandwidth and number of TCP connections licensed by Ordering Activity for that instance, (b) includes access to Riverbed's Cloud Portal and use of Riverbed's Discovery Agent software, which may be used for the term of the license purchased by Ordering Activity, and (c) includes Riverbed's then standard software maintenance and support services, as described in Exhibit C herein, for the term of the license purchased by Ordering Activity. With respect to any instances of Cloud Steelhead software installed at a Ordering Activity site, such Cloud Steelhead software may only be used to optimize traffic between such Ordering Activity and the Ordering Activity's designated service provider cloud environment and cannot be used solely to optimize traffic on such Ordering Activity's network.

Stingray Aptimizer Software:

Each instance of the Stingray Aptimizer software licensed by Ordering Activity may be installed on a single server that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"). Use of each instance(s) purchased by Ordering Activity is limited to the type and scope of use licensed by Ordering Activity as specified in the applicable Product description as follows: (a) SharePoint Aptimizer software may be used to accelerate SharePoint, for the Ordering Activity's internal intranet on a per seat basis, or the Ordering Activity's external facing website up to a designed number of unique visitors per day, (b) Website Aptimizer software may be used to accelerate designated Ordering Activity websites, up to a designed number of unique visitors per day or on a per server basis. Provided that the software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

Stingray Traffic Manager and Application Firewall Software:

Each instance of Stingray Traffic Manager or Application Firewall software (including software and virtual appliances) licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"). Only one copy of a single Stingray instance may be running or used at any time. Provided that the Stingray software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Stingray software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Stingray software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use each Stingray instance(s) purchased by Ordering Activity to manage, secure and accelerate application traffic in the manner licensed by Ordering Activity for that instance. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

Stingray Traffic Manager Software, Term License:

Each instance of Stingray Traffic Manager software licensed by Ordering Activity on a term basis may be installed in either a designated service provider cloud environment or at a Ordering Activity site installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the "Licensed Server"), and may be used for the term of the license purchased by Ordering Activity to manage, secure and accelerate application traffic in the manner licensed by Ordering Activity for that instance. Each such instance includes Riverbed's then standard software maintenance and support services, as described in Exhibit C herein, for the term of the license purchased by Ordering Activity. Only one copy of a single Stingray instance may be running or used at any time. Provided that the Stingray software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Stingray software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Stingray software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed.

## **EXHIBIT C – MAINTENANCE AND SUPPORT SERVICES**

### Software Maintenance

**Software Updates.** Ordering Activity shall be entitled to receive, and Contractor through Riverbed shall provide Ordering Activity e-mail notification of, all maintenance releases, updates and upgrades to Product software as Riverbed, in its sole discretion, makes them generally available without additional charge to Riverbed's Support Services Ordering Activities. The contents of all maintenance releases and updates shall be decided upon by Riverbed in its sole discretion. Ordering Activity may obtain updates by downloading the updates from Riverbed's Support care website (support.riverbed.com). Product software maintenance releases and updates may only be installed on Products that are covered by then current support and maintenance services. Any such software provided by Riverbed shall be subject to this Attachment A.

**Supported Software.** Contractor through Riverbed supports the current major release of Product software, plus certain prior versions of software in accordance Riverbed's support policy available at: [www.riverbed.com/supportpolicy](http://www.riverbed.com/supportpolicy).

**Error Corrections.** Contractor through Riverbed shall use its reasonable efforts to correct any reproducible programming error in the Product software attributable to Riverbed with a level of effort commensurate with the severity of the error, provided that Riverbed shall have no obligation to correct all errors in the Product software. Upon identification of any programming error, Ordering Activity shall notify Riverbed of such error and shall provide Riverbed with enough information to reproduce the error. Riverbed shall only be responsible for correcting errors that are (1) attributable to Riverbed and (2) reproducible by Riverbed on unmodified Product software as delivered to Ordering Activity.

**Hardware Replacement**

**Return Material Authorization.** Before returning any Product, Ordering Activity must contact Riverbed Support and obtain a Return Material Authorization (RMA) number by calling the designated support telephone number or logging a request via the Support website. If Riverbed Support verifies that the Product is likely to be defective, Contractor through Riverbed will issue Ordering Activity an RMA number, which allows Ordering Activity to return the defective unit to Riverbed for repair or replacement.

**Shipping.** Contractor through Riverbed cannot accept any Product without an RMA number on the package. Ordering Activity must deliver the defective Product along with the RMA number to Riverbed. If Ordering Activity ships the Product on their own account, Ordering Activity assumes the risk of damage or loss in transit. Ordering Activity must use the original container (or the equivalent); Ordering Activity will be responsible for any damage in transit if Ordering Activity fails to use adequate packaging. Riverbed will provide Ordering Activity with the shipping address at the time of RMA issuance. Responsibility for shipping costs, both return shipping from the Customer to Riverbed and Riverbed's shipment of replacement Products to Ordering Activity, shall be as set forth in Table 1 below.

Table 1: Service Contract Shipping Cost Responsibilities

Region		Silver		Gold		Gold Plus		Platinum		Dead on Arrival	
		Riverbed	Customer	Riverbed	Customer	Riverbed	Customer	Riverbed	Customer	Riverbed	Customer
North America	To Customer	x		x		X		x		x	
	To Riverbed		x	x		X		x		x	
Latin America	To Customer	x		x		X		x		x	
	To Riverbed		x		x		X	x		x	
EU States	To Customer	X		x		X		x		x	
	To Riverbed		x	x		X		x		x	
Non EU States, MEA	To Customer	x		x		X		x		x	
	To Riverbed		x		x		X	x		x	
APJ	To Customer	x		x		X		x		x	
	To Riverbed		x		x		X	x		x	

**Repair or Replace.** Contractor through Riverbed may replace or repair the Product with either a new or reconditioned Product.

**Dead on Arrival Products:** For RMAs that are issued by Contractor through Riverbed within the first thirty (30) days after original Product shipment, Riverbed will ship a new (not refurbished) advance replacement unit via express delivery; such Product may be shipped from Riverbed's manufacturing facilities. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm PST USA by Riverbed will be shipped for next business day delivery, provided that special configurations may require additional time before a new replacement unit can be shipped; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.

**Silver-level Ordering Activities:** For RMAs that are issued by Contractor through Riverbed within the first ninety (90) days after original Product shipment, Riverbed will ship an advance replacement unit via express delivery. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations. For RMAs that are issued by Riverbed after the first ninety (90) days after original Product shipment, at Ordering Activity's request, Riverbed will ship a replacement unit within ten (10) business days via ground delivery once Riverbed confirms receipt of the defective unit at the shipping address designated by Riverbed at the time of RMA issuance.

**Gold-level Ordering Activities:** For RMAs that are issued by Contractor through Riverbed, Riverbed will ship an advance replacement unit via express delivery. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.

**Gold-Plus-level Ordering Activities:** For RMAs that are issued by Contractor through Riverbed, at Ordering Activity's request, Riverbed will deliver replacement Product to the applicable installation location within 4 hours, 24 hours per day, 7 days per week, provided that the delivery time may be greater than 4 hours based on the location, and 4 hour coverage may only be available during business hours in some locations. Please contact Riverbed to determine if Gold Plus support is available in your area, and if it is, the applicable Product delivery time. Riverbed will use reasonable endeavors to establish service spares close to the installation location within thirty (30) days of (a) shipment of the applicable Product, (b) notice from Ordering Activity that the installation location has moved, or (c) upgrade by Ordering Activity from Silver or Gold to Gold Plus support; Product delivery times may be impacted until such service spares are established. Gold Plus may not be available at the new location or the delivery time may be impacted.

**Platinum-level Ordering Activities:** For RMAs that are issued by Contractor through Riverbed, at Ordering Activity's request, Riverbed will either (a) ship an advance replacement unit via express delivery, or (b) provide on-site Product repair or replacement within 4 hours, provided that the on-site response time may be greater than 4 hours based on the location. Please contact Riverbed to determine if on-site support is available in your area, and if it is, the applicable on-site response time. Riverbed will use reasonable endeavors to establish service spares and trained local field engineers close to the installation location within thirty (30) days of (a) shipment of the applicable Product, (b) notice from Ordering Activity that the installation location has moved, or (c) upgrade by Customer from Silver or Gold to Platinum support; on-site response times may be impacted until such service spares and local field engineers are established. If the Product is shipped to Ordering Activity for next business day delivery, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.

#### Ordering Activity Support

**Support.** Contractor through Riverbed will provide Ordering Activity with technical support by the following methods: World Wide Web, email and telephone. Such support will include:

Assistance related to questions on the installation and operational use of the Product;  
Assistance in identifying and verifying the causes of suspected errors in the Product; and  
Providing workarounds for identified Product errors or malfunctions, where reasonably available to Riverbed.

Ordering Activity will designate the contact information of two named individuals to act as support liaisons to utilize the support and will ensure that such persons will be properly trained in the operation and usage of the Product; Riverbed will not be obligated to provide support or maintenance services to any other individuals. Ordering Activity agrees to provide reasonable access to all necessary personnel to answer questions about any problems reported by Ordering Activity regarding the Product. Ordering Activity also agrees to promptly implement all updates and error corrections provided by Riverbed under this Attachment A. Upon request, Ordering Activity will provide access for on-line diagnostics of the Product during error diagnosis.

**Support Web Site.** Contractor through Riverbed may provide Ordering Activity with an authorized account to access Riverbed's Support website.

Riverbed may make available the following services through its Support web site:

Product software releases that can be downloaded by Ordering Activity;  
Documentation for Product;  
Issuing trouble reports identified by Ordering Activity through Riverbed's Support website;  
Issuing suggestions for enhancements through Riverbed's Support website.

**Telephone Support.** Telephone support shall include Direct Hotline Support. Ordering Activity may contact Support directly 7x24 via telephone at 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381.

**Special Services.** Ordering Activity may request maintenance and support services not specifically provided for in this Attachment A.

#### Product Obsolescence

Riverbed's End of Sale and End of Support policy is available at: [www.riverbed.com/supportpolicy](http://www.riverbed.com/supportpolicy).

#### Support Service Levels

A problem is defined as a situation where the software does not function as intended. The detail below defines priority levels of each problem type. Contractor through Riverbed will use commercially reasonable efforts to provide the service level responses included below.

##### Priority 1

**Definition:** A catastrophic problem that severely impacts the Ordering Activity's ability to conduct business. This may mean that the Ordering Activity's systems and/or Product are down or not functioning and no procedural workaround exists.

**Riverbed Response:** Contractor through Riverbed to respond within one (1) hour. The objective is to get the Ordering Activity back on line within 24 hours and to downgrade the problem severity accordingly. Efforts to isolate, diagnose, and deliver a work-around or repair shall be continuous. When the severity level has been changed to "Priority 2" or "Priority 3," the appropriate guidelines should be followed.

##### Priority 2

**Definition:** A high-impact problem in which the Ordering Activity's operation is disrupted but there is capacity to remain productive and maintain necessary business-level operations. The problem may require a fix be installed on the Ordering Activity's system prior to the next planned commercial release of the software.

**Riverbed Response:** Contractor through Riverbed to respond within four (4) hours following receipt of a call. Efforts to isolate, diagnose, and deliver a work-around or repair problems shall be continuous during business hours.

##### Priority 3

**Definition:** A medium-to-low impact problem that involves partial loss of non-critical functionality. The problem impairs some operations but allows the Ordering Activity to continue to function. This may be a minor issue with limited loss or no loss of functionality or impact to the Ordering Activity's operation.

**Riverbed Response:** Contractor through Riverbed to respond within eight (8) hours following the receipt of a call. Action should be appropriate to the nature of the escalation.

##### Priority 4

**Definition:** Minor problems: all other errors. This includes documentation errors. The inconvenience is slight and can be tolerated.

**Riverbed Response:** Contractor through Riverbed to respond within the next business day following the receipt of a call during normal business hours. Riverbed's support organization will respond in a manner appropriate to the nature of the call.

#### Escalation Procedures

If problems are not responded to as targeted above, Ordering Activity may escalate the issue to appropriate Riverbed management personnel. Contractor through Riverbed provides systematic escalation management to Ordering Activity with current service plans. The Riverbed escalation process notifies levels of management throughout the life cycle of the technical issue. This ensures that the appropriate resources resolve outstanding technical problems as efficiently as possible.

SEVERITY	NOTIFICATIONS		
	Escalation Engineer	Manager	Executive Staff
1. Critical	Within 1 Hour	1 Hour	4 Hours
2. High	Within 4 Hours	8 Hours	24 Hours
3. Minor	Within 8 Hours	Weekly	N/A
4. Informational	Within 24 Hours	N/A	N/A

To escalate a case, email [support@riverbed.com](mailto:support@riverbed.com) or call 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381. A case follows this escalation path: Support Engineer to Local TAC Manager to Regional Support Director to Director of Support Operations to VP Support.

Continuous Support Coverage

Regardless of where the case originates, Riverbed Support endeavors to solve the case when it is opened. The Support team uses a “follow the sun” process to hand-off cases between different Support Centers.

For example, between Monday and Friday, 8 AM - 5 PM GMT, a case from Europe will be routed to the Amsterdam Support Center. After regular business hours in Europe, the case may be routed to the New York or San Francisco Support Center, when the Amsterdam office is closed. If the case remains open, it is passed back to the Amsterdam Support Center for the beginning of their next business day.

Case Handling

Contractor through Riverbed is committed to ensuring Ordering Activity success and satisfaction. All support services professionals are rigorously trained on Riverbed products, their underlying technologies, and industry leading technical problem-solving methodologies. Case handling follows these steps:

An Ordering Activity can open a case in one of the following ways:

- call 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381
- send an email to [support@riverbed.com](mailto:support@riverbed.com)
- generate a ticket directly from the Riverbed Support web site [support.riverbed.com](http://support.riverbed.com)

When Ordering Activities open a case, they should be prepared to provide the following:

- Serial number of hardware component with issue
- Detailed description of the problem
- Priority level and impact of the problem
- Indication of the activity that was being performed when the problem occurred
- Software version
- Configuration data

Once a case is submitted, the issue is assigned to an escalation engineer (“EE”). Every EE is trained to perform extensive troubleshooting to quickly resolve the issue. All opened cases are tracked in Riverbed’s online support tracking system. While working to resolve an issue, the EE may need to access information on the Ordering Activity system relative to the failure, or may need to recreate the failure to get additional information. If the problem is related to the system configuration, the Ordering Activity may be asked to provide a network diagram and configuration information. If the Ordering Activity and the EE agree, the Ordering Activity may send log files or trace files to Riverbed through email or upload them to the Riverbed Support FTP site for further review.

Note: Any information sent to Riverbed to help resolve Ordering Activity problems is treated as confidential.

A case is closed when all parties agree the reported issue has been resolved. If the Ordering Activity issue is determined to be an enhancement, a Feature Request is entered into the Riverbed defect tracking system. A Feature Request is handled and processed by Product Management and Engineering.

Consistently improving quality of service is a very high priority within Riverbed. After closing a case, a survey is sent to the Ordering Activity asking for feedback as to how the case was handled and where Riverbed can improve. Ordering Activity Support managers and executives review the survey responses, and take action where appropriate. Individual entries in this survey may be shared on the Support website anonymously, but identifiable submitter details are not shared. Individual entries will not be used for marketing purposes. The sole purpose of these survey results is to evaluate and improve Riverbed services.

Restrictions

Ordering Activity is entitled to receive Support Services only on Products for which Ordering Activity has purchased Support Services; Support Services commence upon sale of the applicable Product by Riverbed. Contractor through Riverbed will not be obligated to provide any Support Services: (1) on Products that: (a) have been altered, modified, mishandled, or damaged, (b) have not been installed, operated, repaired, or maintained in accordance with Riverbed’s specifications, documentation and instructions, or (c) have been misused or operated outside of the environmental specifications for that Product; (2) where the problem relates to Ordering Activity’s or a third party’s network, systems, hardware, software, or other problem beyond the reasonable control of Riverbed; or (3) to any geographic location or to any customers in violation of applicable laws or regulations. Ordering Activity acknowledges and agrees that Riverbed’s ability to provide Support Services is dependent on Ordering Activity providing accurate Product installation location information, and any failure to do so may impact Riverbed’s ability to provide the Support Services. Remote access to the Products on Ordering

Activity's network may be required to diagnose or resolve a support problem, and Ordering Activity's failure to provide such access may impact Riverbed's ability to resolve the support problem. Riverbed will not be responsible for any Product replacement or repair delays caused by Riverbed's compliance with export/import laws and regulations. Riverbed's obligations under any Support Service plan with respect to any Product is subject to Riverbed's receipt of the applicable annual Support Services fee. Riverbed retains ownership of any intellectual property resulting from Support Services.



**RSA SECURITY**  
**174 MIDDLESEX TURNPIKE**  
**BEDFORD, MA 01730**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **RSA Security** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

### RSA SECURITY

#### RSA SECURITY LICENSE, WARRANTY AND SUPPORT TERMS

##### End User Software License Agreement For Use with GSA Schedule 70

RSA Security LLC, located at 174 Middlesex Turnpike, Bedford, MA 01730 ("Licensor"), and \_\_\_\_\_, with a principal place of business at \_\_\_\_\_ ("Customer"), agree that this End User Software License Agreement ("EULA") shall govern any Software listed on an Order accepted by Licensor after the date of last signature below (the "Effective Date").



## 1. DEFINITIONS.

**A. "Documentation"** means the then-current, generally available, written user manuals and online help and guides for Products provided by LICENSOR.

**B. "Products"** mean "**Equipment**" (which is the hardware delivered by LICENSOR to Customer) and/or "**Software**" (which is any programming code provided by LICENSOR to Customer as a standard product, also including microcode, firmware and operating system software).

**C. "Product Notice"** means the notice by which LICENSOR informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an LICENSOR quote, otherwise in writing and/or a posting on the applicable LICENSOR website, currently located at [http://www.emc.com/products/warranty\\_maintenance/index.jsp](http://www.emc.com/products/warranty_maintenance/index.jsp)

**D. "Software Release"** means any subsequent version of Software provided by LICENSOR after initial Delivery of Software, but does not mean a new Product.

**E. "Eligible Ordering Activities"** are those agencies and activities authorized under 552.238-78 Scope of Contract (Eligible Ordering Activities) and GSA Order ADM 4800.2G, February 16, 2011, to use GSA Schedule 70. An Eligible Ordering Activity is a "Customer". Eligible Ordering Activities that are Executive agencies (as defined in FAR Subpart 2.1), including non-appropriated fund activities as prescribed in 41 CFR 101-26.000, are referred to as "Executive Customers". All other Eligible Ordering Activities are referred to as "Other Customers".

## 2. LICENSE TERMS.

**A. General License Grant.** LICENSOR grants to Customer a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to use (i) the Software for Customer's internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer's use of the Software. Licenses granted to Customer shall, unless otherwise indicated on the LICENSOR quote, be perpetual and commence on Delivery of the physical media or the date Customer is notified of electronic availability, as applicable.

**B. Licensing Models.** Software is licensed for use only in accordance with the commercial terms and restrictions of the Software's relevant licensing model, which are stated in the Product Notice and/or LICENSOR quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with certain equipment, or a CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.

**C. License Restrictions.** All Software licenses granted herein are for use of object code only. Customer is permitted to copy the Software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation insofar as reasonably necessary in connection with Customer's authorized internal use of the Software. Customer shall not, without LICENSOR's prior written consent (i) use Software in a service bureau, application service provider or similar capacity; or (ii) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of LICENSOR Products performed by or on behalf of Customer; (iii) make available Software in any form to anyone other than Customer's employees or contractors; or (iv) transfer Software to an Affiliate or a third party.

**D. Software Releases.** Software Releases shall be subject to the license terms applicable to Software.

**E. Audit Rights.** LICENSOR shall have the right to audit Customer's usage of Software to confirm compliance with the agreed terms. Such audit is subject to reasonable advance notice by LICENSOR and shall not unreasonably interfere with Customer's business activities. Customer will provide LICENSOR with the support required to perform such audit and will, without prejudice to other rights of LICENSOR, address any non-compliant situations identified by the audit by forthwith procuring additional licenses. If the Customer is an Executive Customer non-compliant situations are subject to paragraph 2.F. Disputes.

**F. Disputes.** For a EULA with an Executive Customer LICENSOR shall comply with FAR 52.212-4 (d) Disputes for requests for equitable adjustment, claims, appeals or actions arising under this EULA, including Executive Customer breaches of the terms governing use of the Software. EULA's with Other Customers are not subject FAR 52.212-4 (d) Disputes. .

**G. Reserved Rights.** All rights not expressly granted to Customer are reserved. In particular, no title to, or ownership of, the Software is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies of the Software. Unless expressly permitted by applicable mandatory law, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the Software without the manufacturer's prior written consent, nor shall Customer permit any third party to do the same.

**H. Other License Terms.** If a particular Product is provided with a "clickwrap" agreement included as part of the installation and/or download process, or a "shrinkwrap" agreement included in the packaging for the Product, the terms of such clickwrap or shrinkwrap agreement shall, in case of conflict with the terms of this EULA, (i) prevail with regard to Products for which LICENSOR is not the licensor; and (ii) not prevail with regard to Products for which LICENSOR is the licensor.

## 3. PRODUCT WARRANTY.

**A. Software Warranty.** LICENSOR warrants that Software will substantially conform to the applicable Documentation for such Software and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. LICENSOR does not warrant that the operation of Software shall be uninterrupted or error free, that all defects can be corrected, or that Software meets Customer's requirements, except if expressly warranted by LICENSOR in its quote. Support Services for Software are available for separate purchase and the Support Options are identified at the Product Notice.

**B. Warranty Duration.** Unless otherwise stated on the LICENSOR quote, the warranty period for Products shall be as set forth at the Product Notice. Equipment warranty commences upon Delivery. Software warranty commences upon Delivery of the media or the date Customer is notified of electronic availability, as applicable. Equipment upgrades are warranted from Delivery until the end of the warranty period for the Equipment into which such upgrades are installed.

**C. Customer Remedies.** LICENSOR's entire liability and Customer's exclusive remedies under the warranties described in this section shall be for LICENSOR, at its option, to remedy the non-compliance or to replace the affected Product. If LICENSOR is unable to effect such within a reasonable time, then LICENSOR shall refund the amount paid by Customer for the Product concerned as depreciated on a straight line basis over a five (5) year period, upon return of such Product to LICENSOR. All replaced Products or portions thereof shall be returned to and become the property of LICENSOR. If such replacement is not so returned, Customer shall pay LICENSOR's then current spare parts price therefore. If the Customer is an Executive Customer, LICENSOR claims for non-returned Products are subject to paragraph 2.F. Disputes.

LICENSOR shall have no liability hereunder after expiration of the applicable warranty period.

**D. Warranty Exclusions.** Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond LICENSOR's control; (iii) installation, operation or use not in accordance with LICENSOR's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than LICENSOR or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. LICENSOR has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without LICENSOR's consent or whose original identification marks have been altered or removed. Removal or disablement of Equipment's remote support capabilities during the warranty period requires reasonable notice to LICENSOR. Such removal or disablement, or improper use or failure to use applicable Customer Support Tools shall be subject to a surcharge in accordance with LICENSOR's then current standard rates.

**E. No Further Warranties.** Except for the warranty set forth in this EULA, LICENSOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. INsofar AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALING OR USAGE OF TRADE.

**4. INDEMNITY.** LICENSOR shall (i) defend Customer against any third party claim that a Product or Service infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts stated in a written settlement negotiated by LICENSOR. The foregoing obligations are subject to the following: Customer (a) notifies LICENSOR promptly in writing of such claim; (b)(1) if Customer is an entity for which the Department of Justice (DoJ) has the statutory right to exercise sole control over the defense, DoJ shall have that right, provided that DoJ shall consult appropriately with LICENSOR and/or RSA Security LLC, and LICENSOR and/or RSA Security LLC shall have the right to intervene through its own counsel and at its own expense; (b)(2) for all other Customers, Customer grants LICENSOR sole control over the defense and settlement thereof; (c) reasonably cooperates in response to an LICENSOR request for assistance; and (d) is not in material breach of this EULA. Should any such Product or Service become, or in LICENSOR's opinion be likely to become, the subject of such a claim, LICENSOR may, at its option and expense, (1) procure for Customer the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; (3) request return of the Product and, upon receipt thereof; refund the price paid by Customer, less straight-line depreciation based on a five (5) year useful life for Products; or (4) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation. LICENSOR shall have no liability to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of a Product or Service with third party products or services; (B) use for a purpose or in a manner for which the Product or Service was not designed; (C) any modification made by any person other than LICENSOR or its authorized representatives; (D) any modifications to a Product or Service made by LICENSOR pursuant to Customer's specific instructions; (E) any technology owned or licensed by Customer from third parties; or (F) use of any older version of the Software when use of a newer Software Release made available to Customer would have avoided the infringement. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LICENSOR'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

## 5. LIMITATION OF LIABILITY.

**A. Limitation on Direct Damages.** EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 4 ABOVE, LICENSOR'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY LICENSOR'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US\$1,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO LICENSOR FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.

**B. No Indirect Damages.** EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTION 4 ABOVE, NEITHER CUSTOMER NOR LICENSOR SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

**C. Regular Back-ups.** As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall provide for a daily back-up process and back-up the relevant data before LICENSOR performs any remedial, upgrade or other works on Customer's production systems. To the extent LICENSOR's liability for loss of data is not anyway excluded under this EULA, LICENSOR shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Customer had appropriately backed up its data.

**D. Limitation Period.** Unless otherwise required by applicable law, the limitation period for claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.]

**E. Suppliers.** The foregoing limitations shall also apply in favor of LICENSOR's suppliers.

**6. EXPORT CONTROL.** The Products, Services and the technology included therein provided under this EULA are subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Products and technology included therein may be produced or located; (iii) disclosures of technology to foreign persons; (iv) exports from abroad of derivative products thereof; and (v) the importation and/or use of such Products and technology included therein outside of the United States or other countries (collectively, "**Export Laws**"). Customer shall comply with all Export Laws. Diversion contrary to U.S. law or other Export Laws is expressly prohibited.

**7. TERM AND TERMINATION.** This EULA takes effect on the Effective Date and continues until terminated in accordance with the following:

**A.** EULAs with Executive Customers may be (i) terminated for cause pursuant to FAR 52.212-4(m) or (ii) for convenience pursuant to FAR 52.212-4 (l).

**B.** For EULAs with Other Customers LICENSOR may terminate licenses for cause if Customer breaches the terms governing use of the Software and fails to cure within thirty (30) days after receipt of LICENSOR's written notice thereof. Upon termination of a license, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to LICENSOR. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment of outstanding fees, confidentiality and liability, shall so survive.

## 8. MISCELLANEOUS.

**A. References.** LICENSOR may identify Customer for reference purposes unless and until Customer expressly objects in writing.

**B. Notices.** Any notices hereunder shall be in writing.

**C. Entire Agreement.** This EULA and each purchase order (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; and (ii) may be modified only in writing. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this EULA and/or LICENSOR quote, shall be null and void and of no legal force or effect, even if LICENSOR does not expressly reject to such terms when accepting a purchase order or similar document

provided by Customer; however, terms in such document deviating from a LICENSOR quote do become binding upon the parties when expressly accepted by LICENSOR in writing in an order acknowledgement or similar document.

**D. Force Majeure.** Except for payment of fees, neither party shall be liable under this EULA because of a failure or delay in performing its obligations due to any force majeure event, including strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.

**E. Assignment.** Customer shall not assign this EULA or a purchase order or any right herein or delegate any performance without LICENSOR's prior written consent, which consent shall not be unreasonably withheld. LICENSOR may use LICENSOR Affiliates or other sufficiently qualified subcontractors to provide Services to Customer, provided that LICENSOR shall remain responsible to Customer for the performance thereof.

**F. Governing Law.** To the extent not preempted by federal law or regulation, this EULA is governed by the laws of the Commonwealth of Massachusetts. To the extent permitted by law, the courts of the Commonwealth of Massachusetts shall be exclusively competent to rule on disputes arising out of or in connection with this EULA and all purchase orders. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

**G. Waiver.** No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

IN WITNESS WHEREOF, the parties have caused this Software License Agreement to be signed on the respective dates indicated below.

**Licensor: Licensee:**

**By: By:**

**Name (Print): Name (Print):**

**Title: Title:**

**Date: Date:**

# RSA SOFTWARE USE RIGHTS

RSA software products (“Software”) are licensed by RSA to customers who order 1) directly from RSA (“Direct End-Users”) under a signature-bearing agreement between RSA or the applicable EMC affiliate and the Direct End-User, 2) under the terms of an End-User License Agreement (“EULA”) that is between RSA or the applicable EMC affiliate and the entity making productive use of the Software, or 3) through channel partners under the terms of a EULA that is between RSA or the applicable EMC affiliate and the entity making productive use of the Software. The information in this Software Use Rights (“SUR”) document is provided to further define the license rights and limitations for Software products.

RSA Software is licensed via a Unit of Measure used to quantify the scope of license rights based on a particular licensing model for such RSA Software. Some Agreements, schedules, or quotes refer to the UOM as a “license unit” or such other similar term. Use of the RSA Software beyond the scope of the rights granted requires additional or modified license grants, and additional payment of applicable license and maintenance fees.

- **Appliance (APP).** An appliance is the Hardware provided to Customer which has been loaded with the RSA Software.
- **Central Processing Unit (CPU).** RSA Software licensed on a “per CPU” basis means the maximum number of CPUs upon which you may install and use this RSA Software. A CPU is a single central processing unit within a computer system.
- **Collector Device (CD).** RSA Software licensed on a “collector device” basis means the number of source devices and applications from which events are collected within the Customer environment. The Server is licensed to run a single instance on the RSA® enVision® Appliance.
- **Concurrent (CNC).** RSA Software licensed on a “per concurrent User” or “per concurrent client connection” basis means the maximum number of Users or client connections that may concurrently use or access the RSA Software.
- **Database (DB).** RSA Software licensed on a “per Database” basis means the maximum number of Databases with which you may use the RSA Software. A “Database” is a data repository managed by a Server.
- **Events per Second (EPS).** RSA Software licensed on an “Events per Second” basis is defined as the number of events collected per second within the customer environment.
- **Field of Use (FOU).** RSA Software licensed on a “Field of Use” basis is licensed with a license restriction on a field of use, number of users, servers, platforms, or other restrictions. A “Field of Use” is defined as a license restriction as outlined in a Schedule, Quote, or Purchase Order subject to the terms and conditions of the Agreement.
- **File System (FS).** RSA Software licensed on a “per file system” basis means each file server to be encrypted. Separate licenses for production and development systems are required.
- **Instance (INST).** RSA Software licensed on a “per Instance” basis means the maximum number of individual installations of an RSA Software application, or “Instances,” you may use at the same time in a production environment. For each Instance of the RSA Software license hereunder for production use, the Customer will receive the right to use two (2) additional Instances in non-production use (including standby/development/disaster recovery). License fees for additional Instances (both production and non-production) will be quoted on request.
- **Number of Connections.** RSA Software licensed on a “Number of Connections” basis means the RSA Software is licensed per connection between each computer FIM connects to.



- **Server (SVR/SRVR).** RSA Software licensed on a “per server” basis means the maximum number of physical servers on which you may install and use the RSA Software.
- **User (USR).** RSA Software licensed on a “per User” basis (sometimes referred to as a per “seat”) basis means the maximum number of Users that may be authorized to use or access the RSA Software, regardless of whether such Users are actively using or accessing the RSA Software at any given time. Except as otherwise agreed in an applicable Agreement, Schedule, or Quote, “User” means your agents, employees, consultants, or independent contractors authorized by you to use the RSA Software on your behalf. RSA Archer® Software Specific USR qualifiers: Different categories of Users (USR) will apply for RSA Archer Software licensed on a per User basis (these do not apply where the RSA Archer Software is licensed on a per Instance (INST) basis).
- **Full Access User (USR-FAU).** Means a User with unrestricted access, with authority to create, update, and/or delete system entries, to all nine (9) core solutions of the RSA Archer Software including: Policy Management, Risk Management, Compliance Management, Incident Management, Vendor Management, Threat Management, Enterprise Management, Business Continuity, and Audit Management. This further includes unlimited User access to On-Demand applications, the Training and Awareness solution, Questionnaires, and Exchange Applications.\*
- **Assessment User (USR-AU).** Assessment Users are authorized to use the RSA Archer Software for the purpose of conducting up to four (4) assessments each year using the following core solutions of the RSA Archer Software only: (i) Risk Management, (ii) Vendor Management, and/or (iii) Compliance Management Solutions. Assessment Users have authority to create, update, and delete system entries (subject to the foregoing limitations on accessible core solutions of the RSA Archer Software and frequency).\*
- **Read-Only User (USR-ROU).** Read-Only Users may only access the following core solutions of the RSA Archer Software: (i) Policy Management, (ii) Training & Awareness, and/or (iii) Business Continuity Management Solutions. Read-Only Users are not permitted to create, update, and/or delete any system entries.\*

*\* Please refer to the generally available product documentation for descriptions of the foregoing core solution components.*

## ADDITIONAL INFORMATION

**Additional disclaimer applicable to RSA Archer Software:** “RSA Security LLC and its affiliates explicitly disclaim any warranty or guarantee of the accuracy, currency, completeness, or adequacy, of the content provided herein, and shall in no event be liable for any loss, damage, liability, or expense suffered by any person in connection with reliance by that person on any such material or otherwise. In no event shall the inclusion of any of the content provided herein be construed as legal advice. **INFORMATION PROVIDED AT THIS SITE IS PROVIDED 'AS IS' WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**”

**Additional copyright information applicable to RSA Archer Software:** “Portions Copyright © 2002 to 2010 Corporate Web Solutions Ltd./WebAvail Productions Inc.”

**Additional terms applicable to RSA Archer Software:** RSA may identify Customer for reference purposes and use Customer’s logo in its marketing material unless and until Customer expressly objects in writing.

**Restrictions on use of RSA SecurID solution:** For all purposes under the Agreement, token records to RSA SecurID authenticators shall be deemed RSA Software and be subject to the restrictions on transferability set forth in Section 4(c) of the Agreement.

**Restrictions on use of RSA enVision Software:**

- (1) RSA enVision Software identified in an order as a test system may be used in non-production environments only;
- (2) enVision Software identified in an order as a standby system may be used with cold-standby deployments only. The foregoing is subject to the following exception: In the event the production system that the standby system has been purchased with is unavailable due to failure or maintenance, the standby system may be used in a production environment. In no event may redundant system pairs operate concurrently beyond the use required due to failure or maintenance. Use of the standby system in a production environment shall be subject to the license restrictions of the production environment it is replacing;
- (3) Customer may receive the enVision Software in more than one medium. Customer may not use or install the other medium on another computer and may not loan, rent, lease, or otherwise transfer the other medium to another user; and
- (4) Customer understands that enVision Software is bundled with products which are subject to the Microsoft Software License Terms, currently located at <http://www.rsa.com/node.aspx?id=2469> and <http://msdn.microsoft.com/en-us/sqlserver/aa937726>, which Customer agrees to accept.

**Restriction on Use of RSA Authenticators:** Customer shall use the RSA authenticators only to authenticate to RSA Software. Customer shall not use any hardware cards, tokens, or other devices not provided by RSA to authenticate to the RSA Software, unless otherwise authorized by RSA in writing.

**Restriction on Use of RSA Archer Software:**

**If Customer is licensing RSA Archer software on a term basis, the following provisions shall apply:**

Software License Term: Notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), whether stated in a section entitled "Grant of License" or elsewhere, no perpetual licenses are granted to Customer for the use of the RSA Archer Software and the following provisions shall apply:

The initial term of the license granted by RSA to Customer to use the such RSA Archer Software (the "Initial Term") shall commence on the effective date of this Quotation and remain in effect for (i) the period stated on the first page of this Quotation; or (ii) where no such period is so stated for three (3) years, unless sooner terminated in accordance with the Governing Agreement(s). The Initial Term shall automatically renew for consecutive additional one (1) year periods (each a "Renewal Term") provided that (1) Customer pays the applicable license fee (as specified in this Quotation or as otherwise quoted by an RSA representative or channel partner) prior to expiration of the then current term, and (2) neither party has sent the other party written notice of termination at least sixty (60) days prior to the end of the then current term.

No rights of termination for convenience will apply during the Initial Term or any Renewal Term and any provisions to the contrary in the applicable Governing Agreement(s) will be deemed amended to give effect to this provision. The license rights granted hereunder shall not survive termination of the Governing Agreement(s) and such Agreement(s) are deemed amended to give effect to this provision.

Pricing and Payment: The "Net Price" listed on the first page of this Quotation in the applicable row of the "Products" table shows the total amount that Customer shall pay for the license of RSA Archer Software for the Initial Term. RSA shall invoice Customer annually in advance for one (1) year's worth of license and maintenance fees for each year of the Initial Term and any Renewal Term. For example: if the Initial Term is three (3) years RSA will send Customer an invoice for 1/3 of the "Net Price" after the RSA Archer Software is made available to Customer through electronic file transfer or shipment of media containing such Software. In certain instances, RSA may invoice term licenses for RSA Archer software in a different manner. In such a case, the amount due for each year of the term license shall be set forth in the row entitled "Miscellaneous" on the first page of this Quotation.

**If Customer is licensing RSA Archer Software bundled with other RSA software (SKU: BLP-P Solution Platform-perpetual license), the following provision shall apply:**

Software License: Notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), whether stated in a section entitled "Grant of License" or elsewhere, Customer shall only be able to utilize the RSA Archer Software for internal purposes with other RSA software which Customer has licensed.

**Restriction on Use of RSA NetWitness Products:**

If Customer is purchasing RSA NetWitness Products, the following provisions shall apply:

RSA may use all or any portion of information and knowledge gained by RSA in connection with such products, including, without limitation, such information and knowledge regarding attacker and beacon activity, to improve hardware, software, and/or services. RSA may also share it with others, such as hardware and software vendors who may use it to improve how their products interoperate with or support RSA products or services. To the extent that any services specified in any contract resulting from this Quotation, including without limitation installation, configuration, and/or maintenance services, constitute "defense services" as defined under the U.S. International Traffic in Arms Regulations ("ITAR"), 22 CFR 120.9, then RSA's commitment to provide such services shall be subject to the receipt of any required authorization from the U.S. Department of State, and the delivery schedule and pricing for such services shall be reasonably adjusted as appropriate to reflect such requirements. RSA shall not be liable for any delay in performing or failure to perform defense services due to delays or refusal by the U.S. Department of State to grant any such required authorization.

If Customer is licensing RSA NetWitness products or services on a term basis, the following provisions shall apply:

To the extent the first page of a Quotation offers a NetWitness product or service on a term or subscription basis, notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), no perpetual licenses are granted to Customer for the use of such product or service. The term license to such product or service shall commence on the effective date of this Quotation and remain in effect for the period stated on the first page of this Quotation.

**Restriction on Use of RSA Adaptive Authentication On-Premise Product:**

If Customer licenses the RSA Adaptive Authentication On-Premise Product, the provisions set forth on Schedule 1 hereto shall apply.



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## SCHEDULE 1

### ADAPTIVE AUTHENTICATION PRODUCT SPECIFIC TERMS & CONDITIONS

#### 1. Definitions.

The following terms shall have the definitions below or set forth elsewhere herein. All references to “Section” shall refer to sections of this Schedule, unless otherwise specified herein.

“Active End User” means an account holder or other client of the Customer (an “End User”) whose identity has been processed or profiled or scored or authenticated or otherwise verified by the Product at least once in the course of the six (6) months immediately preceding the then current date.

“Active End User Ceiling” means the maximum number of Active End Users which Customer is licensed to store at any given time using the Product and as set out in applicable Quote.

RSA “eFraud Network™” database means a database owned and operated by RSA which contains information aggregated by RSA, discovered by the parties as part of the performance of their obligations under this Schedule, obtained, and/or procured from third parties and/or resulting from risk and fraud assessments carried out by RSA and includes without limitation IP addresses, Phishing website URLs, and any other related data.

“Exhibit” means Exhibits A, B, and/or C attached hereto, the terms of which are incorporated herein by reference;

“Product” means (a) the RSA consumer software suite described in Exhibit A and developed by RSA together with any Software releases, fixes, or patches delivered pursuant to the Maintenance Services, known as the RSA Adaptive Authentication Web Protection System.

#### 2. License, Ownership.

A. RSA hereby grants Customer a perpetual, non-exclusive, nontransferable license to run and use those components of the Product as selected an RSA issued Quote, for Customer's own use for the purpose of processing Active End User authentication information on its web portals, online services, and/or its electronic transaction clearing systems. Such license shall be subject always to the Active End User Ceiling as further detailed in this Schedule.

B. Additional Software License Restrictions. Customer will not directly or indirectly use the Product for its internal enterprise authentication purposes. For the purpose of the Schedule, “internal enterprise authentication” means authenticating a login request (which request may originate either remotely or from Customer or an Affiliate's premises) of an employee, consultant, or an agent of Customer (or an Affiliate) for the purpose of granting the requestor access to Customer (or an Affiliate's) computer networks for the purpose of performing their assigned work.

C. Ownership and/or License of the eFraud Network database information. RSA shall retain and own all right, title, and interest and all intellectual property rights (including but not limited to copyrights, trade secrets, trademarks, and patent rights) to all information which is collected, submitted to, and made available on the eFraud Network in the course of the performance by either party of their obligations under this Schedule (or where such title cannot be granted or otherwise transferred to RSA, then Customer agrees to grant RSA an unconditional, unlimited, unrestricted, royalty free license to use, distribute, and/or otherwise make available such information).

D. RSA Trademark License. For so long as this Schedule remains in force, RSA grants Customer the right to use the “Secured by RSA” trademarks described in Exhibit C (the “RSA Mark”) solely for the purpose of displaying the RSA Mark on the End User facing web-based log in pages of its online services in compliance with Section 3 (on next page). Customer's use of the RSA Mark will conform at all times with RSA's quality and usage requirements and will be subject to prior review and approval by RSA. Customer will not seek to register any trademarks of RSA in any country in the world. Any use of the RSA Mark shall be in accordance with RSA's reasonable policies regarding advertising and

trademark usage as established from time to time.

### **3. RSA Branding of the Active End User interface to the Licensed Software.**

For so long as Customer is subscribing for the Maintenance Services, Customer will (unless it is a U.S. governmental entity) place the following words: “Secured by RSA”, in the form of the trademark logo attached hereto under Exhibit C, on (i) the client facing web-based user interface which is deployed by Customer for the purpose of allowing Active End Users access to the Product; and (ii) whenever the personal security image of the site-to-user authentication module (as described in Exhibit A) is shown. Nothing else herein shall prevent Licensee from separately branding its security processes which may use the Licensed Software and other security processes.

### **4. Billing Files.**

Customer will provide RSA with the billing files as generated by the billing utility component of the Product (as further detailed in the Documentation) at the end of each calendar month for the purpose of evidencing its ongoing compliance with the Active User Ceiling from time to time and subject to RSA’s audit rights under the Agreement.

### **5. Product Delivery.**

RSA Software shall be delivered to the Customer at the email address specified in Exhibit A.

### **6. Authorized Active End Users; Active End User Ceiling Increases.**

Customer may increase the authorized Active End User Ceiling from time to time by way of a purchase order referencing this Schedule. Where Customer has exceeded its then authorized Active End User Ceiling, Customer will promptly (and in any event in not less than thirty (30) days from the date the Active End User Ceiling is first exceeded) procure an increase to its then licensed authorized Active End User Ceiling, for the fees and in the minimum increments set out in a Quote so as to meet or exceed its actual use of the Product. Such increases will be procured by way of a purchase order referencing the Quote. Where Customer has upgraded the authorized Active End User Ceiling, RSA will invoice Customer the adjusted Maintenance Services fees on a pro-rata basis for the Maintenance Services year then in progress on the date of such upgrade in a Quote.

### **7. Maintenance Services.**

Customer hereby purchases the Enhanced Support and Data Services as further described in Exhibit B for the Products ordered under this Schedule for a term of one (1) year (the “Initial Maintenance Term”) commencing on the date the Product is first made electronically available for download. Thereafter, Maintenance Services shall renew on an annual basis, subject to Customer’s payment of RSA’s invoice for the applicable Maintenance Services fees. RSA may increase the Maintenance Services fee, to be effective at the commencement of any future annual period, provided that RSA notifies Customer, in writing, of such fee increase at least thirty (30) days prior to the end of the previous annual period.

**A**

**Base Product Description:**

The Product without Additional Features is available for the license fees detailed in a signed Quote.

<b>Product—RSA Adaptive Authentication Components—Login</b>
Risk Based Authentication at Login (web-channel device identification using secure cookies, Flash Shared Objects, device forensics and network forensics including IP geolocation. This can be applied only during account login).
Baseline Policy Manager and Risk Models. (One set of policies per institution and generic risk models.)
Secondary Authentication: Challenge Questions. (Challenge Questions, including enrollment to collect challenge questions and answers.)
RSA eFraud Network Access. (Shared fraud data.) It is understood by the parties that Customer's access to the eFraud Network shall be contingent on Customer's agreement to submit non-identifiable fraud data via log files for inclusion in RSA eFraud Network's aggregated database and subject to Customer's ongoing subscription to the Enhanced Support and Data Services.
Case Management Module. Provides the Client functionality to track and update Active End User activities that were flagged for follow-up or authentication.
Site to User Authentication Module. (Enrollment and maintenance of image assignments, and image pool of 38,000 images.)

**Description of Additional Features:**

These components of the Product are available for extra license fees as detailed in a signed Quote.

<b>Product—Transaction Monitoring</b>
Assessment, analysis, and scoring of post-login transactions activities by a Bayesian, self-learning risk engine that leverages both device and behavioral profiling. A case management application allows investigating high risk transactions, marking the fraudulent ones, and feeding feedback into the risk engine. A partial list of such post-login transaction activities includes but is not limited to: transferring funds, making online payments, establishing payees, viewing check images, changing personal information, etc.

<b>Product—Mobile Protection</b>
The RSA Adaptive Authentication Mobile Protection Module provides strong authentication to End Users who access online banking applications via a mobile device (i.e., mobile phone, smart phone, iPhone, PDA, Blackberry, etc.). This module complements RSA Adaptive Authentication's web channel protection module. It is powered by the same risk-based authentication technology and provides the Customer with a unique risk model designed to address specific mobile transaction characteristics. By using the Mobile Protection Module, the Customer benefits from multi-channel fraud protection.

**Service—Authentication Methods**

*OneTime Password (“OTP”).* OTP generated by Adaptive Authentication and sent by Customer to the End User.

*Out of band (“OOB”) Phone Call.* OOB phone call (telephone confirmation, using RSA’s service and infrastructure and telephone numbers stored in Customer’s systems. Depending on the selected integration method, the OOB phone feature requires additional telephony infrastructure and involves set up costs and fees to make the phone calls.

*OOB SMS.* One Time Password generated by Adaptive Authentication and sent by RSA to End User via OOB SMS using phone numbers stored in Customer’s system (only for phones that support SMS). The OOB SMS feature involves set up costs and fees to send the SMS. Delivery of SMS messages (or timing of delivery) is not guaranteed.

## B

**Enhanced Support and Data Services**

Customer acknowledges that the Basic Support Services (as described on the Support Website) are not available for the Product licensed under this Schedule.

In addition to then current Enhanced Support Services which will be provided as detailed on the Support Website, the Customer will also receive the Data Services described hereunder.

**1. Definitions.**

In addition to those defined terms of the Agreement and the Schedule, the following definitions shall be used for purposes of this Exhibit B.

- A. **“Data Services”** means, the delivery by RSA on an ongoing basis of (i) the Information; and (ii) updates to the eFraud Network; and RSA making available the online statistical analysis tools for the use of the Customer. The Information and any other data delivered pursuant to the Data Services will be deemed to form part of the Product under the Schedule.
- B. **“Geo-Location Service”** means the geo-location component made available with the Product.
- C. **“Information”** means the data and information derived from the Geo-Location Service.
- D. **“Support Website”** means RSA’s online support resource currently located at <http://www.rsa.com/node.aspx?id=1067>.

**2. RSA Data Feeds for Adaptive Authentication.**

Customer will receive the following Data Services:

- A. Delivery of eFraud Network database updates. Updates to the eFraud Network database will be made available to Customer by RSA via Internet protocol from RSA hosted servers. Where configured in accordance with the Documentation, the Product will automatically download the updates on a periodic basis and load them into a local data store, which is used for run-time analysis of inbound transactions.
- B. Delivery of Information. Information updates will be made available by RSA to Customer via Internet protocol from RSA hosted servers. Customer will download the updates on a periodic basis and load the Information into the Product for run-time analysis of inbound transactions.
- C. Online Statistical Analysis Tools. RSA will make available to Customer a set of reports or tools for generating reports, which will be hosted on RSA web servers, to allow Customer to understand Product system usage levels and patterns.

**3. Enhancements to Maintenance Services.**

Customer may purchase enhancements to the Maintenance Services, including the Personalized Support options Services, as described on the Support Website.

**4. Additional Customer Obligations.**

- A. Network and Device Forensics. In addition to those obligations set out on the Support Website, Customer shall provide to RSA daily scrubbed data activity logs, the case log file and the forensic data logs as further described in the Documentation. RSA will review these logs in order to provide the Maintenance Services hereunder and to improve forensic analysis of future Software Releases of the Product. Customer shall not transmit, send, or otherwise provide, directly or indirectly, to EMC any data that is considered personally identifiable under the laws of the jurisdictions applicable to Customer’s installation and use of the Product and Customer’s operations, and shall indemnify EMC for all third-party claims arising as a result of Customer’s breach of this obligation.

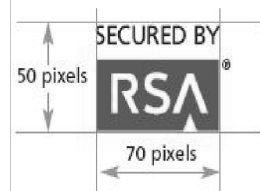





C

**Trademark and Usage Guide**

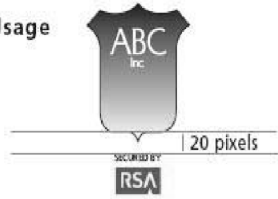

**SECURED BY RSA—Logo Designator for RSA Adaptive Authentication Customers**

The SECURED BY RSA logo has been designed as an indicator that the customer is using the RSA Adaptive Authentication solution. It is designed for web and print use and is not intended to be a substitute for the corporate logo or for use in locations other than the web pages or promotional material of companies that have purchased Adaptive Authentication. Nor is the SECURED BY RSA mark to be used as a substitute for the corporate logo in places where the Customer corporate logo is appropriate. This logo is not posted. Logo files may be obtained by contacting the Identity Protection and Verification solutions group at RSA corporate headquarters. It is to be used at the size indicated below. The logo consists of the RSA brick and the words SECURED BY. These two components should not be separated or changed; SECURED BY should always appear in the same proportions and relationship to the RSA notched rectangle.

<p><b>Correct size and layout</b></p> 	<p><b>Incorrect: altered layout</b></p> 	<p><b>Incorrect: altered proportions</b></p> 
<p><b>Incorrect: combination with corporate logo</b></p> <p>The words "The Security Division of EMC" are not part of the SECURED BY RSA logo. The corporate logo, which includes the word "The Security Division of EMC", is a separate mark; the two logos may not be combined.</p>		

In customer applications, the logo is to be seen only as a third-party mark that indicates the security features of the customer’s website. Therefore the following restrictions apply to use:

(i) The logo may not be enclosed by the Customer’s logo or other artwork so as to appear to be part of the Customer’s logo.

<p><b>Correct Usage</b></p> 	<p><b>Incorrect Usage</b></p> 
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(ii) The logo may be placed adjacent to the customer’s logo or other artwork as long as there is sufficient empty (white) space between the two logos. Sufficient space online is defined as 20 pixels in any direction from the outer edges of the SECURED BY RSA logo. Sufficient space in print is defined as .5 inches in any direction from the outer edges of the logo.

EMC<sup>2</sup>, EMC, the EMC logo, the RSA logo, RSA, RSA Archer, eFraud Network, enVision, and NetWitness, are registered trademarks or

**RSA Warranty and Replacement Parts Maintenance Table**

- B. Restrictions on use of the Geolocation Service and Information. Customer will not (a) reproduce or distribute the Geo-Location Service in a manner that allows its users to access the Geo-Location Service in any way other than through aggregate reports generated by the Product (as described in the Documentation); or (b) use the Information to create or otherwise support the transmission of unsolicited commercial email.

trademarks of EMC Corporation in the United States and other countries. All other trademarks used herein are the property of their respective owners. © Copyright 2011, 2012 EMC Corporation. All rights reserved. Published in the USA. H8761.4 Handout Rev. June 6, 2012

**RSA Warranty and Replacement Parts Maintenance Table**

Product	Standard Warranty Period and Support Option	Support Option Upgrade during Warranty Period	Initial Product Installation	Support Options during Maintenance Period	RMA-Parts Replacement	Customer Performed Tasks (*1)	Designated Customer Replaceable Units (CRU's) (*2)
RSA Software	90 days: defective media replacement Support during warranty available with purchase or a maintenance support option	N/A	Installation not included. Performed by Customer or may be available for separate purchase	Basic, (*6) Enhanced	N/A	Customer Installation of subsequent Software Releases	N/A
RSA Tokens	Full Lifecycle of Token up to 6 months from expiration	N/A	Installation not included. Performed by Customer or may be available for separate purchase	Basic, Enhanced	Standard Token Replacement (*3) Advanced Token Replacement (*4)	N/A	N/A
RSA Appliance	90 Days	N/A	Installation not included. Performed by Customer or may be available for separate purchase	Enhanced	Advanced Replacement (*5) - Next Business Day (Requests must be in by 2pm EST or 4pm Western Europe Time). 1st Year Advanced Replacement  Maintenance for years 2 through 5	Customer(*7) Installation of subsequent Software Releases	Appliance
SaaS	N/A Hosted Solution(*8)	N/A	Performed by RSA	Basic, Enhanced	N/A	RSA Operation responsible for installation and maintenance of Hosted environment	N/A



**1. Customer-Performed Tasks:**

Customer-performed tasks are product support tasks that Customer is authorized by RSA to perform. RSA will provide diagnostic tools and documentation to enable customers to perform replacement of designated Equipment and other service tasks.

**2. Customer Replaceable Units (CRUs):**

CRUs are specific assemblies, components or individual parts of designated RSA Equipment that Customer is authorized by RSA to self replace. In the event of a Failure or technical issue, a customer may remove and replace a CRU by using RSA provided diagnostic tools and/or documentation. Assemblies or components not designated as CRUs, must be serviced and/or replaced by RSA or an RSA authorized service partner.

\*\*Authentication Manager and Authentication Manager Express CRU parts limited to complete Appliance\*\*

**3. Standard Token Replacement:**

The System/Security Administrator at your company will return any non-expired tokens that no longer function properly to RSA. Replacements will be shipped within 5 days after the defective token is received. A printable form will be e-mailed back to the customer containing a pre-filled return form with RMA numbers and ship-to information. More details can be found here: <https://selfservice.rsasecurity.com/TWR/>

**4. Advanced Token Replacement:**

After filling out the appropriate information, RSA will ship out replacements for each valid token within 2 or 3 days. It is the customer's responsibility to ship the defective tokens back within 60 days of the receipt of the replacement tokens. If not, RSA will invoice for the amount of the replacement tokens shipped. More details can be found here: <https://selfservice.rsasecurity.com/TWR/>

**5. Advanced Replacement:**

Appliances are shipped out same day or next business day. Secure ID Appliances must be returned within 15 days of Receiving replacement or full value of Replacement Appliance will be incurred by Customer. For all other Appliances, Customer has 10 days to return faulty appliances.

**6. Basic support not available for AA on Prem, Access Manager, DPM, or Authentication Manager**

**7. DPM Appliance installation performed by RSA/EMC Professional Services**

**8. Saas**

90 day defective media replacement. For both Archer and Adaptive Authentication for the Web on Premise

Archer On Premise: Installation not included. Performed by Customer or may be available for separate purchase

**SDL GOVERNMENT**  
**2325 DULLES CORNER BLVD**  
**SUITE 1100**  
**HERNDON, VA 20171**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached SDL Government ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract, and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the

Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SDL GOVERNMENT, Inc.**

**SDL GOVERNMENT, Inc. WARRANTY AND SUPPORT TERMS**

**Attachment A – SDL GOVERNMENT, Inc.**

Please read the terms and conditions of this Agreement carefully. Licensor is willing to license the Software to you only if you agree to be bound by all the terms and conditions of this Agreement. This written Agreement supersedes any other End User Software License Agreement embedded via an installer for the Software.

1. Grant of License. Subject to the terms and conditions of this Agreement and the underlying GSA Schedule Contract, Licensor grants to Customer a nonexclusive, nontransferable license: (a) to use the Software in the configuration for which you have paid a license fee (or in the event

Licensor has provided you with the Software on a no fee basis for beta, evaluation, testing or demonstration purposes, your use of the Software shall be limited to such purposes), and only for your internal use; and (b) to copy the Software as reasonably necessary to exercise the license rights granted in subsection (a), including making a reasonable number of copies for internal archival purposes so long as no more than one such copy is used at any time. All copies of the Software made pursuant to subsection (b) shall be true and complete copies, and shall include all copyright, trademark and other proprietary notices as are contained on or in the original. Licensor reserves all rights in the Software not expressly granted to Customer in this Agreement.

2. **Restrictions.** Except as may be expressly authorized in this Agreement, Customer shall not: (a) copy or modify the Software, in whole or in part; (b) transfer, sublicense or otherwise distribute the Software to any third party; (c) lease, lend or rent the Software, use the Software to provide service bureau, time sharing, application services provider, hosting, language translation or other computer services to third parties, or otherwise make the functionality of the Software available to third parties with or without consideration; or (d) disassemble, decompile or reverse engineer the Software nor permit any third party to do so, except to the extent such restrictions are prohibited by law.

3. **Ownership.** You expressly acknowledge that, as between Licensor and Customer, Licensor owns all worldwide right, title and interest in and to the Software and all improvements thereto, including all worldwide intellectual property rights therein. You will not delete or in any manner alter the copyright, trademark and other proprietary rights notices appearing on the Software as delivered to you. You will reproduce such notices on all copies you make of the Software. In the event Licensor has provided Customer with the Software for evaluation purposes, you will be issued an Evaluation Agreement and will be asked to provide feedback to Licensor regarding the Software (including comments, questions, suggestions and the like) ("Feedback") in accordance with that Evaluation Agreement. You agree that any Feedback can be used by Licensor for purposes of improving the Software. In the event the end user of this license is a U.S. government agency, you will obtain written permission from the U.S. government agency to release any Feedback to Licensor, and for Licensor to use the Feedback for purposes of improving the Software. Any licenses for test and development purposes will be sold under separate terms and conditions. Test and development licenses are only to be used for internal assessment or testing purposes, and software provided for test and development purposes will not be installed, used or incorporated into any production environment.

4. **Term.** This Agreement will begin on the date Customer accepts this Agreement and will remain in effect for the term for which you have paid a license fee as set forth in the applicable ordering document, unless terminated earlier in accordance with the terms of this Agreement. Upon expiration or termination of this Agreement, you shall discontinue all use of the Software, and provide Licensor with a written certification stating that you have uninstalled the software and ceased using the license.

5. **Support.** If Customer issues an order for support, Licensor will provide you with technical support services for the Software. All technical support services will be subject to and performed in accordance with Licensor's Support and Maintenance Agreement issued at time of license delivery. Licensor reserves the right to change its technical support practices at any time, but will not reduce the level of technical support practices for which fees have been paid.

6. **Limited Warranty.** Licensor warrants that, for a period of sixty (60) days after the shipment date of the Software, the Software will be capable of performing in all material respects in accordance with the functional specifications set forth in the applicable documentation for the Software that has been provided with installation. As your sole and exclusive remedy and Licensor's entire liability for any breach of the warranty set forth in this Section 6, Licensor will, at its option: (a) promptly correct any Software that fails to meet this warranty; (b) provide you with a reasonable procedure to circumvent the nonconformity; or (c) refund the license fees paid by you for the non-conforming Software upon your return of such Software to Licensor. The warranty set forth in this Section 6 does not apply in the event Licensor has provided you with the Software on a no fee basis for beta, evaluation, testing or demonstration purposes.

7. **Disclaimer.** Licensor does not warrant that the Software will meet Customer's requirements, that the operation of the Software will be error-free or uninterrupted or that all Software errors will be corrected. EXCEPT AS PROVIDED IN SECTION 6, THE SOFTWARE PROVIDED HEREUNDER IS PROVIDED "AS IS" AND LICENSOR MAKES NO WARRANTY OF ANY KIND WITH REGARD TO THE SOFTWARE. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. No advice or information, whether oral or written, obtained from Licensor or elsewhere will create any warranty not expressly stated in this Agreement.

8. Reserved.

9. Reserved.

10. **Proprietary Information.**

10.1 **Restrictions.** Customer acknowledges that, in the course of this Agreement you may obtain certain confidential or proprietary information of Licensor ("Proprietary Information"). "Proprietary Information" includes (a) Licensor's technical, engineering, manufacturing, product, marketing, servicing, financial, personnel and other information, (b) the licensed software, and (c) documentation such as manuals and other supporting materials related to the software. As between Customer and Licensor, the Proprietary Information shall belong solely to Licensor. You agree: (i) to protect Proprietary Information from unauthorized dissemination and use, (ii) to use Proprietary Information only for the performance of this Agreement and the exercise of any rights granted to you under this Agreement, (iii) not to disclose any Proprietary Information to any of your employees, contractors, agents or any other individuals, except to those who are under confidentiality obligations no less restrictive than the requirements of this Section 10, and (iv) not to remove or destroy any proprietary or confidential legends or markings placed upon or contained within the Proprietary Information.

10.2 **Equitable Relief.** Customer agrees that, due to the unique nature of the Proprietary Information, the unauthorized disclosure or use of Proprietary Information or any other breach of any provision of Section 10.1 will cause irreparable harm and significant injury to Licensor, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, you agree that Licensor, in addition to any other available remedies, shall have the right to obtain an immediate injunction and other equitable relief enjoining any breach or threatened breach of Section 10.1 without the necessity of posting any bond or other security. You shall notify Licensor in writing immediately upon becoming aware of any such breach or threatened breach.

11. **U.S. Government End User Terms**

11.1 **Applicability.** The U.S. Government end user terms and conditions set forth in this Section 11 shall apply to all instances where Customer is the U.S. Government, or a Prime Contractor or Subcontractor that is using the Software to provide services to or for the U.S. Government (each, a "U.S. Government End User"). In the event that Customer is a U.S. Government End User, the following provisions of this Agreement do not apply, and, where relevant, are superseded by the applicable provision of FAR 52.212-4 or other applicable law, such as the Contracts Disputes Act: 4 (to the extent it permits termination by Licensor), 5 (to the extent it permits unilateral alteration of support terms by Licensor), 8, 10 (to the extent inconsistent with the Freedom of Information Act), 12.6, 12.7.

11.2 **Government End User Rights.**

(a) The Software and any derivatives are "commercial items" as defined in 48 C.F.R. 2.101 ("Commercial Items"). If Customer is a U.S. Government End User, then the use, duplication, reproduction, release, modification, disclosure or transfer of the Software and any associated documentation and technical data is restricted in accordance with 48 C.F.R. §12.211; 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. A third party may resell the Software to a U.S. Government End User, if and only if, the Software is licensed to the U.S. Government End User subject to the terms of this Agreement.

(b) Consistent with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-1 through 48 C.F.R. §227.7102-3, and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Software is provided to U.S. Government End Users: (i) only as Commercial Items, (ii) with only those rights



as are granted to all other users pursuant to this Agreement (except as otherwise noted in Section 11.1), and (iii) the terms of this Agreement are incorporated into any Reseller, Prime Contractor, or Subcontractor's contract with the U.S. Government or otherwise agreed to by Customer in a way that legally binds the U.S. Government to these terms. This U.S. Government Rights clause is in lieu of, and supersedes, any Federal Acquisition Regulations ("FAR"), the Defense FAR Supplement ("DFARS"), or other clause or provision that addresses U.S. Government rights in computer software or technical data.

## 12. General

12.1 Independent Contractor and Subcontractors. Licensor is an independent contractor and not an agent or representative of Customer or any Reseller. No employee of Licensor shall be deemed an employee of Customer or any Reseller. Customer will have no direct control over Licensor or its employees. Licensor may engage subcontractors without notice to or consent of Customer.

12.2 No Third-Party Beneficiaries. Licensor and Customer mutually agree that this Agreement is intended to be solely for the benefit of the Parties and that no third parties shall obtain any direct or indirect benefits from the Agreement, have any claim or be entitled to any remedy under this Agreement or otherwise in any way be regarded as third party beneficiaries under this Agreement.

12.3 Third-Party Hardware and Software. The Software provided under this Agreement may necessitate use of certain third party hardware, software and/or data products by Customer. Customer shall be solely responsible for obtaining licenses to such third party hardware, software or data for its own use. Notwithstanding anything to the contrary in this Agreement, and for the avoidance of doubt, Licensor has no liability for such third party hardware, software or data, whether in warranty, indemnity, or otherwise.

12.4 Publicity. Licensor may make reference to the existence of this Agreement and disclose that Customer is a customer of Licensor, including, without limitation, that Customer is a customer of Licensor with respect to the Software, without Customer's further consent. Customer may not make any reference to this Agreement, including the existence of this Agreement, in any prospectus, proxy statement, offering memorandum, or similar document without Licensor's prior written consent, which Licensor may grant or withhold, in its reasonable discretion.

12.5 Severability. If the application of any provision of this Agreement to any particular facts or circumstances shall be held to be invalid or unenforceable by a court of competent jurisdiction, then (a) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement shall not in any way be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

12.6 Reserved.

12.7 Reserved.

12.8 No Waiver. No course of dealing, course of performance or failure of either Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any other term, right or condition. No waiver or breach of any provision of this Agreement shall be construed to be a waiver of any subsequent breach of the same or any other provision.

12.9 Relationship of the Parties. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the Parties, and the Parties shall at all times be and remain independent contractors. Except as expressly agreed by the Parties in writing, neither Party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other Party or to bind the other Party in any respect whatsoever.

12.10 Notices. Licensor shall deliver all notices and communications concerning the Software or this Agreement to the attention of the individual or group designated by the Parties in writing on the signature page of this Agreement. Any notice, request, demand, or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed given upon receipt when: (a) delivered personally; (b) sent by registered or certified mail, return receipt requested, postage prepaid; (c) sent via express courier, with written confirmation of receipt; or (d) delivered via email with read receipt or reply confirming recipient viewed the message.

12.11 Compliance with Laws. Customer agrees that it shall comply with all laws and regulations of the United States and other applicable jurisdictions in access and using the Software. Without limiting the generality of the foregoing, Customer shall not make the Software available to any person or entity that: (a) is located in a country that is subject to a U.S. Government embargo; (b) is listed on any U.S. Government list of prohibited or restricted parties; or (c) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

12.12 Export Laws. The Software and related documentation are subject to U.S. export control laws and may be subject to export or import regulations in other countries. Customer agrees to strictly comply with all such laws and regulations and acknowledges that Customer is responsible for obtaining such licenses to export, re-export, or import as may be required.

12.13 Headings. The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

12.14 Complete Agreement. This Agreement, any exhibits and schedules attached to it, any other terms and conditions incorporated by reference herein, and the terms and conditions of the underlying GSA Schedule Contract, contain the entire understanding of the Parties with respect to the subject matter hereof, and supersede any and all related prior understandings, agreements, representations, negotiations and discussions, whether oral or written. This Agreement cannot be modified or amended except in a writing signed by both Parties.

## 13. Definitions.

13.1 "Affiliate" of a Party means (i) an entity that owns directly or indirectly, a controlling interest in such Party, (ii) an entity in which such Party owns a controlling interest, by stock ownership or otherwise, or (iii) an entity under common control with such Party, directly or indirectly. As used in this Agreement, the terms "controlling interest" and "common control" mean the ownership, directly or indirectly through the stockholders, interest holders or members of an entity, of more than fifty percent (50%) of the voting securities or other ownership interest of the other entity, or the possession, directly or indirectly, of the power to direct the management or policies of the other entity, whether through the ownership of voting securities, by contract, or otherwise.

13.2 "Party" when used in the singular refers to either Licensor or Customer. "Parties" refers to both Licensor and Customer.

13.3 "Prime Contractor(s)" means one or more non-Government Agency third party(ies) that has entered into a prime contract with the U.S. Government authorizing such third party(ies) to, on behalf of, or as an agent to the U.S. Government, obtain software and services similar to those authorized for resale by Licensor under this Agreement. Designation as a "Prime Contractor" will immediately expire upon expiration or termination of the prime contract between the Prime Contractor and the authorizing U.S. Government agency.

13.4 "Reseller" means an entity authorized by Licensor to resell or make available the Software on Licensor's behalf.

13.5 "Software" means SDL Government's Enterprise Translation software.

13.6 "Subcontractor(s)" means one or more non-U.S. Government third party(ies) at any tier that has entered into a subcontract with a Prime Contractor or a higher-tier Subcontractor authorizing such third party(ies) to obtain software and services similar to those authorized for resale by Licensor under the Agreement, but who shall not resell, distribute or sublicense the Software to any other party. Designation as a "Subcontractor" will immediately expire upon expiration or termination of the subcontract between the Subcontractor and the Prime Contractor or higher-tier Subcontractors.

13.6 "U.S. Government" means an agency, department or instrumentality of the United States Government, international agencies of which the U.S. Government is or becomes a member, and any other U.S. Federal Government entity authorized to purchase off of Government contracts on behalf of the United States Government.

**LC AMERICA, INC.**

a subsidiary of  **ImmixGroup**

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SECEON INC.  
238 LITTLETON RD, SUITE 202  
WESTFORD, MA 01886

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Seceon Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the



Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SECEON INC.**

**SECEON INC. WARRANTY AND SUPPORT TERMS**

**Attachment A – Seceon**

End User License Agreement

1) Definitions.

"Authorized Partner" means any of Seceon's distributors, resellers or other business partners.

"Grant Letter" means a confirmation notice letter issued electronically by Seceon to you, confirming Software and Support purchased by you, including the applicable product entitlement, as defined in the Product Entitlement Definitions (further described at Section 3(a) below) and also containing download details.

"Documentation" means explanatory materials in printed, electronic or online form accompanying the Software in English and other languages, if available.

"Seceon" means (a) Seceon, Inc., a Massachusetts corporation, with an office located at 238 Littleton Rd., Suite 202, Westford, MA 01886 USA) "Node" means any kind of device capable of processing data and includes any of the following types of computer devices: diskless workstations, personal computer workstations, networked computer workstations, homemaker/teleworker homebased systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANS), terminal servers or portable workstations connected or connecting to the server(s) or network.

"Software" means each Seceon software program in object code format licensed by Seceon and purchased from Seceon or its Authorized Partners, including Upgrades.

"Subsidiary" refers to any entity controlled by you through greater than fifty per cent (50%) ownership of the voting securities.

"Support" or "Technical Support" means the support services offered by Seceon for the support and maintenance of the Software and Seceon brand hardware further specified in the Seceon Technical Support and Maintenance Terms. i) "Updates" are related to content and include without limitation all DATs, signature sets, policy updates, database updates for the Software which are made generally available to Seceon's customer base as a part of purchased Support and which are not separately priced or marketed by Seceon.

"Upgrade" means any and all improvements in the Software which are made generally available to Seceon's customer base as part of purchased Support and which are not separately priced or marketed by Seceon.

License Grant. Subject to the terms and conditions of this Agreement and the applicable ordering document, Seceon hereby grants to you a non-exclusive, non-transferable right to use the Software (for the purpose of this Agreement, use of the Software means to access, install, download, copy or otherwise benefit from using the Software) for your own internal business operations. You acknowledge that the Software and all related information are proprietary to Seceon and its suppliers. You are not granted rights to Updates and Upgrades unless you have purchased Support or a service subscription.

Copy and Use terms.

Product entitlement: The use of the Software depends on the licenses purchased (e.g. Nodes). Software is installed may not exceed your product entitlement. Certain Software licensed as part of a suite-based Seceon product may also require the purchase of a separate Seceon server license in order to use the Software on certain types of servers, in each case as specified in the Documentation.

Term: The license is effective for a limited period of time ("Term") in the event that such Term is set forth in the Grant Letter and the applicable ordering document, otherwise the licenses shall be perpetual.

Copies: You may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes.

Managing Party: If you enter into a contract with a third party in which the third party manages your information technology resources ("Managing Party"), you may transfer all your rights to use the Software to such Managing Party, provided that (a) the Managing Party only uses the Software for your internal operations and not for the benefit of another third party or the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement and (c) you provide Seceon with written notice that a Managing Party will be using the Software on your behalf.

Subsidiaries: You may permit use of the Software in accordance with the terms of this Agreement by a Subsidiary only for so long as such entity remains your Subsidiary. You shall be responsible and fully liable for each Subsidiary's compliance with or breach of the terms of this Agreement.

General Restrictions: You may not, nor allow any third party to:  
decompile, disassemble or reverse-engineer the Software, except to the extent expressly permitted by applicable law, without Seceon's prior written consent;  
remove any product identification or proprietary rights notices of the Software or Documentation;  
lease, lend or use the Software for timesharing or service bureau purposes;  
modify or create derivative works of the Software,  
except with Seceon's prior written permission, publish any performance or benchmark tests or analysis relating to the Software or  
otherwise use or copy the Software except as expressly provided herein.

Technical Support and Maintenance. The Seceon Technical Support and Maintenance Terms apply if you have purchased Support. The Seceon Technical Support and Maintenance Terms are incorporated by reference. After the support or service subscription period specified in a Grant Letter has expired, you have no further rights to receive any Support including Upgrades, Updates and telephone support.

Limited Warranty and Disclaimer.

Limited Warranty: Seceon warrants that, for a period of 1 year from the purchase date ("Warranty Period"), the Software licensed hereunder (including Upgrades provided within the Warranty Period for the remainder of the Warranty Period) will perform substantially in accordance with the Documentation.

Exclusive Remedy: In case of any breach of the above limited warranty, Seceon will (a) repair or replace the Software or (b) if such repair or replacement would in Seceon's opinion be commercially unreasonable, refund the price paid by you for the applicable Software.

Exclusion of Warranty: The above Limited Warranty will not apply if: (i) the Software is not used in accordance with this Agreement or the Documentation, (ii) the Software or any part thereof has been modified by any entity other than Seceon or (iii) a malfunction in the Software has been caused by any equipment or software not supplied by Seceon.

Disclaimer: THE ABOVE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS" AND SECEON MAKES NO WARRANTY OR GUARANTEE AS TO ITS USE OR PERFORMANCE AND DOES NOT WARRANT OR GUARANTEE THAT THE OPERATION OF THE SOFTWARE WILL BE FAIL SAFE, UNINTERRUPTED OR FREE FROM ERRORS OR DEFECTS OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.

Reserved.

Reserved.

Intellectual Property Indemnity.

Third-party claims: Subject to 28 U.S.C. § 516, Seceon shall defend and hold you harmless from any claim by a third party that the Software infringes, whether a patent, copyright or trade secret of that third party, provided that: (i) Seceon is notified promptly, and in any event no later than within 14 days of your receipt of notice of the claim, (ii) Seceon receives the required level of reasonable cooperation from you in order to perform Seceon's obligations hereunder and (iii) Seceon has control over the defense and all negotiations for a settlement or compromise of the claim. The foregoing obligation of Seceon does not apply with respect to Software or portions or components thereof that are: (i) not supplied by Seceon, (ii) used in a manner not expressly authorized by this Agreement or the relevant Documentation, (iii) made in accordance with your specifications, (iv) modified by anyone other than Seceon, if the alleged infringement relates to such modification, (v) combined with other products, processes or materials where the alleged infringement would not exist but for such combination or (vi) where you continue the allegedly infringing activity after being notified thereof and provided with modifications that would have avoided the alleged infringement.

Remedy and Liability: In the event that the Software is held by a court of competent jurisdiction to constitute an infringement or use of the Software is enjoined, Seceon shall, at its sole discretion, do one of the following: (i) procure for you the right to continue use of the Software, (ii) provide a modification to the Software so that its use becomes non-infringing, (iii) replace the Software with software that is substantially similar in functionality and performance or (iv), if none of the foregoing alternatives is reasonably available to Seceon, Seceon shall refund the residual value of the purchase price paid by you for the infringing Software, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Software to you. This Section 7 states Seceon's sole liability and your exclusive remedy for intellectual property infringement claims.

Reserved.

Additional Terms.

Reserved.

Reserved.

"Free" or "Open-Source" Software: The product may include programs or code that are licensed under an OpenSource Software ("OSS") license model. OSS programs and code are subject to the terms, conditions and obligations of the applicable OSS license and are SPECIFICALLY EXCLUDED FROM ALL WARRANTY AND SUPPORT OBLIGATIONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.

Notice to United States Government End Users. The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

Privacy and Collection of Personal or System Information.

The Software, Support or service subscription may employ applications and tools to collect personally identifiable, sensitive or other information about you and users (e.g., including, without limitation, your and users' name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers' interactions with other computers (e.g., including, without limitation, information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, Seceon products installed, Seceon components, processes and services information, frequency and details of update of Seceon components, information about third party products installed, extracts of logs created by Seceon, usage patterns of Seceon products and specific features, etc.) (collectively, "Data").

The collection of this Data may be necessary to provide you and users with the relevant Software, Support or service subscription functionalities as ordered (e.g., including, without limitation, detecting and reporting threats and vulnerabilities on your and users' computer network), enable Seceon to improve our Software, Support or service subscription (e.g., including, without limitation, content synchronization, device tracking, troubleshooting, etc.) and to further or improve overall security for you and users. You may be required to uninstall the Software or disable Support or its service subscription to stop further Data collection that supports these functions.

You are solely responsible for securing any privacy-related rights and permissions from your users as may be required by local law or by your internal policies. Seceon will only collect, process, copy, backup, store, transfer and use personally identifiable information.

Audit. Subject to your security requirements, Seceon may, at its expense, upon reasonable prior written notice to you and during standard business hours, audit you with respect to your compliance with the terms of this Agreement no more than once per year.

You understand and acknowledge that Seceon utilizes a number of methods to verify and support software use by its customers. These methods may include technological features of the Software that prevent unauthorized use and provide Software deployment verification. Upon reasonable request, you will provide a system-generated report verifying your Software deployment, such request to occur no more than two (2) times per year. Seceon will not unreasonably interfere with the conduct of your business.

Export Controls. You acknowledge that the Software is subject to US export regulations. You shall comply with applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. You shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. You are responsible, at your own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Software. For additional information regarding exporting and importing the Software, see [http://Seceon.com/us/about/export\\_compliance/index.html](http://Seceon.com/us/about/export_compliance/index.html) (then click on US Export Compliance. Seceon reserves the right to update this website from time to time, at its sole discretion.)

Reserved.

Reserved.

Reserved.

**SECURE CHANNELS INC.**  
**16400 BAKE PARKWAY**  
**SUITE 100**  
**IRVINE, CA 92618**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Secure Channels Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

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Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

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**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third-party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

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**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

### SECURE CHANNELS

#### SECURE CHANNELS. WARRANTY AND SUPPORT TERMS

##### Secure Channels Inc.

All references to Secure Channels, Inc. ("SCI") in these Terms and Conditions should be read as "Contractor (immixTechnology, Inc.), acting by and through its supplier, SCI."

##### SECURE CHANNELS, INC.'S END USER LICENSE AND TECHNICAL SUPPORT AND MAINTENANCE AGREEMENT

This End User License and Technical Support and Maintenance Agreement ("EULA") is a legal agreement between the Customer ("you") either a Government agency or instrumentality and Secure Channels, Inc. and its subsidiaries (collectively, "SCI") for SCI's Software, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation (collectively "Licensed Software") as well as technical support and maintenance services for the Licensed Software ("Technical Support and Maintenance") if acquired from SCI. The Licensed Software also includes any updates and supplements to the original Licensed Software which may be provided to you by SCI.

The Licensed Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Licensed Software is licensed, not sold.

#### **Grant of License; License Keys.**

**Grant.** Under this EULA, SCI grants to you a non-exclusive license to use the version of the Licensed Software provided to you by SCI, and to receive Technical Support and Maintenance if acquired, solely for your own internal purposes and subject to the terms of this EULA. Your use of the Licensed Software shall also be in accordance with the documentation for the Licensed Software and the applicable License Key and License Configuration as defined herein. Your license rights as specified herein may be perpetual ("**Perpetual License**"), or limited to a subscription period, if applicable ("**Subscription License**"). You may allow your employees, agents, consultants and/or independent contractors (collectively referred to as "personnel," hereinafter) to use the Licensed Software for your internal purposes and you are responsible for their compliance with the terms of this EULA in such use. Unless otherwise provided in this EULA, you may only make copies of the Licensed Software for archive purposes. The Licensed Software is deemed accepted as provided in the Federal Acquisitions Regulations ("FAR") and the underlying ordering document.

**License Keys.** The Licensed Software may require an applicable license key in order to access its functionality ("**License Key**"). In order to access the full functionality of the Licensed Software, each copy of the Licensed Software may require an applicable License Key issued by SCI for a limited number of servers or users, specifically identified computers, fixed subscription period and/or other usage rights or limitations ("**License Configuration**") specified in an applicable ordering document ("**Order**").

#### **Other Rights and Limitations.**

**Limitations on Reverse Engineering, Decompilation and Disassembly.** You shall not cause or permit the reverse engineering, decompilation, or disassembly of the Licensed Software or any portion thereof, except and only to the extent that such activity is expressly permitted by applicable federal law.

**Marks.** This EULA does not grant you any rights in connection with any trademarks or service marks of SCI. You shall not remove or modify any Licensed Software markings or any notice of SCI's proprietary rights.

**Third Party Use.** You shall not rent, lease or lend the Licensed Software, or make the Licensed Software available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted in writing by SCI).

**Actual License Limits.** You may not use software or hardware that (i) reduces the number of users directly accessing or utilizing the Licensed Software; (ii) allows you to exceed the number of processors ("CPUs") or servers for which the Licensed Software is licensed to you; or (iii) otherwise prevents the Licensed Software from keeping an accurate count of the number of users, CPUs or servers actually accessing or utilizing the Licensed Software.

**Benchmarks and Competitive Use.** You shall not disclose results of any Licensed Software benchmark tests without SCI's prior written consent. The Licensed Software may not be used for purposes of competitive analysis or development of a competitive product.

**Proprietary Rights.** All rights, title, interest and copyrights in and to the Licensed Software are owned by SCI or its licensors.

**Technical Support and Maintenance Services.** This EULA does not entitle you to receive any enhancements, improvements or modifications to the Licensed Software. SCI may provide you with Technical Support and Maintenance if you have ordered such services from SCI, subject to the execution of an applicable Order. Use of Technical Support and Maintenance is governed by SCI's policies and programs. Any enhancements, improvements, modifications or other supplemental software provided to you as part of Technical Support and Maintenance shall be considered part of the Licensed Software and subject to the terms and conditions of this EULA. With respect to technical information you provide to SCI as part of Technical Support and Maintenance, SCI may use such information for its business purposes, including for product support and development.

**Inspection/Acceptance.** The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("SCI") published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights- (1) Within the warranty period; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

#### **5. Warranties, Disclaimers and Remedies.**

If you have acquired a Perpetual License for the Licensed Software, SCI warrants for 90 days after acceptance in accordance with the FAR and the underlying ordering document, (the "**Warranty Period**") that the Licensed Software will function in all material respects as described in the documentation for the Licensed Software, subject to compliance with the License Configuration.

If you have acquired a Subscription License for the Licensed Software, SCI warrants for 90 days after the start of your subscription, or an annual renewal of such subscription, if applicable ("**Subscription Warranty Period**") that the Licensed Software will function in all material respects as described in the documentation for the Licensed Software, subject to compliance with the License Configuration.

You must notify SCI of any Licensed Software warranty deficiency during the applicable Warranty Period. SCI also warrants that if you contracted and paid for Technical Support and Maintenance, it will be provided in a professional manner consistent with industry standards. You must notify SCI of any Technical Support and Maintenance warranty deficiencies within 60 days of the performance of the deficient Technical Support and Maintenance.

SCI DOES NOT WARRANT OR GUARANTEE THAT THE LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS, WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT SCI WILL CORRECT ALL ERRORS IN THE LICENSED SOFTWARE. TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND SCI EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. FOR ANY BREACH OF THE ABOVE



WARRANTIES, YOUR EXCLUSIVE REMEDY AND SCI'S ENTIRE LIABILITY, SHALL BE, AT SCI'S DISCRETION, AS APPLICABLE, FOR THE LICENSED SOFTWARE, (A) THE CORRECTION OF ERRORS IN THE LICENSED SOFTWARE THAT CAUSE BREACH OF THE WARRANTY; OR (B) TERMINATION OF YOUR LICENSE AND REFUND OF THE FEES YOU PAID TO SCI FOR THE SPECIFIC LICENSED SOFTWARE (IN THE CASE OF SUBSCRIPTIONS, SUCH REFUND SHALL BE LIMITED TO THE THEN-CURRENT SUBSCRIPTION PERIOD) AND ANY UNUSED, PREPAID TECHNICAL SUPPORT AND MAINTENANCE FEES YOU HAVE PAID FOR THE SPECIFIC LICENSED SOFTWARE; AND FOR TECHNICAL SUPPORT AND MAINTENANCE, (C) THE REPERFORMANCE OF DEFICIENT TECHNICAL SUPPORT AND MAINTENANCE; OR (D) TERMINATION OF THE RELEVANT TECHNICAL SUPPORT AND MAINTENANCE AND REFUND ANY UNUSED PREPAID TECHNICAL SUPPORT AND MAINTENANCE FEES YOU HAVE PAID TO SCI FOR THE DEFICIENT TECHNICAL SUPPORT AND MAINTENANCE.

The Licensed Software is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Licensed Software could lead directly to death, personal injury or sever physical or property damage (collectively, "High Risk Activities"). SCI EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR FITNESS FOR HIGH RISK ACTIVITIES.

**Reserved.**

**Reserved.**

**Indemnification.** If someone makes a claim against you that the Licensed Software provided to you by SCI under this EULA and used by you according to the documentation for the Licensed Software infringes that party's intellectual property rights, SCI will indemnify and hold you harmless against the claim provided you: (a) notify SCI promptly in writing, not later than 30 days after you receive notice of the claim;(b) provide SCI with the opportunity to intervene in any litigation, at its own expense, through counsel of its choosing SCI and (c) SCI will provide the Government with the information, assistance and authority as required to defend against or settle the claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If SCI believes or it is determined that the Licensed Software violated someone else's intellectual property rights, SCI may choose in its discretion to: (i) modify the Licensed Software to be non-infringing; (ii) work with the Government to obtain a license for you to allow for continued use; or (iii) terminate the license for the Licensed Software and require its return, and refund a prorated portion of any fees you may have paid for the Licensed Software. SCI has no obligation to indemnify or hold you harmless: (A) if you alter the Licensed Software or use it outside the scope of the License Configuration; (B) if you continue to use a version of the Licensed Software which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Licensed Software which was provided to you; (C) to the extent that an infringement claim is based upon any software, design, specification, instruction, data or other material not furnished by SCI; or (D) to the extent an infringement claim is based upon the combination of the Licensed Software with any products or services not provided to you by SCI.

**Reserved.**

**Reserved.**

**Other.**

**Audit.** Upon 30 days written notice, and subject to Government security requirements, SCI may audit your use of the Licensed Software, but no more than once-during a 12-month period. During standard business hours and upon prior written notice, SCI may visit you and you shall cooperate with SCI's audit and provide reasonable assistance and access to information. SCI shall comply with all security requirements of your facility and shall not interfere with you normal business operations.

**U.S. Government Restricted Rights.**

All Licensed Software provided to the U.S. Government is provided only with the rights described as stated in DFAR Section 227.7202, FAR Section 12.212, FAR 52.227-14 and DFARS 252.227.7015, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed by the terms of this Agreement and the applicable ordering document and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

**Export Restrictions.** You acknowledge that the Licensed Software is subject to U.S. export jurisdiction. You shall comply with all applicable federal laws that apply to the Licensed Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. Government.

**Transfer Restrictions.** You shall not assign or otherwise transfer this EULA or any portion of the Licensed Software, or any copies thereof or any of your interests in any of the foregoing, without SCI's prior written consent. Assignment by SCI is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR subpart 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013). This EULA will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs and permitted assigns.

**Reserved.**

**Reserved.**

**SECURITY FIRST CORP.  
29811 SANTA MARGARITA PARKWAY,  
SUITE 600  
RANCHO SANTA MARGARITA, CA 92688**

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SECURITY FIRST CORP.**

**SECURITY FIRST CORP. WARRANTY AND SUPPORT TERMS**

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**SECURITY FIRST CORP. (“SECURITYFIRST™”)  
LICENSE AGREEMENT FOR SECURITYFIRST SOFTWARE**

PLEASE READ THIS LICENSE AGREEMENT (“AGREEMENT”) CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING SECURITYFIRST SOFTWARE. BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE. THIS AGREEMENT INCLUDES BY REFERENCE THE LICENSE AGREEMENT ADDENDUM(S) ATTACHED HERETO.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU ARE A GOVERNMENT EMPLOYEE OR GOVERNMENT CONTRACTOR THAT HAS BEEN GIVEN THIS SOFTWARE TO INSTALL YOU HEREBY AGREE TO ABIDE BY ALL GOVERNMENT TERMS AND CONDITIONS RELATING TO THE USE AND REPRODUCTION OF THIS SOFTWARE, INCLUDING ALL GOVERNMENT RULES REGARDING COPYRIGHT PROTECTION.

IMPORTANT NOTE: The SecurityFirst software product (“Software” or “Product” or “Software Product”) is licensed to you only for transmission and/or storage of non-copyrighted materials, materials in which you own the copyright, or materials you are authorized or legally permitted to transmit and/or store.

You hereby waive to the maximum extent permitted by applicable law any claim against SecurityFirst concerning the validity or enforceability of this Agreement.

**DEFINITIONS.**

“**Distributor**” means a SecurityFirst authorized reseller, distributor, system integrator, service provider, independent software vendor, managed service provider, value-added reseller or OEM for SecurityFirst products.

“**Product Notice**” means the notices by which SecurityFirst informs its customers of its warranty, maintenance and product-specific terms. Product Notices may be delivered from time to time by SecurityFirst by means of Quotes, contract riders and / or when applicable a posting on the SecurityFirst website (see: <https://support.securityfirstcorp.com/product-notices/>). The terms of all applicable Product Notices shall not bind the Ordering Activity unless the terms are provided for review and agreed to in writing by all parties.

“**Purchase Order(s)**” or “**Order(s)**” or “**Quote(s)**” means one or more required documents issued by SecurityFirst or a Distributor which identifies the product(s), evaluation product(s), and/or a related service(s), the applicable pricing, unit of measure, quantity of licensed units, term of the license and sufficient other information to complete the transaction (at a minimum, a Quote must identify the product or evaluation product, pricing, quantity and term).

**AUDIT RIGHTS**

If you are entering this Agreement on behalf of a U.S. Government agency, the following shall apply with respect to audit rights: Upon request, but no more than once per year, the agency shall deliver to SecurityFirst a signed statement certifying that use of the Program(s) are in compliance with the terms of the License Agreement.

**LICENSE**

Subject to your compliance with this Agreement, and payment of all initial and, if applicable, periodic license fees to SecurityFirst, SecurityFirst grants you a limited, personal, nonexclusive, and non-transferable license (with no right to sublicense) to use the Software for your internal business purposes only under the terms of this Agreement, for the number of applicable licensing units and in accordance with any other license terms or restrictions set forth in the required Quote. The Software is licensed, not sold. The terms of this Agreement will govern any Software upgrades provided by SecurityFirst that replace and/or supplement the original SecurityFirst product. Documentation is licensed solely for purposes of supporting your use of the Software as permitted in this Section, and you may host the documentation on a section of your intranet that is not publicly accessible and may make a reasonable number of copies for your internal use.

All licenses granted herein are for use of object code only. You may make one copy of the Software in machine-readable form for backup purposes only; provided that the backup copy must include all copyright or other proprietary notices contained on the original. You may not use the Software in a service bureau or similar capacity, or copy, provide, disclose, lease, loan, rent, transfer or otherwise make available any Software in any form to anyone other than your internal business purposes in a manner consistent with this Agreement. For evaluation products, you shall not disclose the results of any comparative or competitive analyses, benchmark testing, infringement testing, or analyses of SecurityFirst’s Software and hardware products to any third party. Except as otherwise agreed in writing, separate license units are required for each device/user accessing or using a product or evaluation product, notwithstanding any non-SecurityFirst technology used to reduce the number of devices/users accessing or using a product or evaluation product. You may not separate any Software for use in more than one operating system environment under a single license unit, even if the operating system environments are on the same physical hardware system. You shall be fully responsible to SecurityFirst for the compliance of your users herewith.

**WARRANTY AND DISCLAIMER.**

**Duration.** The warranty term for the Software and any hardware product shall be ninety (90) days from the date of receipt by you. Any warranty claim

must be filed in writing with SecurityFirst within thirty (30) days after the end of the applicable warranty term. ANY EVALUATION PRODUCT AND ANY SOFTWARE OR HARDWARE SOURCED FROM A THIRD PARTY IS PROVIDED STRICTLY ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OR INDEMNITIES OF ANY KIND. YOU RECOGNIZE THAT ITEMS MAY HAVE DEFECTS OR DEFICIENCIES WHICH CANNOT OR MAY NOT BE CORRECTED BY SECURITYFIRST.

**Product Warranty.** For the applicable warranty term, SecurityFirst warrants that each product will substantially conform to the applicable accompanying documentation for such Product. Hardware products may be newly manufactured, (ii) may be assembled from new or serviceable used parts™ that are equivalent to new parts in performance, or (iii) may have been previously installed. No warranty shall apply to any product which has been altered, except by SecurityFirst or under SecurityFirst's direction, or which has been handled, installed, misused (including static discharge), maintained, or operated not in accordance with SecurityFirst's instructions. SecurityFirst does not warrant that the operation of products shall be uninterrupted or error free, or that all defects can be corrected. SecurityFirst's entire liability and your exclusive remedy for warranty claims shall be for SecurityFirst, at its option, to use reasonable efforts to remedy the product defects or replace the affected product. If SecurityFirst is unable to make an affected product operate as warranted within a reasonable time, then SecurityFirst shall refund the amount received by SecurityFirst for the affected product upon its return to SecurityFirst or its Distributor. The foregoing shall not void any supplementary remedies made available to you by a Distributor, with respect to which SecurityFirst shall have no liability or obligation.

**Warranty Exclusions.** Except as expressly stated in the applicable warranty set forth in this Agreement, and to the maximum extent permitted by law, SecurityFirst (including its suppliers) provides all Software and hardware on an "AS IS" basis and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON- INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

**OWNERSHIP AND RESTRICTIONS.** Other than the rights expressly granted under Section 3, no other rights are granted to the Software whether expressly or by estoppel, implication, exhaustion, other doctrine of law, equity or otherwise. No title to, or ownership of, Software is transferred to you. You shall reproduce and include copyright and other proprietary notices on and in any copies, including but not limited to partial, physical or electronic copies, of the Software authorized to be copied by you. You may not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce to human readable form the Software, nor shall you permit any third party to do the same. You shall not combine or distribute Software with open source software or with software developed using open source software (e.g. tools) in a manner that subjects SecurityFirst or any portion of the Software licensed hereunder to any license obligations of such open source software including, but not limited to, the obligation to publicly disclose software source code.

**INDEMNITY.** SecurityFirst shall (i) indemnify its customers against any third party claim that Software, currently both under license and a paid support agreement with SecurityFirst or an authorized Distributor of SecurityFirst products, infringes a U.S. issued patent or registered copyright, and (ii) pay the resulting costs and damages finally awarded against a customer by a court of competent jurisdiction or the amounts stated in a written settlement signed by SecurityFirst. The foregoing obligations are subject to the following: that the customer (a) notifies SecurityFirst promptly in writing of such claim, (b) gives SecurityFirst an opportunity to intervene in any suit or claim filed against the GSA Customer, at his own expense, through counsel of his choosing, (c) reasonably cooperates in response to a SecurityFirst request for assistance, and (d) is not in material breach of this Agreement. Should any item become, or in SecurityFirst's opinion be likely to become, the subject of such a claim, SecurityFirst may, at its option and expense, (1) procure for the customer the right to make continued use thereof, (2) replace or modify such so that it becomes non-infringing, (3) request return of the product and, upon receipt thereof, refund the price paid by customer, less straight line depreciation on a three year useful life for the product, or (4) discontinue the service and refund the portion of any pre-paid service fee that corresponds to the period of service discontinuation. SecurityFirst shall have no liability under this Section 6 to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of any item provided by SecurityFirst with third party products or services, (B) use for a purpose or in a manner for which the SecurityFirst provided items was not licensed or designed, (C) any modification made by anyone other than SecurityFirst, (D) any modifications to a SecurityFirst product or service to comply with the designs, specifications or instructions provided by you or the use of technical information or technology provided by you, (E) any technology owned or licensed by you or a Distributor from third parties, (F) any evaluation items, or (G) use of any older version of the product when use of a newer version made available to you would have avoided the infringement. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute, 28 U.S.C. 516.

THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDY AND SECURITYFIRST'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

#### **LIMITATION OF LIABILITY.**

**Limitation on Direct Damages.** TO MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SECURITYFIRST'S (INCLUDING SECURITYFIRST'S DISTRIBUTORS) TOTAL LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE CONTRACT PRICE PAID TO SECURITYFIRST BY YOU FOR THE SPECIFIC ITEM OR SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) FROM WHICH SUCH CLAIM ARISES.

**No Indirect Damages.** TO MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SECURITYFIRST (INCLUDING SECURITYFIRST'S DISTRIBUTORS) SHALL NOT HAVE ANY LIABILITY FOR SPECIAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF. YOU MAY NOT BRING ANY CLAIM BASED ON PRODUCTS OR SERVICES PROVIDED HEREUNDER MORE THAN SIX (6) YEARS AFTER THE CAUSE OF ACTION ACCRUES. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY (1) TO PERSONAL INJURY OR DEATH CAUSED BY CONTRACTOR'S NEGLIGENCE; (2) FOR FRAUD; (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

#### **Class Actions. [Reserved]**

#### **GOVERNMENT REGULATIONS AND RIGHTS.**

**Export.** Items provided under this Agreement are subject to governmental restrictions on exports from the U.S. and from disclosures of technology to foreign persons. Diversion contrary to U.S. law is expressly prohibited. You shall, at your sole expense, comply with all export laws. You represent that you are not a restricted person, which shall be deemed to include any person or entity: (1) located in or a national of Cuba, Iran, Libya, North Korea, Sudan, Syria, or any other countries that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; or (2) on any restricted person or entity list

maintained by any U.S. governmental agency. Certain information, products or technology may be subject to the International Traffic in Arms Regulations ("ITAR"). This information, products or technology shall only be exported, transferred or released to foreign nationals inside or outside the United States in compliance with ITAR as applicable.

**Rights.** All Software licensed hereunder shall be considered "commercial computer software" or "commercial computer software documentation" which has been developed entirely at private expense. They are delivered and licensed as commercial computer software and commercial computer software documentation within the meaning of all applicable acquisition regulation(s). With respect to the federal or state governments, their departments, offices or agencies, either directly or through a prime contractor or subcontractor at any tier ("Government Customer"), all Software and documentation provided hereunder are "commercial item[s]" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software," commercial "computer software documentation" and/or commercial "technical data" as such terms are used in 48 C.F.R. §§ 12.212, 252.227-7014(a) and 252.227-7015(a)(5), respectively. Consistent with 48 C.F.R. §§ 12.212, Government Customers acquire only those rights set forth herein, except that in no event shall any Government Customer have greater rights in any computer software or technical data than as set forth in 52.227-14252.227-7015, Technical Data – Commercial Items (NOV 1995), respectively. For U.S. Government Customers, FAR 52.227-3 shall apply. SecurityFirst retains all intellectual property rights in and to such items.

**TERMINATION.** With respect to evaluation products only, this Agreement shall automatically expire and terminate upon the conclusion of sixty (60) days from the initial installation of an evaluation product unless another term (not to exceed one (1) year) is otherwise provided for in an applicable Quote. For non- evaluation products, this Agreement will terminate at the end of the applicable license terms. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, SecurityFirst shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination of this Agreement, you shall cease all use and return or certify destruction of the applicable Software (including copies) to SecurityFirst. Upon termination of the Agreement, the following Sections hereof shall survive in accordance with their terms: 1, 2 (only if fees are due and owing at termination), 4.C, 5, 7, 8, 9, 10 and 11.

**NOTICES.** Any notices permitted or required under this Agreement shall be in writing, and shall be deemed given upon receipt when delivered (i) in person, (ii) by a recognized overnight courier, with proof of receipt, or (iii) by U.S. certified or registered mail, with proof of delivery. Routine business communications (e.g., SecurityFirst's Product Notices) may be communicated or exchanged in the ordinary course of business without formal notification. Notices to SecurityFirst shall be sent to: Security First Corp., Attn: Legal Department, 29811 Santa Margarita Parkway Suite 600, Rancho Santa Margarita, CA 92688, USA.

**MISCELLANEOUS.** This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, and applicable Purchase Order(s), is the complete statement of the agreement of the parties with regard to the subject matter hereof, and may be modified only by a writing signed by both parties. Excusable delays shall be governed by FAR 52.212-4(f). You or SecurityFirst shall not assign this Agreement or any right or delegate any performance without the other party's prior written consent. No waiver shall be deemed a waiver of any prior or subsequent default hereunder. If any part of this Agreement is held unenforceable or invalid, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. This Agreement is governed by the Federal laws of United States. The U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (as well as any version thereof adopted by any state in any form) shall not apply. For U.S. Government Customers, this Agreement will be governed by and construed in accordance with U.S. Federal law, including without limitation, for matters arising out of contract disputes, the mechanism for redress permitted by the Federal Acquisition Regulations (FAR), the Defense Federal Acquisition Regulations (DFAR) and their Supplements, as applicable.

**Agreed and Accepted by:**

\_\_\_\_\_  
(Customer)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_  
(Printed or Typed Name)

\_\_\_\_\_  
(Email Address)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Signature)

**Effective Date: 02-20-2018**

**LICENSE AGREEMENT ADDENDUM (“DataKeep™ Addendum”)**

This DataKeep Addendum represents additional terms applying only to DataKeep licensing agreements.

Terms for the license of SecurityFirst™ Software are in the LICENSE AGREEMENT FOR SECURITYFIRST SOFTWARE. If there is a conflict in terms between the LICENSE AGREEMENT FOR SECURITYFIRST SOFTWARE and this DataKeep Addendum, the terms of this Addendum will govern.

**Additional Product Terms:**

The DataKeep PPM software component is licensed under this Agreement at no additional cost and is included in the software distribution of the DataKeep agents licensed hereunder and may be used only to support these and other properly licensed DataKeep agents.

Installation of DataKeep PPM at the server level is supported as an OVA using CentOS as one or more VM's as the Customer finds necessary to adequately support the licensed DataKeep agents (inclusive of high availability clustered management environments). Customer is permitted to install and use the licensed number and type (model) of DataKeep agent Software instances with each instance limited to one, and only one server (either bare metal or VM).

The Software will be delivered to the Customer from SecurityFirst via digital download or some other mutually agreeable method. The Software download should then be installed on the desired server and by performing installation, Customer accepts the responsibility of remaining within the number of agent instances as licensed by this Agreement.



**SENECA**

**6040 TARBELL ROAD  
SYRACUSE, NY 13206**

**SENECA DATA DISTRIBUTORS, INC.  
TERMS AND CONDITIONS OF SALE\***

All quotations and sales by Seneca Data Distributors, Inc. ("Seneca Data" or "Seller") to you ("You" or "Your") are subject to these terms and conditions ("Terms"). These Terms are deemed an offer and a rejection of any other terms or conditions contained in any of Your documents (which, if construed to be an offer, is hereby rejected). This transaction with Seller is expressly made conditional on Your assent to the Terms set forth below, which are binding to the exclusion of any additional or different terms contained in any other document, any course of dealing or performance, and any trade custom or usage. Your acceptance of any product or service shall manifest Your assent to these Terms.

**1. DEFINITIONS**

- a. Bill of Materials or BOM means Your document used to identify parts or components as part of Your Specifications.
- b. Defect?
- c. End of Life or EOL means the OEM's determination that any Products, parts or components will be discontinued and/or no longer manufactured. EOL status includes non-cancellable/non-returnable ("NCNR") items.
- d. End User means Your customer who obtains Products for internal business purposes or personal use and not for resale, license or distribution to third parties
- e. Order means Your written instructions to Seller and commitment to procure and pay for Products and Services in accordance with these Terms.. Orders shall be consistent with Seller's Quote unless mutually agreed in writing.
- f. Original Equipment Manufacturer or OEM means the manufacturer (other than Seller) of a Product or the parts or components used to create a Product.
- g. Products: as Includes Seller's software and any third party software required in the Specifications, subject to any applicable End User License Agreements.
- h. Quote means Seller's written statement of the price, timing, lead times and other relevant information for the sale of Products and Services.
- i. RMA
- j. Services means activities performed by Seller using skills, ingenuity, experience and know-how associated with Products. Services do not include Value-Added Services or activities in connection with Order management and fulfillment, distribution, inventory, RMA, warranty or administration.
- k. Specifications means Your designs, drawings, requirements, BOM and instructions used to develop and deliver a Product.
- l. Value-Added Services means Seller's assembly and/or integration of parts or components into a Product in accordance with Your Specifications.

**2. PAYMENT.** Terms of payment are net 30 days from invoice date. Prices do not include any taxes, freight, handling, duty (including but not limited to tariffs) or other similar charges, payment of which will be solely Your responsibility. Prices are conditioned upon timely payment and any past due balance will accrue interest at the monthly rate of 1.5%. ALL PRICES SHOWN ARE "CASH DISCOUNT PRICES" AND REFLECT A 3% DISCOUNT FOR PAYMENT MADE BY CASH, COMPANY CHECK, BANK MONEY ORDER, CERTIFIED CHECK OR WIRE TRANSFER. PAYMENT BY ANY OTHER MEANS MAY NOT QUALIFY YOUR PURCHASE FOR THE CASH DISCOUNT PRICE. Freight and handling charges may not reflect actual costs. Seller reserves the right to modify any payment terms prior to shipment, require payment in advance, or delay/cancel any shipment or order for any reason (including Your creditworthiness).

**3. SHIPMENT.** Unless otherwise agreed, Seller will select a carrier. Shipment shall be FCA Seller's facility (INCOTERMS 2020); Seller's responsibility for any loss or damage ends, and title passes, when products (including software, hereafter, "Products") are delivered to the carrier, to You, or to Your agent, whichever occurs first. You will pay for storage charges if Seller holds Products at Your request for up to a maximum of 60 days (or as otherwise agreed in a signed writing) and You agree to accept delivery of Products upon completion of such period. Seller retains a purchase money security interest in Products sold to You, and in the proceeds of any resale of such Products, until Seller's invoices to You have been paid in full.

3. From the date You purchase Products, Seller warrants that the Products it manufactures and You purchase shall be free from defects in materials and will function substantially in accordance with the normal, ordinary and customary use of the Products, when used in accordance with how Seller intends the Products to be used and in compliance with all instructions provided to You. Seller warrants that Services performed by Seller shall be performed in accordance with generally accepted industry standards. Limited warranty periods for Products and Services are specified on Seller's invoice. Seller's warranties apply only to Products which are manufactured by Seller or Services performed by Seller. All other products, expendable parts and/or peripheral devices from Seller's Suppliers ("Supplier Products"), even if included with Products and which may not be invoiced separately to You, all original equipment manufacturer products ("OEM Products") and OEM services associated with OEM Products ("OEM Services") are subject to Supplier's or OEM's standard warranty, which is expressly in lieu of any other warranty, express or implied, by Seller, Supplier or OEM. If there is no Supplier or OEM warranty, You take all such Supplier Products, OEM Products and OEM Services "as-is" without any warranty. Your exclusive remedy, if any, under Seller's warranties is limited, at Seller's election, to: (a) refund of Your purchase price, (b) repair or reperformance of any Products or Services found to be defective, or (c) replacement of any Product. Repairs or replacements may be performed using factory-refinished parts or comparable products. Any parts or Products exchanged by Seller in repairing or replacing any parts or Products shall become the sole property of Seller. Repaired or replaced Products and reperfomed Services shall be subject to the original warranty period. Seller does not provide repair services or any other services at Your place of business or any other place other than at Seller's facilities. You acknowledge that except as specifically set forth herein, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND BY SELLER, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS OR SERVICES, THEIR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, NONINFRINGEMENT, OR OTHERWISE. SELLER ASSUMES NO RESPONSIBILITY OR LIABILITY FOR SUPPLIER PRODUCTS, OEM PRODUCTS OR SUPPLIER SERVICES, THE PERFORMANCE OR ADEQUACY OF ANY SUPPLIER OR OEM DESIGNS OR SPECIFICATIONS OR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO SELLER.

4. Seller's warranty in paragraph 3 shall not apply in the event (a) A Product has been damaged or rendered defective as a result of: (i) the use other than for its usual and customary use; (ii) the failure of You or any other party to use the Product in accordance with the component user manual(s) and any other written directions or instructions provided with the Product at the time of sale or subsequently; (iii) the condition or use of Supplier Products, OEM Products or parts or accessories purchased other than directly from Seller; (iv) a modification or repair of the Product by You or any party other than Seller; (v) services performed by any party other than Seller; (vi) improper transportation or packaging in the shipment of the Product to Seller or its repair facility; or (vii) the installation of third-party products into the Product, for example, memory cards; (b) Any third party software provided with the Products (which software may or may not be provided with a licensor warranty); and (c) Operation of the Products in conjunction with equipment, software or other items manufactured or sold by any third-party or You.

5. Seller's rights and remedies will be cumulative and not exclusive. You are responsible for all losses, costs and expenses, including attorney's fees, incurred by Seller in collecting any sums You owe. Seller shall have the right to offset against any amounts owed by Seller to You. These Terms, and any matter arising out of or related thereto, are governed solely by the laws of the State of New York, without regard to its conflict of law principles. No provisions of the United Nations Convention on Contracts for International Sale of Goods, including any amendments thereto, will apply. Any proceeding arising out of or related to this Agreement must be commenced in any court of competent jurisdiction located in New York County in the State of New York. The parties hereby submit to the exclusive jurisdiction of such court and waive (a) any right to a jury trial or (b) defense of lack of personal jurisdiction in such court. EACH OF THE PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH PROCEEDING IN SUCH COURTS AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN ANY SUCH COURTS HAS BEEN BROUGHT IN ANY INCONVENIENT FORUM. Each party agrees that a final judgment in any such proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
5. Products or Services are deemed accepted by You unless You notify Seller of shortages, damage or defects in writing within 10 days of delivery of Products or performance of Services. All returns must comply with Seller's return policy and procedure as set forth at <https://www.senecadata.com/support/rma-policy/> ("RMA Policy") and paragraph 13 with respect to NCNR Products. If You refuse to accept tender or delivery of any Products or return any Products without complying with the RMA Policy, Seller will hold such Products awaiting Your instructions for 20 days, after which Seller may deem the Products abandoned and dispose of them, without crediting Your account. You warrant that any Products returned are the original Products Seller shipped to You and are unaltered. All returns are subject to a restocking fee up to 50% of the value of the Products being returned.
6. Seller will not be liable for any damages due to any failure or delay in its performance as result of any events beyond its reasonable control. Seller may cancel without liability any order delayed by any such cause(s). In its sole discretion, Seller may allocate, defer, delay, or cancel the shipment of any Product which is in short supply.
7. These Terms are subject to change and are effective upon Seller posting the updated Terms to its website (available at <https://www.senecadata.com/support/xxxxxxx>).
8. If Your order is placed under a contract with the United States Government, Seller agrees to comply only with those contract provisions and regulations that meet both of the following conditions: (a) Seller must comply with such provisions and regulations applicable to a distributor as a matter of law, and (b) You have identified them in writing and they have been accepted in writing by Seller at the time of order placement. In no event will United States Government Cost Accounting Standards apply. To the extent not exempt, You shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin.
9. You covenant that Products and Services provided by Seller will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where product failure could lead to loss of life or catastrophic property damage. In the event that You breach such covenant, You will fully defend, indemnify and hold harmless Seller, its agents and Suppliers from any claims resulting from such breach.
10. You will comply with any applicable export or resale restrictions and regulations. Seller does not warrant and will not be liable for any error regarding the accuracy of any statement as to product country of origin, ECCN, HTS Code, RoHS compliance, parametric or conflict mineral data or compliance with applicable law. You certify that You: (a) comply with all applicable laws, including the labor laws and regulations and anti-bribery regulations in the jurisdictions where You operate and (b) comply with Seller's Business Partner Code of Conduct (available [here](#)).
11. Except for the limited warranty in paragraph 3, NEITHER SELLER, SUPPLIER(S) OR OEM(S) WILL HAVE ANY LIABILITY OR OBLIGATION TO YOU OR ANY OTHER PERSON FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE CAUSED IN WHOLE OR IN PART BY (a) ANY INADEQUACY, DEFICIENCY, OR DEFECT IN ANY PRODUCTS OR SERVICES (WHETHER OR NOT COVERED BY ANY WARRANTY), (b) THE USE OR PERFORMANCE OF ANY PRODUCTS OR SERVICES, OR (c) ANY FAILURE OR DELAY IN SELLER'S PERFORMANCE HEREUNDER. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR AS REQUIRED BY APPLICABLE LAW, NEITHER SELLER, SUPPLIER(S) NOR OEM(S) WILL HAVE ANY LIABILITY THESE TERMS OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOST PROFIT, LOST BUSINESS OR COST OF REPLACEMENT GOODS OR SERVICES, REWORK OR LOSS OF DATA HOWSOEVER CAUSED, EVEN IF ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF ANY SUCH DAMAGES. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY FOR ANY DAMAGES, REGARDLESS OF BASIS, EXCEED THE PRICE PAID FOR THE SPECIFIC PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM.
12. Notwithstanding paragraph 3, the performance of any value-added service to OEM Products may void OEM's warranty. Orders incorporating value-added services may become non-cancelable and the Products non-returnable under paragraphs 13 or 15. Your third-party value-added service provider is deemed to be Your agent. Seller shall have no liability for any technical advice offered or given.
13. Seller may designate Products, Supplier Products or OEM Products as end-of-life or obsolete ("EOL"), required to be ordered in minimum quantities ("MOQ"), an OEM Product modified by Seller's value-added services as described in paragraph 12, or otherwise cannot be canceled and cannot be returned except for a valid warranty claim (collectively, "Non-Cancellable/Non-Returnable" or "NCNR") Products). Orders for NCNR Products are subject to Seller's NCNR Agreement, which You will sign before Seller accepts such Orders. If You do not take delivery of NCNR Products by the delivery date mutually agreed in the NCNR Agreement, You agree that Seller may ship NCNR Products to You and You will accept and pay for such NCNR Products. Orders for NCNR Products are not eligible for cancellation, rescheduling, reconfiguration or assignment under paragraph 15.
14. All rights in intellectual property owned or licensed by Seller, Supplier(s) or OEM(s) are hereby reserved and deemed restricted or limited. Seller makes no representation or warranty with respect to such rights and will have no liability in connection with them. You agree to comply with all requirements with regard to any intellectual property (including any requirement to enter into a separate license agreement and prohibitions against duplicating, reverse engineering or disclosing the same), even if Seller has broken the seal on any "shrink wrapped" software. If You provide Seller with any intellectual property, You warrant that You have all necessary legal rights to such intellectual property. You will indemnify Seller against and defend and hold it harmless from all liability, cost or expense arising out of or relating to any (a) breach or alleged breach of these terms and conditions, or (b) Your use or sale of the Products or Services, including infringement claims that arise from Your use of Products or Services in combination with other products or services.
15. None of Your orders may be cancelled, rescheduled, reconfigured, or assigned without Seller's prior written authorization and, in such event, You will be liable to Seller for any additional costs and expenses incurred by Seller. Prices are subject to change by Seller for any reason, including (a) upon Your rescheduling or reconfiguration of orders, or (b) in response to Supplier's price increases or if a price has been quoted in error, whereupon You may cancel the undelivered portion of any affected order by delivering written notice to Seller prior to the shipment thereof and within 10 days of Your receipt of notice of the price increase. Seller may assign its accounts receivable. In order to defray the cost of Your account administration, any amount owed to You which remains unclaimed by You for a period of 12 months will become the property of Seller.
16. If any term or provision set forth herein is deemed to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination



that any term or provision is invalid, illegal or unenforceable, the court may modify these terms and conditions to affect our original intent as closely as possible in order that the transactions contemplated hereby be consummated to the greatest extent possible as originally contemplated.

Version:

\*Your purchase is also subject to any applicable supplier Terms and Conditions available here:

[U-Blox Use Restrictions](#)

SIEMENS INDUSTRY, INC.  
1911 HARRISON STREET  
HOLLYWOOD, FL 33020

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Siemens Industry, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the

Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

### SIEMENS INDUSTRY, INC.

#### SIEMENS INDUSTRY, INC. LICENSE, WARRANTY AND SUPPORT TERMS

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1. Buyer's Requirements. Timely performance by Contractor through Siemens is contingent upon Ordering Activity's supplying to Siemens all required technical information and data, including drawing approvals, and all required commercial documentation.

2. Limited Warranty. (a.) Limited Product Warranty Statements. For each Product purchased from Contractor or an authorized reseller, Contractor makes the following limited warranties: (i) the Product is free from defects in material and workmanship, (ii) the Product materially conforms to Siemens' specifications that are attached to, or expressly incorporated by reference into, these terms, and (iii) at the time of delivery, Siemens has title to the Product free and clear of liens and encumbrances (collectively, the "Limited Warranties"). Warranties with respect to software which may be furnished by Contractor as part of the Product, if any, are expressly set forth elsewhere in these terms. The Limited Warranties set forth herein do not apply to any software furnished by Contractor. If software is furnished by Contractor, then the attached Software License/Warranty Addendum shall apply.

(b.) Conditions to the Limited Warranties. The Limited Warranties are conditioned on (i) Ordering Activity storing, installing, operating and maintaining the Product in accordance with Siemens' instructions, (ii) no repairs, modifications or alterations being made to the Product other than by Contractor through Siemens or its authorized representatives, (iii) using the Product within any conditions or in compliance with any parameters set forth in specifications that are attached to, or expressly incorporated by reference into, these terms, (iv) Ordering Activity discontinuing use of the Product after it has, or should have had, knowledge of any defect in the Product, (v) Ordering Activity providing prompt written notice of any warranty claims within the warranty period described below, (vi) at Contractor's discretion, Ordering Activity either removing and shipping the Product or non-conforming part thereof to Contractor through Siemens, at Ordering Activity's expense, or Ordering Activity granting Contractor through Siemens access to the Products at all reasonable times and locations to assess the warranty claims, and (vii) Ordering Activity not being in default of any payment obligation to Contractor under these terms.

(c.) Exclusions from Limited Warranty Coverage. The Limited Warranties specifically exclude any equipment comprising part of the Product that is not manufactured by Siemens or not bearing its nameplate. To the extent permitted, Contractor hereby assigns any warranties made to Siemens for such non-Siemens equipment. Contractor shall have no liability to Ordering Activity under any legal theory for such non-Siemens equipment or any related assignment of warranties. Additionally, any Product that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Limited Warranties and is provided to Ordering Activity "as is" with no warranties of any kind. Also excluded from the Limited Warranties are normal wear and tear items including any expendable items that comprise part of the Product, such as fuses and light bulbs and lamps.

(d.) Limited Warranty Period. Ordering Activity shall have 12 months from initial operation of the Product or 18 months from shipment, whichever occurs first, to provide Contractor with prompt, written notice of any claims of breach of the Limited Warranties. Continued use or possession of the Product after expiration of the warranty period shall be conclusive evidence that the Limited Warranties have been fulfilled to the full satisfaction of Ordering Activity, unless Ordering Activity has previously provided Contractor with notice of a breach of the Limited Warranties.

(e.) Remedies for Breach of Limited Warranty. Buyer's sole and exclusive remedies for any breach of the Limited Warranties are limited to Siemens' choice of repair or replacement of the Product, or non-conforming parts thereof, or refund of all or part of the purchase price. The warranty on repaired or replaced parts of the Product shall be limited to the remainder of the original warranty period. Unless otherwise agreed to in writing by Siemens, (i) Contractor shall be responsible for any labor required to gain access to the Product so that Siemens can assess the available remedies and (ii) Contractor shall be responsible for all costs of installation of repaired or replaced Products. All exchanged Products replaced under this Limited Warranty will become the property of Siemens.

(f.) Transferability. The Limited Warranties shall be transferable during the warranty period to the initial end-user of the Product. THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY SET FORTH IN SECTION 8 BELOW. SIEMENS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

3. Patent and Copyright Infringement. Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer in so far as it is based on an allegation that any Product (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if Siemens is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding to the extent permitted by 28 U.S.C. 516. Siemens will pay the damages and costs awarded in any suit or proceeding so defended. Siemens will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Product, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Siemens will, at its option and its own expense, either: (a) procure for Buyer the right to continue using said Product; (b) replace it with substantially equivalent non-infringing Product; or (c) modify the Product so it becomes noninfringing.

Siemens will have no duty or obligation to Buyer under this Article to the extent that the Product is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (b) modified by Buyer or its contractors after delivery, (c) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Buyer shall protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Buyer under the provisions of the Section above.

THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS.

Siren Data Intelligence, Inc.  
1735 Market Street  
Suite A498  
Philadelphia, PA 19103

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

**Scope.** This Rider and the attached Siren Data Intelligence, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule



dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.2293.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a

United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule

Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SIREN DATA INTELLIGENCE, INC.**

**SOFTWARE LICENCE AGREEMENT**

**THIS AGREEMENT** is entered into as of the date set forth in the Purchase Order, Statement of Work, or similar document (the “**Effective Date**”) by:

<b>Name</b>	The GSA Multiple Award Schedule Contractor acting on behalf of <b>Siren Data Intelligence, Inc. (“Siren”)</b>	The eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“ <b>Customer</b> ” or “ <b>Ordering Activity</b> ”)
<b>D-U-N-S Number</b>	<b>11-693-5195</b>	
<b>Registered Address</b>	22 Mourar Dr Spring City, PA 19475 UNITED STATES	
<b>Contact</b>	Account Manager	
<b>Telephone</b>	+353 91 704885	
<b>Fax</b>		
<b>Email</b>	<a href="mailto:accounts@siren.io">accounts@siren.io</a>	

**BACKGROUND**

Siren has developed or sublicensed the Products and provides certain maintenance and support services in relation to the Products.

The Customer wishes to use the Products and avail of maintenance and support services provided by Siren as detailed in this Agreement.

**OPERATIVE PROVISIONS**

**NOW, THEREFORE**, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Siren and the Customer agree as follows:

**1. LICENSE**

- 1.1 Subject to the terms and conditions of this Agreement, including, without limitation, Customer’s payment of Fees, Siren grants to the Customer a personal, non-exclusive, non-sublicensable, non-transferable, royalty-free worldwide right and licence to use the Products for the purpose of complying with its obligations and exercising its rights under the Agreement, during the Term.
- 1.2 The Customer will not sell, lease, assign or otherwise transfer the rights to use the Products under this Agreement in whole or in part. In particular but without limitation the Customer will not: (i) permit any timesharing or subscription use of the Products; or (ii) permit the Products to be used for any unlawful purpose.
- 1.3 Except as otherwise provided by applicable law, the Customer may not copy, alter, merge, modify, adapt or make error corrections to the Products in whole or in part, including reverse engineering, disassembling or decompiling or otherwise reduce to a human-perceivable form. The Customer may not sell, loan, rent, lease, licence, sublicense, distribute, create derivative work or otherwise transfer the Products without the prior written consent of Siren. The Customer will not remove any copyright or proprietary notices from the Products; create any derivative works based on the Products or show or demonstrate the Products to any competitor of Siren. The Customer acknowledges that the Products (and any concepts, methodologies, techniques, ideas or other information contained therein or related thereto) constitutes Confidential Information of Siren and the provisions of Clause 4 shall apply to it. Siren will have no obligations or responsibilities whatsoever with respect to the Products, including, without limitation, any obligation to provide updates or support, unless otherwise stated in this Agreement.
- 1.4 The licence set out in this Agreement is restricted to the maximum node usage and/or the number of named user seats that is set out in Schedule A.
- 1.5 The Customer and/or the Customer’s outsourced service providers shall host the Products.
- 1.6 The Customer shall record the location of any copy of the Products and ensure there is no un- authorised copying.

**2. NEW VERSIONS, MAINTENANCE AND SUPPORT**

- 2.1 Siren may, at its discretion, prepare new versions, updates or other amendments to the Products and make these available for commercial licensing. Siren may provide such new versions and related documentation to the Customer and where required by Siren the Customer will be obligated to install Major Releases during the Term hereof under the provisions of this Agreement.
- 2.2 Siren will support the Customer’s use of the Products in accordance with Schedule B.



### 3. PAYMENT TERMS

3.1 The GSA Multiple Award Schedule contractor on behalf of Siren will issue an invoice for the Fees annually, unless otherwise stated in Schedule A. The Customer will pay each invoice within 30 days of receipt. The Customer will make payment in United States dollars unless otherwise stated in Schedule A. Interest will be payable on any overdue amounts on the amount of any such overdue amounts together with interest thereon at the rate indicated by the Prompt

Payment Act (31 USC 3901 et seq) and

Treasury regulations at 5 CFR 1315. Siren shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

### 4. CONFIDENTIALITY

4.1 **"Confidential Information"** means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the **"Disclosing Party"**) to the other party (the **"Receiving Party"**) whether before or after the date of this Agreement which ought reasonably to be regarded as confidential including, without limitation, information relating to the Disclosing Party's products, services, operations, processes, plans or intentions, product information, knowhow, design rights, trade secrets, market opportunities and business affairs.

4.2 During the term of this Agreement and after termination or expiration of this Agreement for any reason the Receiving Party: will not use Confidential Information for a purpose other than the performance of its obligations or exercise of its rights under this Agreement;

will not disclose Confidential Information to a

person except with the prior written consent of the Disclosing Party or in accordance with Clause 4.3, 4.4 and 4.5; and shall make every effort to prevent the use or disclosure of Confidential Information.

During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its Affiliates, directors, other officers, employees or agents, (a **"Recipient"**) to the extent that disclosure is reasonably necessary for the purposes of this Agreement provided that the Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.

Each party may disclose Confidential Information if and to the extent that:

this is required by the law of any relevant jurisdiction or pursuant to an order of a court of competent jurisdiction;

this is required by any securities exchange or regulatory or governmental body to which that party is subject to, wherever situated, whether or not the requirement for information has the force of law;

the information is disclosed on a strictly confidential basis to the professional advisers, auditors and bankers of that party;

the information has come into the public domain through no fault of that party;

the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid; and/or

the information was obtained by the Receiving Party from a third party who was free to divulge same PROVIDED THAT any such information disclosed pursuant to paragraphs (a) and (b) shall be disclosed only after notice to the other party.

Siren recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

4.5 The obligations of both parties as to confidentiality shall continue in force notwithstanding the termination or expiration of this Agreement.

### 5. PERSONAL DATA

5.1 Each party will comply with Data Protection Law of the United States. Each party will not use any personal data of the other party in any manner, except that each party may process personal data, for the purposes of (i) this Agreement, (ii) maintaining their administrative or customer relationship management systems, including the use of IT outsource providers, (iii) quality and risk management reviews.

5.2 The Customer acknowledges and agrees that, to the extent that it acts as a data controller, it is responsible for ensuring that it procures consent from data subjects for the processing of their personal data through the Products.

### 6. INTELLECTUAL PROPERTY RIGHTS

6.1 The Customer acknowledges that all Intellectual Property Rights and any other proprietary rights in the Products shall at all times vest in and be the absolute property of Siren or its licensors, as appropriate. Save as expressly stated nothing in this Agreement shall be deemed to give either party any rights of any kind in any Intellectual Property Right belonging to the other party. The Products contain open source software licensed under the Apache license.

6.2 Siren hereby indemnifies and agrees to have the right to intervene to defend the Customer from and against all damages, losses, claims liabilities, costs and expenses, including reasonable attorneys' fees, arising out of any and all third party claims that the Products infringe any third party Intellectual Property Rights subject to the following conditions:

the Customer shall promptly notify the Siren in writing if any third party action, claim, or other proceeding is made or threatened such as to activate any indemnity granted hereunder;

the Customer must make no admissions without the indemnifying party's prior written consent; and

the Customer, at the indemnifying party's request and expense, shall allow Siren to conduct any negotiations or litigation and/or settle any claim. The Customer shall give Siren all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for Siren's account. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

6.3 If at any time an allegation of infringement of Intellectual Property Rights is made in respect of the Products or, in Siren's reasonable opinion such an allegation is likely to be made, Siren may at its own expense modify or replace the Products so as to avoid the infringement making good to the Customer any loss arising from such modification or replacement. If the Products cannot be replaced or modified within thirty (30) days then the Customer may terminate this Agreement without liability and Siren shall promptly refund to the Customer the pro rata amount of any fees paid under this Agreement.

## 7. WARRANTY

7.1 Each party represents and warrants to the other party that:

it has full power and authority to execute and deliver this Agreement and to comply with the provisions of, and perform all its obligations and exercise all of its rights under this Agreement;

it has taken all necessary action to authorise the execution and delivery of this Agreement and this Agreement constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforcement may be limited by any relevant bankruptcy, insolvency, administration or similar laws affecting creditors' rights generally;

the entry into and performance of this Agreement does not and will not violate: (i) any law or regulation of any governmental or official authority or body; (ii) its constitutional documents; or (iii) any agreement, contract or other undertaking to which it or any of its

Affiliates is a party or which is binding on it or any of its Affiliates or any of their respective property or assets;

all consents, licences, approvals and authorisations required in connection with the entry into, performance, validity and enforceability of this Agreement have been obtained and are in full force and effect;

it is not necessary for the legality, validity, enforceability or admissibility in evidence of this Agreement that this Agreement or any document relating to it be registered, filed, recorded or enrolled with any court, registry or public authority in any relevant jurisdiction or that any stamp, registration or similar taxes be paid on or in relation to this Agreement or any document relating to it;

it will comply with all applicable laws in respect of the performance of its obligations and exercise of its rights under this Agreement.

In the event of any failure of the Products to function in accordance with the documentation supporting the Products, Siren will attempt through reasonable endeavours to correct or cure any reproducible non-compliance notified to it in writing, provided always that the Products have not been misused or damaged by the Customer in any respect, and that the existence and nature of any such nonconformity or defect is promptly notified to the Customer in writing upon Siren discovering it.

Siren does not warrant that the Products will meet the Customers' requirements. Except as expressly set forth in this Agreement, all warranties, conditions, representations, statements, terms and provisions express or implied by statute, common law or otherwise are excluded to the greatest extent permitted by law. Save as otherwise set out in the Agreement, and to the fullest extent permissible by law, Siren disclaims and excludes all warranties, conditions, representations, indemnities and guarantees with regard to the Products and any related services provided or to be provided hereunder, whether express or implied, including but not limited to warranties of noninfringement, merchantability, fitness for a particular purpose and that use of the Products will be uninterrupted or error free.

## 8. LIABILITY

8.1 Subject to Clause 8.3, Siren shall in no event be liable to the Customer in contract, or tort, under any law or otherwise howsoever arising for indirect, special, incidental or consequential damages, including but not limited to damages and costs incurred as a result of loss or corruption of data or other equipment or property, loss of business revenue, loss of profits (whether direct or indirect), loss of time, loss of savings, failure to realise expected profits or savings and any other economic loss of any kind.

8.2 Subject to Clause 8.3, Siren's total liability for loss or damage of any kind not excluded by this Clause 8, however caused (whether in contract, tort, under any law or otherwise howsoever) arising from or in relation to the Agreement is limited in aggregate to the Fees paid by the Customer to Siren under the applicable Purchase Order(s).

8.3 Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury caused by that party's negligence, fraud, fraudulent misrepresentation or wilful default.

## 9. TERM AND TERMINATION

9.1 The Agreement shall commence on the Effective Date and shall continue for the length of term set out in the information table in Schedule A ("**Initial Term**") unless terminated earlier pursuant to the terms of the Agreement. After expiry of the Initial Term, the term may

be renewed each year for further fixed terms of one (1) year by both parties executing an option, or new purchase order in writing (each a "**Renewal Term**").

9.2 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Siren shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer

(a) .

9.3 Upon any termination or expiry of the Agreement: the licence to use the Products will terminate. The Customer will cease use of the Products, and on Siren's written request, immediately delete the Products. The Customer's directors will certify in writing that the Products have been deleted from the Customer's systems.

Each party shall within seven (7) days after the

Termination Date return to the other party or (at the other party's election) destroy all data, Confidential Information and all other materials of that other party in its possession, along with all copies of same and documents, memoranda, notes and other writings whatsoever prepared by it or any of its directors, officers, agents, employees, representatives or advisers for it or in its possession which incorporate any of the Confidential Information. Save that, either party may retain such materials: (i) to the extent required by law or any applicable governmental or regulatory authority; and (ii) to the extent reasonably required to permit the relevant party to keep evidence that it has performed, or the other party has failed to perform, its obligations under this Agreement. **10. Dispute Resolution**  
Reserved.

Reserved.

This Agreement and any dispute arising from it, will be governed by the Federal laws of the United States.

## 11. GENERAL

11.1 **Matters beyond reasonable control** -Excusable delays shall be governed by FAR 52.212-4(f):

(a) .

11.2 Reserved.

11.3 Reserved.

11.4 **Entire agreement** - This Agreement (including the Schedules), together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), forms the entire agreement between the parties in relation to the Products. In the event of any conflict between the main body of this Agreement and the Schedule attached at the end of it, the terms of the Schedule will prevail. This Agreement replaces any earlier agreements, representations and discussions.

11.5 **Assignment** –

Subject to Clause 11.5(b), neither party shall be entitled to assign or sub-contract any of its rights or obligations or the licenses granted hereunder without the prior written approval of the other party (not to be unreasonably withheld).

Reserved.

This Agreement shall be binding upon, and inure to the benefit of, the permitted successors and assigns of each party.

**Waiver** – No failure or delay by a party to exercise any right will constitute a waiver of that right nor restrict the further exercise of that right. No single or partial exercise of any right will restrict the further exercise of that or any other rights.

**Changes** – A change to this Agreement will be effective only when agreed in writing by both parties.

**Survival** - The termination of the Agreement shall be without prejudice to: (a) any rights and/or liabilities which shall have accrued before termination, including any remedy available in respect of a breach of this Agreement or (b) any provision of this Agreement which is expressed to survive termination.

**Notices** - Notices shall be deemed to have been received: (a) if delivered by hand, on the day of delivery if it is a Working Day in the place of receipt and otherwise on the first (1st) Working Day in the place of receipt immediately following the day of delivery; (b) if sent by pre-paid airmail, on the fourth (4th) Working Day in the place of receipt after the day of posting; (c) if sent by facsimile or email: (i) (if transmitted between 09:00 and 17:00 hours (GMT) on a Working Day in the place of receipt) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or (ii) (if transmitted at any other time) at 09:00 (GMT) on the first (1st) Working Day in the place of receipt following completion of receipt by the sender of verification of the transmission from the receiving instrument.

**Counterparts** - The Agreement may be executed in any number of counterparts and on separate counterparts, each of which, when executed and delivered, will be an original, and all such counterparts together will constitute one and the same instrument. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by (a) fax (b) e-mail (in PDF, JPEG or other agreed format) or (c) an electronic signature service agreed between the parties, will take effect as delivery of an executed counterpart of this Agreement.

**Definitions** - In the Agreement the following words and expressions shall have the following respective meanings, except where the context requires a different meaning:

(a) **"Affiliate"** means in respect of any party, any company that controls, is controlled by, or is under common control with such party. An entity will be regarded as in control of another company or entity if it owns directly or indirectly more than 50 percent of the voting rights of that company.

(B) **"DATA PROTECTION LAW"** MEANS THE DATA Protection Federal laws of the United States .

**"Fees"** means the fees to use the Products and receive the maintenance and support as set out in the final row of the information table in Schedule A in accordance with the GSA Schedule Pricelist.

**"Force Majeure"** has the meaning set forth in FAR 52.212-4(f).

**"Intellectual Property Rights"** means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

**"Major Version"** means an enhancement of a prior version of the Products that would be considered by the software industry community (of which Siren is a part) as the next generation of a Product, which is usually evidenced by an increment in the version number of the Product. By way of illustration, versions 2.0 and 3.0 are incremental major versions, whereas versions 2.0 and 2.2 are not.

**"Products"** means the software product(s) detailed in Schedule A and any accompanying documentation.

**"Termination Date"** means the date of termination (howsoever caused) or expiry of the Agreement.

**"Term"** means the Initial Term and/or a Renewal Term.

Reserved.

**"Working Day"** means in respect of an obligation hereunder any day other than: a Saturday or a Sunday or a day on which commercial banks in Ireland are not open for business.

**SCHEDULE A LICENCE AND PRODUCT INFORMATION**

**SCHEDULE B**

**SERVICE LEVEL AGREEMENT**

This service level agreement is a part of, and is governed by, the Software Licence Agreement entered into between Siren and the Customer. The parties agree as follows:

**1. DEFINITIONS**

The following terms shall have the following meanings.

“**Call Ticket**” means a request for support services submitted to Siren hereunder, each being uniquely identifiable.

“**Error**” means a problem that has occurred with the Products.

“**Error Correction**” shall mean the completion of all activities, including, but not limited to Fixes and Problem Resolution, necessary to diagnose, resolve and/or provide a solution for a reported Error, problem or defect occurrence in the Products.

“**Error Severity Level(s)**” means:

“**Level 1/Critical**” - Any Error that causes or results in: (i) System or sub-System unavailability; (ii) the System, a System module, or major System function to be rendered inoperable, disabled or inaccessible; (iii) data corruption; and/or (iv) the prevention of critical business functions from being performed.

“**Level 2/Severe**” - Any Error that causes or results in: (i) functional inconsistency across the System; and/or (ii) degradation of System performance.

“**Level 3/Important**” - Any Error that causes or results in (i) incorrect functioning of navigation or validation operations with respect to the System; (ii) disabling or degradation of non-essential functions and/or (iii) Product aesthetics to be inconsistent or incorrect with respect to positioning, spelling and/or color.

“**Enhancement(s)**” means changes or additions, other than Maintenance Modifications, to the Products and related documentation, including all new releases that improve functions, add new functions, screens or data sources or significantly improve performance by virtue of changes in System design or coding. Notwithstanding the foregoing, Enhancements shall not include new Major Versions of Products

“**Fix**” means a temporary bypass/workaround and/or patch of an Error performed and/or implemented so as to cause the Products to continue performing functionally in material conformance with the Documentation, operating manuals and/or the Specifications governing the Products.

“**Maintenance Modification(s)**” means any modifications or revisions, other than Enhancements, to the Products and/or documentation that correct Errors, support new releases to the operating systems with which the Product is designed to operate, support new input/output devices, or provide other incidental changes, updates and corrections.

“**Problem Resolution**” shall mean identification of the root cause of the Error and object code fix or new Release and supporting Documentation necessary to effectuate Error Correction.

“**Release(s)**” shall mean new versions of the Products, including, without limitation, Error Corrections, Maintenance Modifications and Enhancements. Notwithstanding the foregoing, Releases shall not include new Major Versions of Products; and

“**System**” shall mean the Product as configured and installed by the Customer.

**2. SERVICE LEVEL - TECHNICAL SERVICE REQUESTS**

2.1. Siren's response to specific issues reported shall be as follows:

	<b>Production Support</b>	<b>Non-Production Support</b>	<b>24 x 7 Support</b>
<b>Support Hours</b>	0900-1700 GMT	0900-1700 GMT	24 / 7 / 365
<b>Response Times</b>	Level 1: 4 Hours Level 2: 1 day Level 3: 2 days	Level 1: N/A Level 2: 1 day Level 3: 2 days	Level 1: 1 Hour Level 2: 4 Hours Level 3: 1 day

<b>Number of Siren Call Tickets</b>	Unlimited	Unlimited	Unlimited
<b>Number of Support Contacts</b>	Six (6)	Six (6)	Eight (8)
<b>Web Support</b>	Support Portal	Support Portal	Support Portal
<b>Phone Support</b>	No	No	Support Number
<b>Emergency Patches</b>	Yes	Yes	Yes

**3. Error Correction**

Siren shall use its commercially reasonable efforts to complete Error Correction(s) as follows:

<b>Error Severity Level</b>	<b>Error Correction</b>
Level 1/Critical	<p><u>Fix</u>: Fix completed or a mutually agreed upon date for such Fix established within one (1) Working Day of acknowledgment of receipt of Error notification.</p> <p><u>Problem Resolution</u>: Problem Resolution completed within five (5) Working Days of completion of Fix.</p>
Level 2/Severe	<p><u>Fix</u>: Fix completed or a mutually agreed upon date for such Fix established within three (3) Working Days of acknowledgment of receipt of Error notification.</p> <p><u>Problem Resolution</u>: Problem Resolution completed within [five (5) Working Days of completion of Fix.</p>
Level 3/Important	<p><u>Fix</u>: A Fix completed or a mutually agreed upon date for such Fix established within five (5) Working Days of acknowledgment of receipt of Error notification.</p> <p><u>Problem Resolution</u>: Identification of the root cause of Error completed within ten (10) Working Days of reproducing the Error. Object code fix and supporting documentation delivered in the next scheduled Release.</p>

3.1. When reporting an issue, the Customer shall provide the following information:

- a) date of problem occurrence;
- b) location of problem occurrence;
- c) detailed problem description;
- d) any steps taken by the Customer to resolve the problem; and
- e) description of the Error Severity Level of the problem.

Siren and the Customer will act in good faith to determine the Error Severity Level of each issue, however, Siren's determination of the Error Severity Level of each issue shall be final.

In all cases, Siren will use commercially reasonable efforts to correct such Error in a future Release.

Technical and maintenance support will only be made available in English.

**4. TECHNICAL SUPPORT CONTACT INFORMATION**

For issues regarding our products or services, use the user name and password provided for the Siren Customer Portal to access: <http://support.siren.solutions>





**SMARTBEAR SOFTWARE, INC.**  
**450 ARTISAN WAY**  
**SOMERVILLE MA 02145**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

**Scope.** This Rider and the attached SmartBear Software, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23,

Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

SMARTBEAR SOFTWARE, INC.

### SMARTBEAR SOFTWARE, INC. LICENSE, WARRANTY AND SUPPORT TERMS

#### SmartBear On-Premise License Terms of Use

You may not access the Software if You are a direct competitor of SmartBear, except with Our prior written consent.

#### **1. Definitions.**

"Documentation" means the published and generally available on-line user and administrator materials SmartBear delivers or makes available with the Software, including on-line help, as updated from time to time.

"Maintenance and Support" mean those services provided by SmartBear as set forth in Exhibit A.

"Maintenance Period" means (i) for all Perpetual licenses of the Software, that number of years set forth in the applicable Order for which You have purchased Maintenance and Support or (ii) for all Subscription licenses of the Software, the number of years of such Subscription set forth in the applicable Order.

"On-Premise" means that the Software must be installed on a server, desktop, virtual machine or container on site at Your facility; all Software licensed under the terms of this Agreement is for On-Premise deployments only.

"Order" means the purchase order entered into between You and SmartBear and identifies the Software (including the applicable SmartBear product(s), license type, license model (Perpetual or Subscription), quantity) ordered by You and any required access information. An Order that has been accepted by SmartBear shall be deemed incorporated herein by reference.

"Perpetual" means Our grant of a license of the Software without any limitation on the duration of the license.

"Reseller" means an authorized reseller or distributor who may sell the Software to You.

"Software" means the SmartBear software licensed pursuant to the applicable Order and Updates provided by SmartBear, solely in object code form.

"Subscription" means Our grant of a license of the Software for the period of time set forth in the Order (the "Subscription Term").

"Update" means any subsequent release of the Software that SmartBear generally makes available to its customers who are enrolled in, and have fully paid for, Maintenance and Support. Updates do not include any Software that is marketed and priced separately by SmartBear.

"User" means an individual who is authorized by You to use the Software in accordance with this Agreement and the applicable license type set forth herein, and who has been supplied usage credentials. A User may include, but is not limited to, your employee, consultant, contractor and any agent with which You transact business.

"You" means the Ordering Activity accepting this Agreement.

#### **Who We Are.**

If You acquired Software in the United States or Canada, "We", "Us", "Our" or "SmartBear" means SmartBear Software Inc., a Delaware corporation with its principal place of business at 450 Artisan Way, Somerville, MA 02145, and its licensors.

If You acquired Software outside of the United States or Canada, "We", "Us", "Our" or "SmartBear" means SmartBear (Ireland) Limited with its principal place of business at , Galway, Ireland, together with its licensors.

#### **Reserved.**

#### **On-Premise License Grants.**

**Perpetual** – Subject to the terms of this Agreement, the underlying GSA Schedule contract, the Schedule pricelist, and the Order, for all licenses of the Software that are granted on a Perpetual basis, as indicated on the applicable Order, SmartBear grants You a non-exclusive, nontransferable, non-sublicensable, perpetual, limited license to install and use the Software on compatible devices without any end date. You may install and use the Software solely as permitted by the license type purchased, which license type is (i) specified in the applicable Order and (ii) subject to the further terms below applicable to the relevant Software product.

**Subscription** - Subject to the terms of this Agreement, the underlying GSA Schedule contract, the Schedule pricelist, and the Order, for all licenses of the Software that are granted on a Subscription basis, as indicated on the applicable Order SmartBear grants You a non-exclusive, non-transferable, non-sublicensable, limited license to install and use the Software on compatible devices during the applicable Subscription Term. You may install and use the Software solely as permitted by the license type purchased, which license type is (i) specified in the applicable Order and (ii) subject to the further terms below applicable to the relevant Software product.

#### **License Types.**

The licenses granted in Section 4 are subject to all terms and conditions set forth in this Agreement, including the following applicable terms (as specified in the applicable Order):

**Fixed (Named) License:** all Software licensed under these terms are single instance, meaning it can be activated by only one User, with a unique username and password, on a single computer, computing device, or virtual machine and has a fixed license key. You must acquire and dedicate a license for each separate User that You wish to access the Software. A separate license is required for each User and may not be shared. The Software may not be reassigned other than for the permanent transfer of the Software license to another User if the eligible User is no longer employed by You. An eligible User may access the Software with a unique username and password on one device at a time.

**Floating (Concurrent) License:** all Software licensed under these terms can be activated for different users and machine combinations, but only one at a time and has a floating license key. The number of running instances of the Software or the number of individuals simultaneously having access to the Software may not exceed at any one time the number of floating seats licensed. One computer or computing device shall be designated as the "license server", where the license is installed, and all other devices will require access to the license server to run the Software.

**Node-Locked License:** all Software licensed under these terms is for use on a specified computer or computing device. This license will be "bound" to the designated computer or computing device and will only function on this computer or computing device. This license permits the use of a single instance of the Software, which functions on a single computer or computing device.

**Server Application License:** all Software application licensed under these terms can be installed on one server machine and may be accessed by many Users. The license key is dedicated to the designated computer or computing device and will only function on this computer or computing device.

**Usage-Based License:** all Software licensed under these terms is (i) licensed on a unit-based basis during the Subscription Term as set forth in an Order and (ii) restricted to a computer or computing device, which is applicable to the Alertsite and VirtServer products.

**Freeware or Free Version License:** all Software licensed under these terms is licensed to an individual User who is specifically named in the Software registration and may only be used on one computer or computing device at a time. These licenses are not eligible for Maintenance and Support other than the materials and discussion groups that may be accessed generally via the SmartBear online community at <https://community.smartbear.com>.

#### **Software Delivery.**

Delivery of the Software to You shall be made by electronic means and deemed to have occurred when the Software has been made available to You for download or by providing You with a key for such usage. SmartBear is expressly authorized by You to ship the Software upon completion of the applicable Order.

#### **License Restrictions.**

Your use of the Software is limited to the number of units, duration and such other usage restrictions as are set forth on an Order and herein. SmartBear and its licensors and suppliers reserve any and all rights, implied or otherwise, which are not expressly granted to You hereunder, and retain all rights, title and interest in and to the Software. You shall not (i) modify, adapt, distribute, resell, rent, lease or loan the Software or create or prepare derivative works based upon the Software or any part thereof; (ii) use the Software in a service bureau, or application service provider environment, or in any commercial timeshare arrangement; (iii) decompile, disassemble or otherwise reverse engineer the Software; (iv) use the Software in contravention of any applicable laws or government regulations; (v) use the Software in order to build a competitive product or service; (vi) copy any features, functions or graphics of the Software; (vii) use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights.

If the restriction set forth in clause (iii) above is prohibited by applicable law, You shall provide SmartBear with a detailed prior written notice of any such intention to reverse engineer the Software and shall provide SmartBear with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services provider for such work. You shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Software.

**Export.** You may not export the Software into any country prohibited by the United States Export Administration Act and the regulations thereunder. You acknowledge that the export of any Software is subject to export or import control and You agree that any Software or the direct or indirect product thereof will not be imported or exported (or re-exported from a country of installation) directly or indirectly, unless You obtain all necessary licenses from the U.S. Department of Commerce or other applicable agency or governmental body as required under applicable law. Without limiting the generality of the foregoing, You agree that the Software is prohibited for export or re-export to Cuba, North Korea, Iran, Libya, Syria and Sudan or to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists, as such is changed from time to time. Further, you may not provide to SmartBear or any other person (whether through the Service or any other means), or export or re-export, or allow the export or re-export of the Service, any data or information, or any software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing, Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations.

#### **Term.**

The Term of this Agreement shall be determined based on the License Model and License Type as described herein and set forth in the Order.



**Perpetual License** - This term of this Agreement shall commence upon delivery of the Software; for Maintenance and Support the term of this Agreement shall continue for the one-year period following delivery and, thereafter, may be renewed at Your option for subsequent one-year periods if You issue an Order for such subsequent periods.

**Subscription License** – This term of this Agreement shall commence upon delivery of the Software and shall end on the last day of the Subscription Term as set forth in an Order.

**Usage-Based License** – The term of this Agreement is based upon the designated units of consumption as set forth in an Order.

**Effect of Termination.**

Upon any termination of this Agreement, an Order or a license granted hereunder, all applicable licenses are revoked and You shall immediately cease use of the applicable Software and certify in writing to SmartBear within ten (10) days after termination that such Software and all copies thereof have been destroyed, purged or returned to SmartBear. Termination of this Agreement, an Order or a license granted hereunder shall not limit either party from pursuing any remedies available to it or relieve You of your obligation to pay all fees that have accrued or become payable hereunder.

**Your Responsibilities.**

You shall (i) be responsible for each User's compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of your data and of the means by which You acquired Your data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Software, and notify Us promptly of any such unauthorized access or use, and (iv) use the Software in accordance with the Documentation and applicable laws and government regulations.

**Backup of Software.**

Notwithstanding anything to the contrary herein, You may make a copy(ies) of the Software for the sole purpose of backing-up and archiving the Software. Any copy of the Software is subject to all terms and conditions of this Agreement and must contain the same titles, trademarks, and copyrights as the original.

**Virtualization Technology.**

Unless otherwise restricted herein, the Software may be installed within a virtual (or otherwise emulated) hardware system as long as the use of the Software meets the terms of the license type and the virtual machines are run on hardware owned or leased by You. Virtualization technology may not be used to circumvent other licensing terms or restrictions.

**Non-Human Devices.**

Non-human devices that use the Software, whether or not without interaction, are counted as Users. Each such device that runs the Software must be properly licensed to use the Software pursuant to one of the license types described herein. Examples of non-human devices include, but are not limited to, virtual PCs, build servers, unattended PCs for batch jobs, or similar devices.

**Usage Verification.**

At SmartBear's written request and expense, and no more than once every twelve (12) months, You will permit SmartBear to review your deployment and use of the Software in order to verify your compliance with the terms and conditions of this Agreement. Any such review shall be scheduled at least ten (10) days in advance, conducted during normal business hours at your facilities, shall be subject to Government security requirements, and shall not unreasonably interfere with your business activities. Within ten (10) days of completion of any review that finds your use of the Software to be greater than that which was licensed, You will provide SmartBear an Order for the applicable number of additional licenses and pay all applicable fees in accordance herewith.

**Maintenance and Support.**

For Perpetual licenses, SmartBear will maintain and support licensed Software during the Maintenance Period for which You purchased Maintenance and Support. For the first year of a Perpetual license, You must purchase Maintenance and Support. After such first year, You may purchase Maintenance and Support in order to receive those services. The Maintenance Period for all Perpetual licenses shall be twelve months unless otherwise agreed upon in an Order.

For Subscription licenses You receive Maintenance and Support during the Subscription Term.

Any Maintenance and Support purchased through a Reseller shall be subject to this Agreement.

In the case of both Perpetual and Subscription licenses, the term of the Maintenance Period shall commence upon the initial delivery of the Software.

During a Maintenance Period, SmartBear will provide you with technical support services ("Support Services"), including Updates, to the extent such Support Services are provided for in the applicable Order, all in accordance with SmartBear's Product Support Manual attached hereto as Exhibit A. In addition, as part of the Support Services, SmartBear may make available bug lists, planned feature lists, and other supplemental materials. SmartBear makes no representations or warranties of any kind for these materials.

**Reserved.**

**Data Privacy.**

**Data Privacy:** The terms and conditions of SmartBear's Privacy Policy is attached hereto as Exhibit B. By your acceptance of the terms of this Agreement or use of the Software, You authorize the collection, use and disclosure of information collected by SmartBear for the purposes provided for in this Agreement in accordance with the Privacy Policy as written in Exhibit B.

International users understand and consent to the processing of personal information in the United States for the purposes described herein in accordance with the Privacy Policy. You are responsible for your personally identifiable information, You shall only supply data that You have the right to and are authorized to provide and we are not responsible for any such data.

In addition to any other information transmitted as specified in the Privacy Policy, SmartBear's Software may transmit license and/or product usage data at the time of installation, registration, use or update in order to activate your license and provide You with update notifications, protect You and SmartBear against unlicensed or illegal use of the Software, and improve customer service and the product itself. We are permitted to create aggregated anonymous data based on activities and use of all Users. Upon creation, We will be the owner of such aggregated anonymous data and may use and copy such data, in our discretion, for any lawful purpose. This process does not collect or communicate any proprietary application data. A User may disable the collection of certain license and/or product usage data through the Software's settings menu.

**Feedback.** You may provide feedback (which may be oral or written) to Us including on the functions, operation, and utility of the Software and are encouraged to provide prompt reports of any issues, bugs or service errors, feature suggestions and

corrections to problems in the Software and/or Documentation (collectively "Feedback"). You agree that Feedback provided by You becomes the property of, and upon creation, shall be deemed to be assigned to, Us and that we may use or exploit the same without any accounting or payment to You. You will not include in Feedback any third party proprietary or confidential information.

**Ownership.**

Except as expressly provided in this Agreement, SmartBear and its licensors, where applicable, retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Software, as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications You may develop, and all copies thereof. All rights not specifically granted in this Agreement, including U.S. and international copyrights, are reserved by SmartBear and its suppliers.

SmartBear and other trademarks contained in the Software are trademarks or registered trademarks of SmartBear Software Inc. in the United States or other countries. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software.

Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors hereunder in or to Your data, including any intellectual property rights therein.

The Software may contain or otherwise make use of software, code or related materials from third parties, including, without limitation, "open source" or "freeware" software ("Third Party Components"). You acknowledge Third Party Components may have additional or other license terms. Nothing in this Terms of Service limits your rights under, or grants you rights that supersede, the license terms that accompany any Third Party Components. If required by any license for a particular Third Party Component, SmartBear makes the source code of such Third Party Component, and any of SmartBear's modifications to such Third Party Component as required, available by written request to SmartBear at the following address: support@smartbear.com.

The provision of source code, if included with the Software, does not constitute transfer of any legal rights to such code, and resale or distribution of all or any portion of all source code and intellectual property is strictly prohibited hereunder. All Software and other files remain SmartBear's exclusive property. If source code or modifiable files are provided, regardless of any modifications that You make, You may not redistribute any such source code or modifiable files unless SmartBear has expressly designated these as re-distributable in writing.

**19. Limited Warranty; Remedies.**

SmartBear warrants that (a) it has the necessary corporate power and authority and has taken required corporate action on its part necessary to permit it to execute and deliver You this Agreement; (b) it has taken commercially reasonable steps to provide the Software and the medium on which it was originally provided to You is free from any virus at the time of delivery; (c) for a period of thirty (30) days following the initial delivery of the Software to You (the "Warranty Period"), the Software will perform in substantial conformity with the Documentation; and (d) any Services will be provided with reasonable skill and care conforming to generally accepted software industry standards and in accordance with any specifications set forth in the Order in all material respects. Your exclusive remedy and SmartBear's sole obligation for SmartBear's breach of 19(c), is that SmartBear will, at its option, and at no cost to (a) provide remedial services necessary to enable the Software to conform to the warranty, or (b) replace any defective Software or media to enable the Software to conform to the warranty without loss of any material functionality, or in the event that SmartBear determines that neither of the foregoing are reasonably practicable, (c) terminate this Agreement and refund amounts paid in respect of the defective Software. SmartBear's warranty obligations will only extend (i) to material errors that can be demonstrated to exist in an unmodified version of the Software except where the modifications were carried out by SmartBear or with its written approval and (ii) in respect of alleged breaches for which SmartBear has received written notice within the Warranty Period, if applicable. You will provide SmartBear with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. If the Services are not performed as warranted in this Section 20(d) then, upon your written request, SmartBear shall promptly re-perform, or cause to be re-performed, such Services, at no additional charge to You, provided that this warranty shall only survive for ninety (90) days following the completion of the Services. We provide no warranty or remedy for a Trial Version, Freeware or Free Version of the Software.

EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, SMARTBEAR AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. SMARTBEAR DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. IN ADDITION, ALL THIRD PARTY COMPONENTS ARE PROVIDED "AS IS," "WHERE IS," "AS AVAILABLE," "WITH ALL FAULTS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WITHOUT WARRANTY OF ANY KIND. SMARTBEAR AND ITS LICENSORS DISCLAIM ALL WARRANTIES WITH RESPECT TO THE THIRD PARTY COMPONENTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE, AND ANY WARRANTIES REGARDING THE SECURITY, QUIET ENJOYMENT, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SERVICES. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. THE SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. SMARTBEAR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

No oral or written information or advice given by SmartBear, its Resellers, dealers, distributors, agents, representatives or employees shall create any warranty or in any way increase any warranty provided herein.

If applicable law requires any warranties other than the foregoing, all such warranties are limited in duration to thirty (30) days from the date of delivery. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not



apply to You. The warranties provided herein give You specific legal rights and You may also have other legal rights that vary from jurisdiction to jurisdiction. The limitations or exclusions of warranties, remedies or liability contained in this Attachment shall apply to You only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where You are located.

**Reserved.**

**Reserved.**

**Reserved.**

#### **Government Matters**

This Section applies to all acquisitions of the Software by or for the United States Federal government, including by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal government. The Software was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Federal Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the Software. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, then the Federal Government's rights to use, duplicate or disclose the Software are limited to "Restricted Rights" as defined in 48 CFR Section 52.227-14, or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the Federal Government's needs or is inconsistent in any respect with Federal law, the Federal Government agrees to return the Software, unused, to SmartBear. Manufacturer is SmartBear Software Inc., 450 Artisan Way, Somerville, MA 02145.

**Federal Government End Use Provisions.** We provide the Services, including related software and technology, for ultimate Federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

#### **SMARTBEAR HOSTED SERVICES TERMS OF USE**

You may not access the Services if You are a direct competitor of SmartBear, except with Our prior written consent.

##### **1. Definitions.**

"Data" means (i) content You post or otherwise submit to the Services and (ii) SmartBear's license and/or product usage data transmitted to SmartBear, at the time of registration, use or update, in order to activate your access rights and provide You with update notifications, protect You and SmartBear against unlicensed or illegal use of the Services, and improve customer service and the Services.

"Documentation" means the published and generally available on-line user and administrator materials SmartBear delivers or makes available with the Services, including on-line help, as updated from time to time.

"Hosted Services" means the services provided by SmartBear through which it makes the Software available to you as a service (SaaS) and hosted by SmartBear or its authorized third party provider(s).

"Maintenance and Support" mean those technical support and related services provided by SmartBear as set forth at Exhibit A.

"Order" means the purchase order entered into between You and SmartBear, which identifies the Services (including the applicable SmartBear product(s), license type, license model (duration or usage-based), quantity/term) ordered by You and any required access information. Any Order that has been accepted by SmartBear shall be deemed incorporated herein by reference.

"Reseller" means an authorized reseller or distributor who may sell the Services to You.

"Software" means the SmartBear software provided as part of the Services pursuant to the applicable Order, and all Updates, in each case, access to which is provided by SmartBear.

"Services" means the Hosted Services, together with Maintenance and Support, as provided to you during the Subscription Term based on the applicable Order.

"Subscription" means Our grant of the right to access and use the Software through the Services for the period of time or usage-based limit set forth in the Order (the "Subscription Term").

"Update" means any subsequent release of the Software that SmartBear generally makes available to its SaaS customers as part of the Services; Updates do not include any Software that is marketed and priced separately by SmartBear as part of the Services.

"User" means an individual who is authorized by You to use the Services in accordance with this Agreement and the applicable license type set forth herein, and who has been supplied usage credentials. A User may include, but is not limited to, your employee, consultant, contractor and any agent with which You transact business.

"You" means the Ordering Activity accepting this Agreement.

##### **Who We Are.**

If You acquire access to, and use, the Services from in the United States or Canada, "We", "Us", "Our" or "SmartBear" means SmartBear Software Inc., a Delaware corporation with its principal place of business at 450 Artisan Way, Somerville, MA 02145, and its licensors.

If You acquire access to, and use, the Services from outside of the United States or Canada, "We", "Us", "Our" or "SmartBear" means SmartBear (Ireland) Limited with its principal place of business at 3<sup>rd</sup> Floor Dockgate, Unit 19, Merchants Rd., Galway, Ireland, together with its licensors.

**Reserved.**

**Services Grants.**

Subject to the terms of this Agreement, the underlying GSA Schedule contract, Schedule pricelist, and the Order, and during the Subscription Term, SmartBear grants You a nonexclusive, non-transferable, non-sublicensable, limited license to access and use the Services, Documentation, and, if any, associated media and materials, and, if applicable, third party software programs supplied by SmartBear solely (i) to access and use the Services as listed in the applicable Order and (ii) for Your internal business purposes. You may access and use the Services as permitted by the license type purchased, which license type is (i) specified in the applicable Order and (ii) subject to the further terms below applicable to the relevant product.

**License Types.**

The license granted in Section 4 are subject to all terms and conditions set forth in this Agreement, including the following applicable terms (as specified in the applicable Order):

**Single (Named) Licensee:** all Services licensed under these terms are single licensee, meaning it can be activated by only one User, with a unique username and password. Access to the Services may not be reassigned other than for the permanent transfer of the access license to the Services to another User if the eligible User is no longer employed by You. An eligible User may access the Services with a unique username and password on one device at a time.

**Floating (Concurrent) License:** all Software licensed under these terms can be activated for different users and machine combinations, but only one at a time and has a floating license key. The number of running instances of the Software or the number of individuals simultaneously having access to the Software may not exceed at any one time the number of floating seats licensed. One computer or computing device shall be designated as the "license server", where the license is installed, and all other devices will require access to the license server to run the Software.

**Usage-Based License:** access to the Services licensed under these terms is (i) licensed on a time-based or unit-based basis during the Subscription Term as set forth in an Order and (ii) restricted to a computer or computing device, which is applicable to the Alertsite and VirtServer products.

**Freeware or Free Version License:** all Services licensed under these terms are licensed to an individual User who is specifically named in the Services registration and may only be used on one computer or computing device at a time. These licenses are not eligible for Maintenance and Support other than the materials and discussion groups that may be accessed generally via the SmartBear online community at <https://community.smartbear.com>.

**6. License Restrictions.**

Your use of the Services is limited to the number of units, duration and such other usage restrictions as are set forth on an Order and herein. SmartBear and its licensors and suppliers reserve any and all rights, implied or otherwise, which are not expressly granted to You hereunder, and retain all rights, title and interest in and to the Services. You shall not (i) modify, adapt, distribute, resell, rent, lease or loan the Services or create or prepare derivative works based upon the Services or any part thereof; (ii) use the Services in a service bureau, or application service provider environment, or in any commercial timeshare arrangement; (iii) attempt to decompile, disassemble or otherwise reverse engineer the Services or any part thereof; (iv) use the Services in contravention of any applicable laws or government regulations; (v) access the Services in order to build a competitive product or service; (vi) copy any features, functions or graphics of the Services; (vii) create duplicate accounts or make the Services available to anyone other than Users, or (viii) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights. To the extent the Services are used to monitor web sites or devices You do not own, then You shall not publish or otherwise disclose data acquired about such web sites or devices unless express consent is given to You by the web site or device owner; further you shall not (1) interfere with or disrupt the integrity or performance of the Services or thirdparty data contained therein, or (2) attempt to gain unauthorized access to the Services or their related systems or networks.

If the restriction set forth in clause (iii) above is prohibited by applicable law, You shall provide SmartBear with a detailed prior written notice of any such intention to reverse engineer the Services and shall provide SmartBear with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services provider for such work. You shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Services.

**Export.** You may not provide to SmartBear or any other person (whether through the Service or any other means), or export or re-export, or allow the export or re-export of the Service, any data or information, or any Software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing, You acknowledge and agree that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations.

**Term.**

The Term of this Agreement shall be determined based on the License Model and License Type as described herein and set forth in the Order.

The Subscription Term begins on the date that SmartBear grants You access to the Services and continues for twelve (12) months thereafter, unless either (i) the Subscription is usage-based (see below) or (ii) a multi-year, or other, agreement is otherwise agreed upon in an Order ("Initial Term"). In the event that the Subscription is usage-based, the term of this Agreement is based upon the designated units of consumption as set forth in an Order.

**Effect of Termination.**

Upon any termination of this Agreement, an Order or a license granted hereunder, all applicable licenses are revoked and You shall immediately cease use of the Services. Termination of this Agreement, an Order or a license granted hereunder shall not

limit either party from pursuing any remedies available to it or relieve You of your obligation to pay all fees that have accrued or become payable hereunder.

**Your Responsibilities; Login Credentials.**

You shall (i) be responsible for each User's compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, (iv) use the Services in accordance with the Documentation and applicable laws and government regulations, (v) be responsible for obtaining and maintaining all telephone, computer hardware, Internet access services and other equipment or services needed to access and use the Services and all costs and fees associated therewith.

**Data Responsibility.** You are solely responsible for (a) Your Data, (b) the accuracy, quality, and legality of Your Data, (c) the means by which You acquired Your Data, including ensuring that Your Data does not infringe upon or violate the rights of any person or entity, (d) third party claims relating to Your Data, and (e) responding to any person claiming Your Data violates such persons rights, including notices pursuant to the Digital Millennium Copyright Act.

**Login Credentials.** SmartBear will provide You with credentials to assign usernames and passwords to each User ("Login Credentials") in order to access and use the Services. In connection with the foregoing, You agree to (i) maintain as confidential all Login Credentials and not distribute or disclose any such Login Credentials and (ii) use the administrator account to assign the authorized number of Login Credentials to each User. Further, You shall be responsible for the Login Credentials, which shall be maintained confidentially and not be distributed or disclosed. You shall immediately terminate Login Credentials upon knowledge or belief that any User is or may be subject to a breach of this Agreement and, at your own expense, provide all equipment, operating systems, web browser and internet access, etc. needed to access and use the Services in accordance with the Documentation.

**Non-Human Devices.**

Non-human devices that access or use the Services, whether or not without interaction, are counted as Users. Each such device that accesses or uses the Services must be properly licensed to use the Services pursuant to one of the license types described herein. Examples of non-human devices include, but are not limited to, virtual PCs, build servers, unattended PCs for batch jobs, or similar devices.

**Usage Verification.**

At SmartBear's written request and expense, and no more than once every twelve (12) months, You will permit SmartBear to review your deployment and use of the Services in order to verify your compliance with the terms and conditions of this Agreement. Any such review shall be scheduled at least ten (10) days in advance, conducted during normal business hours at your facilities, shall be subject to Government security requirements, and shall not unreasonably interfere with your business activities. Within ten (10) days of completion of any review that finds your use of the Services to be greater than that which was licensed, You will provide SmartBear an Order for the applicable number of additional licenses and Smartbear shall invoice You for all applicable fees in accordance herewith.

**Maintenance and Support.**

Your Subscription to the Services includes Maintenance and Support during the Subscription Term. Any Maintenance and Support purchased through a Reseller shall be subject to this Agreement. During the Subscription Term, SmartBear will provide you with Maintenance and Support, including Updates, all in accordance with SmartBear's Product Support Manual attached hereto as Exhibit A. In addition, as part of Maintenance and Support, SmartBear may make available bug lists, planned feature lists, and other supplemental materials. SmartBear makes no representations or warranties of any kind for these materials.

**Reserved.**

**Data Privacy.**

**Data Privacy:** The terms and conditions of SmartBear's Privacy Policy is attached hereto as Exhibit B. By your acceptance of the terms of this Agreement or access or use of the Services, You authorize the collection, use and disclosure of information collected by SmartBear for the purposes provided for in this Agreement in accordance with the Privacy Policy as written in Exhibit B. International users understand and consent to the processing of personal information in the United States for the purposes described herein in accordance with the Privacy Policy. You are responsible for your personally identifiable information, You shall only supply data that You have the right to and are authorized to provide and we are not responsible for any such data.

In addition to any other information transmitted as specified in the Privacy Policy, the Services may transmit license and/or product usage data at the time of registration, use or update in order to activate your access rights and provide You with update notifications, protect You and SmartBear against uncensored or illegal use of the Services, and improve customer service and the Services. By accessing the Services, You authorize SmartBear to create aggregated anonymous data based on activities and use of all Users. Upon creation, We will be deemed to be the owner of such aggregated anonymous data and may use and copy such data, in our discretion, for any lawful purpose. The Services do not collect or communicate any proprietary application data. SmartBear may elect to provide the User with the ability to disable the collection of certain license and/or product usage data through the settings menu in the Services.

**Feedback.** You may provide feedback (which may be oral or written) to Us including on the functions, operation, and utility of the Services and are encouraged to provide prompt reports of any issues, bugs or service errors, feature suggestions and corrections to problems in the Services and/or Documentation (collectively "Feedback"). You agree that Feedback provided by You becomes the property of, and upon creation, shall be deemed to be assigned to Us and that We may use or exploit the same without any accounting or payment to You. You will not include in Feedback any third party proprietary or confidential information.

**Ownership.**

Except as expressly provided in this Agreement, SmartBear and its licensors, where applicable, retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Services, as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications You may develop, and all copies thereof. All rights not specifically granted in this Agreement, including U.S. and international copyrights, are reserved by SmartBear and its suppliers.

SmartBear and other trademarks contained in the Services are trademarks or registered trademarks of SmartBear Software Inc. in the United States or other countries. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Services.

Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors hereunder in or to Your data, including any intellectual property rights therein.

The Software may contain or otherwise make use of software, code or related materials from third parties, including, without limitation, "open source" or "freeware" software ("Third Party Components"). Third Party Components may be licensed under additional or other license terms that accompany such Third Party Components. Nothing in this Terms of Service limits your rights under, or grants you rights that supersede, the license terms that accompany any Third Party Components. If required by any license for a particular Third Party Component, SmartBear makes the source code of such Third Party Component, and any of SmartBear's modifications to such Third Party Component as required, available by written request to SmartBear at the following address: [support@smartbear.com](mailto:support@smartbear.com).

#### **16. Limited Warranty; Remedies.**

SmartBear warrants that (a) it has the necessary corporate power and authority and has taken required corporate action on its part necessary to permit it to execute and deliver You this Agreement; (b) it has taken commercially reasonable steps to provide the Services free from any virus at the time of initial access; (c) for a period of thirty (30) days following the initial grant of access to You to the Services (the "Warranty Period"), the Services will perform in substantial conformity with the Documentation; and (d) the Services will be provided with reasonable skill and care conforming to generally accepted software industry standards and in accordance with any specifications set forth in the Order in all material respects. Your exclusive remedy and SmartBear's sole obligation for SmartBear's breach of 16(c), is that SmartBear will, at its option, and at no cost, to (a) provide remedial services necessary to enable the Services to conform to the warranty, or (b) replace any defective Services to enable the Services to conform to the warranty without loss of any material functionality, or in the event that SmartBear determines that neither of the foregoing are reasonably practicable, (c) terminate this Agreement and refund amounts paid in respect of the defective Services for the balance of the then-current Subscription Term. SmartBear's warranty obligations will only extend (i) to material errors that can be demonstrated to exist in an unmodified version of the Services except where the modifications were carried out by SmartBear or with its written approval and (ii) in respect of alleged breaches for which SmartBear has received written notice within the Warranty Period, if applicable. You will provide SmartBear with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. If the Services are not performed as warranted in this Section 16(d) then, upon your written request, SmartBear shall promptly re-perform, or cause to be re-performed, such Services, at no additional charge to You, provided that this warranty shall only survive for ninety (90) days following the completion of the Services. We provide no warranty or remedy for a Trial Version, Freeware or Free Version of the Software.

EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, SMARTBEAR AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. SMARTBEAR DOES NOT WARRANT THAT THE SERVICES ARE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. IN ADDITION, ALL THIRD PARTY COMPONENTS ARE PROVIDED "AS IS," "WHERE IS," "AS AVAILABLE," "WITH ALL FAULTS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WITHOUT WARRANTY OF ANY KIND. SMARTBEAR AND ITS LICENSORS DISCLAIM ALL WARRANTIES WITH RESPECT TO THE THIRD PARTY COMPONENTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE, AND ANY WARRANTIES REGARDING THE SECURITY, QUIET ENJOYMENT, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SERVICES. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. THE SERVICES ARE NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. SMARTBEAR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

No oral or written information or advice given by SmartBear, its Resellers, dealers, distributors, agents, representatives or employees shall create any warranty or in any way increase any warranty provided herein.

If applicable law requires any warranties other than the foregoing, all such warranties are limited in duration to thirty (30) days from the date of grant of initial access to the Services to You. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to You. The warranties provided herein give You specific legal rights and You may also have other legal rights that vary from jurisdiction to jurisdiction. The limitations or exclusions of warranties, remedies or liability contained in this EULA shall apply to You only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where You are located.

**Reserved.**

**Reserved.**

**Reserved.**

#### **Government Matters**

This Section applies to all acquisitions of the Services by or for the United States Federal government, including by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal government. The Software was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Federal Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the Services. If for any reason, Sections 12.212, 227.7202-1 or



227.7202-3 are deemed not applicable, then the Federal Government's rights to use, duplicate or disclose the Services are limited to "Restricted Rights" as defined in 48 CFR Section 52.227-14, or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the Federal Government's needs or is inconsistent in any respect with Federal law, the Federal Government agrees to terminate its access to the Services. Manufacturer is SmartBear Software Inc., 450 Artisan Way, Somerville, MA 02145.

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## **EXHIBIT A SMARTBEAR PRODUCT SUPPORT MANUAL**

### **Introduction**

This document explains the procedures that are basic to an understanding of SmartBear Software's Product Support Services.

#### **Purpose**

The purpose of the Product Support Manual is to provide information about SmartBear Software Product Support services so Customers can access SmartBear's Product Support to obtain effective and timely solutions.

#### **Audience**

The audience for this document is:

SmartBear Customers  
SmartBear Employee

### **SmartBear Product Support Procedures**

SmartBear provides assistance in several ways.

Our customers or trial prospects can access online information via our SmartBear website, [www.smartbear.com](http://www.smartbear.com). Our web-site contains online documentation, troubleshooting, and many other tools that will help you get the most out of our products.

We also have several community forums for SmartBear products in which you can find responses to various questions asked from other customers. This is also where you can post your own question. Both our customers and SmartBear monitor these forums and provide answers.

Finally, if you cannot find an answer to your question via our web-site, you can also submit a ticket to our Customer Care team via our web-site by selecting the contact support button at the bottom of the support page.

For some of the products, we also provide chat and telephone support. Please see more detail regarding this below.

Support Services will be available to individuals who have been named, in writing, by customers or prospects eligible to receive support. Support eligibility requires an active maintenance contract, current product subscription, or a valid trial license.

### **Contacting Support**

When our support teams receive your ticket, an individual will review the information you provide with the objective to provide an answer on our initial response. Our goal is to respond in the time frames mentioned below. This will be based on the urgency of the situation and product. Sometimes we do not have all of the information to provide an answer or we may need to perform more research before providing an answer. In these scenarios our initial response will be to let you know we have reviewed the information and what our next steps will be.

We will also provide updates on a regular basis. The time frames of these updates are documented below.

Our team also tracks our dialogue with you as well as captures and tracks any information you have provided us such as log files, screen captures, etc. This information is tracked in our ticketing system. Consequently you'll be able to find out the status of your ticket simply via our updates or by contacting us.

If the support engineer who initially took your issue requires assistance from someone, he/she will either consult with a colleague or escalate your issue to a more skilled engineer, e.g. senior technical support engineer, developer, etc. The timeframe of these escalation goals are driven by the severity of the issue and are listed below.

If you feel you are not receiving the appropriate response for an issue, please check to make sure we understand the urgency of the situation properly. You can also contact your Account Manager or Customer Success Manager who will ensure the appropriate manager is aware of your situation.

### **Product Support Services**

SmartBear Support Services are accessible via the telephone, chat, our web-form, our web-site and forums. Access, availability, response time, escalation time and follow-up time is product dependent.

**Product Support – Access and Availability Table.**

This following table describes the access venue and availability times for each product area.

Products	Telephone	E-Mail/Web-Form	Web-Site (self-help tools and forums)
<p><b>Enterprise</b></p> <ul style="list-style-type: none"> <li>❖ AQtime Pro</li> <li>❖ Collaborator</li> <li>❖ LoadComplete</li> <li>❖ QAComplete</li> <li>❖ Ready!API</li> <li>❖ SoapUI NG</li> <li>❖ LoadUI NG</li> <li>❖ Secure Pro</li> <li>❖ ServiceV</li> <li>❖ TestServer</li> <li>❖ SwaggerHub</li> <li>❖ TestComplete</li> <li>❖ TestLeft</li> </ul>	Not Available	<p>M-F, 12:00am – 8:00pm EST excluding US National Holidays</p> <p><a href="http://support.smartbear.com/product-list/">http://support.smartbear.com/product-list/</a></p>	<p>Always Available: 7 x 24 x 365</p> <p><a href="http://support.smartbear.com/">http://support.smartbear.com/</a></p>
<p><b>SmartBear SaaS Products</b></p> <ul style="list-style-type: none"> <li>❖ AlertSite</li> <li>❖ QAComplete</li> <li>❖ SwaggerHub</li> </ul>	<p><b>Alertsite UXM only</b> M-F, 8:00am – 8:00pm EST excluding US National Holidays</p> <p><b>All SaaS Products</b></p> <p>After Hours is available for emergency issues only for all SaaS products.</p> <p><u>US:</u> 1-877-30ALERT (877-302-5378)</p> <p><u>International:</u> 01-954-312-0188</p>	<p>M-F, 12:00am – 8:00pm EST excluding US National Holidays</p> <p><a href="http://support.smartbear.com/product-list/">http://support.smartbear.com/product-list/</a></p>	<p>Always Available: 7 x 24 x 365</p> <p><a href="http://support.smartbear.com/">http://support.smartbear.com/</a></p>

**Product Support Definitions**

Initial Response, Follow-Up and Escalation

The SmartBear Software Product Support organization has established service-level objectives regarding the timing of the Initial Response provided to our Customers when a new support case is received as well as for Follow Up communication regarding the status of open cases.

**Initial Response**

Initial Response is defined as the first communication from Product Support acknowledging receipt and review of a support request.

New tickets will be created either automatically by a web-form or manually by a Technical Support team member.

When a ticket is created automatically, the submitter will receive an automatic response which will include the ticket number which we use for tracking purposes. This is part of the initial response.

The initial response is completed when a Product Support team member acknowledges receipt of the ticket. This can be a follow-up from an automatic submission or initial entry of the ticket when submitted via phone or chat.

During the initial response, the support engineer may request additional information or may communicate that additional research is required. The support engineer may also escalate to a more skilled engineer if required.

The Initial Response may be provided in various forms including:

Via a support ticket response from Product Support, which would include the assigned case number, status, and next steps  
 If applicable via a customer's first telephone or chat contact with the Product Support organization during which the issue was discussed with a Support Representative.

**Follow-Up Communications**

SmartBear Software Product Support defines Follow-up as communication between the assigned Support Representative and the Customer. This may include a status update, additional information exchange and/or next steps. Communication may be in many forms such as the telephone, chat (if applicable), e-mail or directly updating the case information if it is available to the customer on-line.

**Escalation**

SmartBear Software Product Support defines Escalation as the protocol under which Product Support will escalate a case to higher skilled individuals in which their assistance is required to move a case forward. For example, when an issue needs additional help from development, the support representative will escalate to the development manager. *Priority Definitions*

SmartBear will commit to initial response, follow-up and escalation times based on the severity of an issue. These severities are defined by product state or behavior so we can be as transparent as possible and set the proper expectations with you, our customer. The table below lists these severity definitions.

Priority Definitions Table

Product	Urgent/Sev 1	High	Standard
<p><b><u>SaaS</u></b></p> <ul style="list-style-type: none"> <li>❖ AlertSite</li> <li>❖ QAComplete</li> <li>❖ SwaggerHub</li> </ul> <p><b><u>Enterprise</u></b></p> <ul style="list-style-type: none"> <li>❖ AQtme Pro</li> <li>❖ Collaborator</li> <li>❖ LoadComplete</li> <li>❖ QAComplete</li> <li>❖ Ready!API</li> <li>❖ SoapUI NG</li> <li>❖ LoadUI NG</li> <li>❖ Secure Pro</li> <li>❖ ServiceV</li> <li>❖ TestServer</li> <li>❖ TestComplete</li> <li>❖ TestLeft</li> </ul>	<p>A significant number of customers are impacted by the service, product, or major feature being unavailable. No reasonable workaround is available.</p>	<p>Service Behaviors defined under urgent, but is impacting a moderate number of customers.</p> <ul style="list-style-type: none"> <li>• Is reproducible</li> <li>• A work around is available that is reasonable in the short-term, but not in the long-term.</li> </ul>	<p>Minimal operational impact</p> <ul style="list-style-type: none"> <li>• Cosmetic Issue</li> <li>• Efficiency Issue</li> <li>• Convenience Issue</li> <li>• Operational workaround available</li> <li>• Usage Clarification that does not impact work performance</li> </ul>

**Initial Response, Escalation and Follow-Up Goals**

The following matrix describes our response time, escalation time and follow-up time for each product and priority area. When reporting a case (see product support procedures above) it is imperative that you, the customer, provide us with enough information so we can determine the proper severity. Incorrect severity assignment can lead to improper response on our part which could impact your ability to get the most out of our products.



If you feel an issue is of an urgent nature, please use the most expeditious reporting mechanism available to ensure proper response.

Please note, response times and escalation times only apply to phone, chat and web-form.

Response Time Table – Includes First Response, Follow-up and Escalation based on business hours (one day is defined as one business day).

	Urgent / Sev 1	High	Standard
<p><b>SaaS Products</b></p> <ul style="list-style-type: none"> <li>❖ AlertSite</li> <li>❖ QAComplete</li> <li>❖ SwaggerHub</li> </ul>	<ul style="list-style-type: none"> <li>• First Response: 30 minutes</li> <li>• Follow-up: 1 hour or agreed upon time between customer and representative</li> <li>• Escalation: 2 hours</li> </ul>	<ul style="list-style-type: none"> <li>• First Response: 4 hours</li> <li>• Follow-up: 8 hours or agreed upon time between customer and representative</li> <li>• Escalation: 2 days</li> </ul>	<ul style="list-style-type: none"> <li>• First Response: 1 day</li> <li>• Follow-up: 2 days or agreed upon time between customer and representative</li> <li>• Escalation: 5 days</li> </ul>
<p><b>Enterprise Products</b></p> <ul style="list-style-type: none"> <li>❖ Aqtime Pro</li> <li>❖ Collaborator</li> <li>❖ LoadComplete</li> <li>❖ QAComplete</li> <li>❖ Ready!API</li> <li>❖ SoapUING</li> <li>❖ LoadUING</li> <li>❖ Secure Pro</li> <li>❖ ServiceV</li> <li>❖ TestServer</li> <li>❖ TestComplete</li> <li>❖ TestLeft</li> </ul>	<ul style="list-style-type: none"> <li>• First Response: 2 hours</li> <li>• Follow-up: 4 hours or agreed upon time between customer and representative</li> <li>• Escalation: 1 day</li> </ul>	<ul style="list-style-type: none"> <li>• First Response: 1 day</li> <li>• Follow-up: 1 day or agreed upon time between customer and representative</li> <li>• Escalation: 2 days</li> </ul>	<ul style="list-style-type: none"> <li>• First Response: 2 days</li> <li>• Follow-up: 2 days or agreed upon time between customer and representative</li> <li>• Escalation: 5 days</li> </ul>

**Update Policy**

Product defects and enhancement requests are reviewed regularly by the SmartBear Software Product Management and Development organizations to assess whether the request represents an enhancement or defect and if it is assigned the appropriate priority. Product Management will determine, based upon the assigned priority, whether a patch will be made available for the current generally available release or whether an issue will be addressed in a future release through an update.

All defects and enhancements must be reported using the instructions provided in the Product Support Procedures at the beginning of this document.

**Enhancements**

An enhancement is any additional feature or function that would make the product easier to use, improves workflow or end-user experience, embeds new technology, or provides easier integration with other application or databases. An enhancement is not of an urgent nature, but is an improvement on the current product. Enhancements are therefore handled as a standard priority matter.

**Defects**

A software defect is a flaw in the product that is not working as designed or documented and impedes the workflow of a client.

**Defect/Enhancement Priorities**

Product Management determines the priority of defects. The defect priority drives when a fix will be available. Refer to the Severity Definitions for an explanation of each priority.

Urgent / Sev 1 Priority – SmartBear Software will work to provide a patch or work around that can be applied to the current generally available product release.

High Priority – SmartBear Software will consider a patch or work around for the current generally available product release or will work to provide the fix in a future maintenance release.

Standard Priority – SmartBear Software will consider a fix for a future major release based on market indicators.

## EXHIBIT B

### SMARTBEAR PRIVACY POLICY

This Privacy Policy details certain policies implemented throughout SmartBear governing SmartBear's use of personally identifiable information about users of our Site and users of our services and/or software that is available for download on this Site.

SmartBear complies with the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personally identifiable information from European Union member countries and Switzerland. To learn more about the Safe Harbor program, please visit

<http://www.export.gov/safeharbor/>.

For purposes of this Privacy Policy, "personally identifiable information" shall mean any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity. The following applies solely to the extent that SmartBear collects personally identifiable information directly from individuals.

### PRIVACY POLICY UPDATES

Due to the Internet's rapidly evolving nature, SmartBear may need to update this Privacy Policy from time to time. If we make changes to this policy, both parties shall, in writing, update this Exhibit B. Your continued use of this Site and/or continued provision of personally identifiable information to us will be subject to the terms of the then-current Privacy Policy set forth in this Exhibit B.

### INFORMATION COLLECTION AND USE

You can generally visit our Site without revealing any personally identifiable information about yourself. However, in certain sections of this Site, we may invite you to participate in surveys, questionnaires or contests, contact us with questions or comments or request information, participate in chat or message boards, or complete a profile or registration form. Furthermore, we require you to complete a registration form to access certain restricted areas of the Site, to use certain services and when you download any software. Due to the nature of some of these activities, we may collect personally identifiable information such as your name, e-mail address, address, phone number, password, screen name, credit card information and other contact information that you voluntarily transmit with your on-line and in-person communications to us and personally identifiable information that you elect to include in your chat and message board postings.

If you use a forum on this Web Site, you should be aware that any personally identifiable information you submit there can be read, collected, or used by other users of these forums, and could be used to send you unsolicited messages. We are not responsible for the personally identifiable information you choose to submit in these forums.

We receive permission to post testimonials that include personally identifiable information prior to posting.

To facilitate product support, product development and improvement, product marketing campaigns as well as other services to you, the SoapUI 5.1.2 Software and newer versions may transmit to SmartBear application usage data regarding usage metrics such as which features are used and in which order and time of use with respect to the SoapUI 5.1.2 Software. The SoapUI 5.1.2 Software does not transmit, collect nor communicate any proprietary application data.

SmartBear will not provide any information gathered in connection with the use of the SoapUI 5.1.2 Software to any third party except (i) as may be required by law or legal process, or (ii) to enforce compliance with its terms of use. A User may disable the transmission of this information at any time through the software's settings menu.

### ORDERS

If you purchase a product or service from us, we request certain personally identifiable information from you on our order form. You must provide contact information (such as name, email, and shipping address) and financial information (such as credit card number, expiration date).

We use this information for billing purposes and to fill your orders. If we have trouble processing an order, we will use this information to contact you.

We use your personally identifiable information to register you to use our services or download software or other content, contact you to deliver certain goods, services or information that you have requested, provide you with notices regarding goods or services you have purchased, provide you with notices regarding goods or services that you may want to purchase in the future, verify your authority to enter our Site, receive updates and improve the content and general administration of the Site, our software and our services.

In addition, we may collect information about the performance, security, software configuration and availability of our software on your servers and network in an automated fashion as part of the SmartBear software licensing. If you have opted-in to receiving software updates automatically from SmartBear, the software may report to us, and we may collect, your IP address, operating system type and version, web server type and version, php version, database type and version, version of the services, modifications to any of the Software or services, website user statistics such as the number of nodes, number of users and number of comments. The foregoing information will be linked to your personally identifiable information and user accounts and

we may use the foregoing information to better provide technical support to you and our customers and to improve our software and services.

If you subscribe to one of SmartBear's software as a service offerings you agree that SmartBear may aggregate data and information relating to your usage of the service, which we may use to better provide technical support to you and our customers and to improve our software and services.

If you choose to contact us by e-mail, we will not disclose your contact information contained in the e-mail, but we may use your contact information to send you a response to your message. Notwithstanding the foregoing, we may publicly disclose the content and/or subject matter of your message, therefore, you should not send us any ideas, suggestions or content that you consider proprietary or confidential. All e-mail content (except your contact information) will be treated on a non-proprietary and non-confidential basis and may be used by us for any purpose.

#### **COMMUNICATIONS FROM THE SITE SPECIAL OFFERS AND UPDATES**

We will occasionally send you information on products, services, special deals, and promotions. Out of respect for your privacy, we present the option not to receive these types of communications. Please see the "Choice and Opt-out" section of this Privacy Policy.

#### **NEWSLETTERS**

If you wish to subscribe to our newsletter(s), we will use your name and email address to send the newsletter to you. Out of respect for your privacy, we provide you a way to unsubscribe from these types of communications. Please see the "Choice and Opt-out" section of this Privacy Policy.

#### **SERVICE-RELATED ANNOUNCEMENTS**

We will send you strictly service-related announcements on rare occasions when it is necessary to do so. For instance, if our service is temporarily suspended for maintenance, we might send you an email notification.

Generally, you may not opt-out of these communications, which are not promotional in nature. If you do not wish to receive them, you have the option to deactivate your account.

#### **CUSTOMER SERVICE**

Based upon the personally identifiable information you provide us, we may send you a welcoming email to verify your username and password. We will also communicate with you in response to your inquiries, to provide the services you request, and to manage your account. We will communicate with you by email or telephone, in accordance with your wishes.

#### **CHOICE AND OPT-OUT**

We provide you the opportunity to 'opt-out' of having your personally identifiable information used for certain purposes, when we ask for this information.

If you no longer wish to receive our communications, you may opt-out of receiving them at any time by following the instructions included in each communication, by going to our [Unsubscribe](#) page, or by mail at 100 Cummings Center, Suite 234N, Beverly, MA 01915, USA.

You will be notified when your personal information is collected by any third party that is not our agent/service provider, so you can make an informed choice as to whether or not to share your information with that party.

#### **EMPLOYMENT OPPORTUNITIES**

We provide you with a means for submitting your resume or other personal information through the Site for consideration for employment opportunities at SmartBear. Personal information received through resume submissions will be kept confidential. We may contact you for additional information to supplement your resume, and we may use your personal information within SmartBear, or keep it on file for future use, as we make our hiring decisions.

#### **CHILDREN'S PRIVACY**

SmartBear recognizes the privacy interests of children and we encourage parents and guardians to take active roles in their child's online activities and interests. This Site is not intended for children under the age of 13. SmartBear does not target its software, services or this Site to children under 13. SmartBear does not knowingly collect personally identifiable information from children under the age of 13.

#### **COOKIES AND GIFS**

We use small text files called cookies to improve overall Site experience. A cookie is a piece of data stored on the user's hard drive containing information about the user. Cookies generally do not permit us to personally identify you (except as provided below). We may also use clear GIFs

(a.k.a. "Web beacons") in HTML-based emails sent to our users to track which emails are opened by recipients.

Additionally, when using the Site, we and any of our third party service providers may use cookies and other tracking mechanisms to track your user activity on the Site and identify the organization or entity from which you are using the Site. If you register with the Site, we, and our third party service providers, will be able to associate all of your user activity with your personally identifiable registration information. We will use such user activity information to improve the Site, to provide context for our sales and support staff when interacting with you and customers, to initiate automated email marketing campaigns triggered by your activity on the Site and for other internal business analysis.

#### **AGGREGATE INFORMATION**

The Site may track information that will be maintained, used and disclosed in aggregate form only and which will not contain your personally identifiable information, for example, without limitation, the total number of visitors to our Site, the number of visitors to each page of our Site, browser type, External Web Sites (defined below) linked to and IP addresses. We may analyze this data for trends and statistics in the aggregate, and we may use such aggregate information to administer the Site, track users' movement, and gather broad demographic information for aggregate use.

#### **DISCLOSURE AND ONWARD TRANSFER**

We will not sell your personally identifiable information to any company or organization, except we may transfer your personally identifiable information to a successor entity upon a merger, consolidation or other corporate reorganization in which SmartBear participates or to a purchaser or acquirer of all or substantially all of SmartBear's assets to which this Site relates. We may provide your personally identifiable information and the data generated by cookies and the aggregate information to parent,

subsidiary or affiliate entities within SmartBear's corporate family, partner entities that are not within SmartBear's corporate family and vendors and service agencies that we may engage to assist us in providing our services to you. For example, we may provide your personally identifiable information to a credit card processing company to process your payment.

SmartBear will comply with the notice and choice principles as described above for all data which is disclosed or transferred to third party entities. SmartBear will obtain assurances from such entities that they will safeguard personally identifiable information consistent with this Privacy Policy. Such third party entities may be obligated to protect your personally identifiable information by requiring such party to enter into written confidentiality agreements with SmartBear or to have certified or agreed in writing to its adherence with the EU Safe Harbor Principles. We will disclose your personally identifiable information (a) if we are required to do so by law, regulation or other government authority or otherwise in cooperation with an ongoing investigation of a governmental authority, (b) to enforce SmartBear Terms of Use agreement or to protect our rights or (c) to protect the safety of users of our Site and our services.

The Site may provide links to other Web sites or resources over which SmartBear does not have control ("External Web Sites"). Such links do not constitute an endorsement by SmartBear of those External Web Sites. You acknowledge that SmartBear is providing these links to you only as a convenience, and further agree that SmartBear is not responsible for the content of such External Web Sites. Your use of External Web Sites is subject to the terms of use and privacy policies located on the linked to External Web Sites.

#### **SECURITY**

We employ procedural and technological measures that are reasonably designed to help protect your personally identifiable information including sensitive data such as your credit card information from loss, unauthorized access, disclosure, alteration or destruction. SmartBear may use encryption, secure socket layer, firewall, password protection and other physical security measures to help prevent unauthorized access to your personally identifiable information including sensitive data. SmartBear may also place internal restrictions on who in the company may access data to help prevent unauthorized access to your personally identifiable information.

#### **UPDATING AND DELETING PERSONALLY IDENTIFIABLE INFORMATION**

SmartBear provides you with the ability to review and update the contact information that you provide to us and account information retained by SmartBear related to your previous purchase, download or payment activities. If you wish to review and/or update any of the foregoing information, you may access your account and review and update your personally identifiable information or you may contact us at the e-mail, phone or mailing address listed below.

SmartBear will also delete the personally identifiable information that you have provided to us: (a) upon your request or (b) upon termination of your SmartBear account; provided, however, SmartBear will retain a copy in its files of all personally identifiable information, if required for legal reasons.

If you wish to review, correct or request the deletion of any information you have provided to us, contact us by email at [privacy@smartbear.com](mailto:privacy@smartbear.com) or by regular mail at 450 Artisan Way, Somerville, MA 02145, Attention: Legal. We also gives you the option for changing and modifying information previously provided by visiting [www.smartbear.com](http://www.smartbear.com), where you can log into your account to update your contact information.

#### **ENFORCEMENT**

Individuals who wish to file a complaint or who take issue with this Privacy Policy should direct such communication to SmartBear via e-mail at the address provided above. SmartBear will explain the process to be followed when filing a complaint. Filing a complaint in English will expedite the process. SmartBear will investigate and attempt to resolve complaints and disputes regarding use and disclosure of personally identifiable information in accordance with the principles contained in this Privacy Policy.

SmartBear is also subject to the jurisdiction of the US Federal Trade Commission. You may contact it at: Federal Trade Commission, Attn: Consumer Response Center, 600 Pennsylvania Avenue NW, Washington, DC 20580.

#### **QUESTIONS**

If you have any questions about this Privacy Policy, the practices of this Web Site, or your dealings with this Web Site or SmartBear, you can contact us by email at [privacy@smartbear.com](mailto:privacy@smartbear.com). We will respond to your request within 30 days.

#### **USERS OUTSIDE OF THE UNITED STATES OF AMERICA**

Many of our computer systems are currently based in the United States, so your personal data will be processed by us in the U.S. where data protection and privacy regulations may not offer the same level of protection as in other parts of the world, such as the European Union. If you create a user account with our Web Site as a visitor from outside the United States, by using the Site, you agree to this Privacy Policy and you consent to the transfer of all such information to the United States, which may not offer an equivalent level of protection of that required in the European Union or certain other countries, and to the processing of that information as described in this Privacy Policy.

**THIS PRIVACY POLICY IS EFFECTIVE AS OF: MARCH 11, 2015**

**SPIRENT COMMUNICATION  
27349 AGOURA ROAD  
CALABASAS, CA 91301**

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SPIRENT COMMUNICATION**

**SPIRENT COMMUNICATION WARRANTY AND SUPPORT TERMS**

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## Legacy Assurance - Hardware Repair Agreement (SVC-1320)

**Attn:**  
**Name**  
**Address**  
**State/City/Country**

**Agreement Number:**  
**PO Number:**  
**Account:**  
**Start Date:**  
**Expiration Date:**

**Thank you for purchasing Spirent Communications' Legacy Assurance - Hardware Repair program. The specific hardware listed in Appendix A shall be entitled to the following support for the term of the agreement:**

- **Repair for any hardware failures, once failure is confirmed by Customer Service. Spirent shall not be responsible for failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Hardware is to be returned to Spirent's factory referencing a return authorization number (RMA#), freight prepaid by the Customer. Spirent will ship repaired products to Customer, freight prepaid.**
- **Telephone support to confirm hardware failure, during regular local business hours.**

**Contact our Customer Service team, or your local distributor, for any support needs related to products covered by this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at <http://support.spirentcom.com> and obtain a Customer Service Center (CSC) user account.**

**Additional terms of the Legacy Assurance - Hardware Repair program are as follows:**

1. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this agreement.
2. Spirent shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
3. In cases where the product cannot be repaired, Spirent will contact the customer to discuss the options available.
4. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.

**Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.**

91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a>	21G, Rue Jacques Cartier – RDC 78960 Voisins Le Bretonneux - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a>	Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +86 400-810-9529 (mainland) +86 (10) 82-33-00-33 Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a>
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**Support Maintenance  
Legacy Assurance - Hardware Repair Agreement**  
Agreement Number:

**Appendix A**

**Hardware products covered under this Support Services Program:**

Part Number	Product Name	Chassis ID or S/N
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<p><b>Americas</b> 27349 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b> Spirent Communications 21G, Rue Jacques Cartier – RDC 78960 Voisins Le Bretonneux - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b> Spirent Communications Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +86 400-810-9529 (mainland) +86 (10) 82-33-00-33 Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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## Support Maintenance Extended Support Agreement (SVC-1015)

**Attn:**  
**Name**  
**Address**  
**City/State/Country**

**Contract Number:**  
**PO Number:**  
**Account:**  
**Start Date:**  
**Expiration Date:**

**Thank you for purchasing Spirent Communications' Extended Support. The specific hardware and software listed in Appendix A shall be entitled to the following support for the term of the agreement:**

- **Repair or replacement**, customarily 7-20 business days at one of our repair facilities, for any hardware failures, once failure is confirmed by Customer Service (excludes shipping time). Spirent shall not be responsible for failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Hardware is to be returned to Spirent's factory referencing a return authorization number (RMA #), freight prepaid by the Customer. Spirent will ship repaired products to Customer, freight prepaid.
- **Telephone support** from technical support engineers during regular local business hours.
- **Escalation of service requests** by our technical support engineers.
- **Software and Firmware updates** for the software listed in Appendix A to ensure your system remains current with evolving industry standards (excludes discontinued and obsolete products).
- **Access to our software download center** on our exclusive online Customer Service Center at <http://support.spirentcom.com> to take advantage of Spirent's continual product improvements.
- **Email notification**
- **Access To Computer Based Training Materials** to help you get the most from using your Spirent products of major software releases so you can quickly take advantage of the software fixes and enhancements implemented in the release for increased productivity.
- **Access to latest product documentation** to help you effectively utilize your investment.

**Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.**

**Contact our Customer Service team, or your local distributor,** for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at <http://support.spirent.com> and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

<p><b>Americas</b>                  27349 Agoura Road                  Calabasas CA, 91301                  1-800-SPIRENT                  (1-800-774-7368)                  1-818-676-2616                  Support Hours: 8:30AM                  ET - 6:00PM PT                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b>                  Spirent Communications (India) Pvt. Ltd                  9th Floor, Umiya Business Bay, Tower-1 Cessna                  Business Park, Kadubeesanahalli                  Marath halli – Sarjapur Outer Ring Road                  Bangalore - India 560 037                  1 800 419 2111 Direct +91 80 67023400                  Support Hours: 9:00AM - 6:00PM GMT + 5:30                  Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b>                  Spirent Communications                  Business Park Le Val                  Saint Quentin                  2 rue René Caudron, Bât.                  G - France                  +33 1 6137 2270                  0800-111-4363 (UK only)                  Support Hours: 9:00AM -                  6:00PM GMT +1                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b>                  Room 1302, Shining                  Tower, No.35                  Xueyuan Road, Haidian                  District                  Beijing, 100191, China                  +400-810-9529                  (Mainland)                  +86-400-810-9529 (Rest                  of APAC)                  Support Hours: 9:00AM –                  6:00PM GMT +8                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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**Terms of service response time with Extended Support are as follows:**

Additional \*response times to issue submissions are targeted to be within the following guidelines based on regional Support center hours of operation in which each product is supported.

Issue Severity	Description	Response Time
Critical	System is inoperable or not usable as a result of hardware or software malfunction. No known workaround available. Follow up communications are once per day until a resolution plan is established.	4 Hours
Urgent	System is providing limited functionality. The software or product is malfunctioning and/or has restricted functionality. No known workaround is available. Follow up communications are a minimum once every two days until a resolution plan is established	8 Hours
Normal	System is providing all functionalities but consistently or randomly generates wrong results. Problem is being worked to resolution via the application or configuration details, or a workaround is available. Follow up communications are a minimum once every 3 business days until a resolution plan is established	12 Hours

Response time is defined as the time when a customer has been informed or attempts have been made to inform the customer that the issue has a specific owner assigned to be responsible to drive the SR to resolution.

**Additional terms of Extended Support are as follows:**

1. The standard terms of Spirent's hardware and software warranty that both parties have executed in writing are applicable to this service agreement unless where specifically stated otherwise in this agreement.
2. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.
3. Software and firmware updates are restricted to only the ones listed in Appendix A and only for the chassis or modules in which it is licensed per our software license agreement.
4. Spirent shall be under no obligation to release a specific version or any number of versions of the software covered under the Support Services Plans. Customer shall be under no obligation to utilize the newest version and may continue to utilize prior versions.
5. In cases where Customer does not upgrade to the latest or prior release, Spirent will not recreate or consider any bug fixes optional features or enhancements.
6. Spirent shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
7. This agreement does not cover hardware products which have been designated as "obsolete" as defined by Spirent's

Advanced Lifecycle Management policy which can be found on Spirent's website.

8. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.

9. Defective Products and Software under a service agreement shall be, at Spirent's discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent's location in the United States;(b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer; and (c)The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.

<p><b>Americas</b>                  27349 Agoura Road                  Calabasas CA, 91301                  1-800-SPIRENT                  (1-800-774-7368)                  1-818-676-2616                  Support Hours: 8:30AM                  ET - 6:00PM PT                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b>                  Spirent Communications (India) Pvt. Ltd                  9th Floor, Umiya Business Bay, Tower-1 Cessna                  Business Park, Kadubeesanahalli                  Marath halli – Sarjapur Outer Ring Road                  Bangalore - India 560 037                  1 800 419 2111 Direct +91 80 67023400                  Support Hours: 9:00AM - 6:00PM GMT + 5:30                  Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b>                  Spirent Communications                  Business Park Le Val                  Saint Quentin                  2 rue René Caudron, Bât.                  G - France                  +33 1 6137 2270                  0800-111-4363 (UK only)                  Support Hours: 9:00AM -                  6:00PM GMT +1                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b>                  Room 1302,Shining                  Tower,No.35                  Xueyuan Road,Haidian                  District                  Beijing,100191,China                  +400-810-9529                  (Mainland)                  +86-400-810-9529 (Rest                  of APAC)                  Support Hours: 9:00AM –                  6:00PM GMT +8                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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## Support Maintenance Extended Support Agreement

Contract Number:

### Appendix A

#### Products Covered under this Support Services Program

Part Number	Product Name	Chassis ID or S/N
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<p><b>Americas</b> 27349 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b> Spirent Communications (India) Pvt. Ltd 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marath halli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b> Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caudron, Bât. G - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b> Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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## One year Warranty Agreement (SVC-1001)

**Attn:**  
**Name**  
**Address**  
**City/State/Country**

**Contract Number:**  
**PO Number:**  
**Account:**  
**Start Date:**  
**Expiration Date:**

**Thank you for purchasing Spirent Communications' Hardware Warranty. The specific hardware listed in Appendix A shall be entitled to the following support for the term of the warranty:**

- **Repair or replacement**, customarily 7-20 business days at one of our repair facilities, for any hardware failures, once failure is confirmed by Customer Service (excludes shipping time). Spirent shall not be responsible for failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Hardware is to be returned to Spirent's factory referencing a return authorization number (RMA #), freight prepaid by the Customer. Spirent will ship repaired products to Customer, freight prepaid.
- **Telephone support** from technical support engineers during regular local business hours.
- **Escalation of service requests** by our technical support engineers.
- **Access to latest product documentation** to help you effectively utilize your investment.

**Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.**

**Contact our Customer Service team, or your local distributor, for any support related to this service agreement.**

<p><b>Americas</b> 27349 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b> Spirent Communications (India) Pvt. Ltd 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marath halli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b> Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caudron, Bât. G - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b> Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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**Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at <http://support.spirentcom.com> and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.**



## One year Warranty Agreement

**Terms of service response time with Warranty are as follows:**

Additional \*response times to issue submissions are targeted to be within the following guidelines based on regional Support center hours of operation in which each product is supported.

Issue Severity	Description	Response Time
Critical	System is inoperable or not usable as a result of hardware or software malfunction. No known workaround available. Follow up communications are once per day until a resolution plan is established	8 Hours
Urgent	System is providing limited functionality. The software or product is malfunctioning and/or has restricted functionality. No known workaround is available. Follow up communications are a minimum once every two days until a resolution plan is established	12 Hours
Normal	<del>System is providing all functionalities but consistently or randomly generates wrong results. Problem</del> is being worked to resolution via the application or configuration details, or a workaround is available. Follow up communications are a minimum once every 3 business days until a resolution plan is established	16 Hours

\* Response time is defined as the time when a customer has been informed or attempts have been made to inform the customer that the issue has a specific owner assigned to be responsible to drive the SR to resolution.

**Additional terms of Warranty Support are as follows:**

1. The standard terms of Spirent's hardware and software warranty that both parties have executed in writing are applicable to this service agreement unless where specifically stated otherwise in this agreement.
2. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.
3. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.
4. Defective Products and Software under a service agreement shall be, at Spirent's discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent's location in the United States;(b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer; and (c)The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.

Spirent reserves the right to deny service delivery, or charge Customer for repair at Spirent's then-current prevailing rates in accordance with the GSA Schedule Pricelist, should any of the above conditions caused the failure.



**One year Warranty  
Agreement**

**Entitlement Number:**

**Appendix A**

**Products Covered under this Support Services Program**

Part Number	Product Name	Chassis ID or S/N
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## Support Maintenance Premium Support with Advance Replacement Agreement (SVC-1020)

**Attn:**  
**Name**  
**Address**  
**City/State/Country**

**Contract Number:**  
**PO Number:**  
**Account:**  
**Start Date:**  
**Expiration Date:**

**Thank you for purchasing Spirent Communications' Premium Support with Advance Replacement. The specific hardware and software listed in Appendix A shall be entitled to the following support for the term of the agreement:**

- **Advance Replacement of any hardware failure** to minimize down-time and inconveniences of obtaining a Purchase Order in the event hardware repairs are required. All repair fees are included under this Agreement in accordance with the GSA Schedule Pricelist. This Agreement does not apply to failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Advance replacements may be new or like new condition. Hardware is to be returned to Spirent's factory referencing a return authorization number (RMA #), freight prepaid by the Customer. Spirent will ship advance replacement products, freight prepaid, to Customer.
- **Escalation of service requests** by our technical support engineers.
- **Telephone support** from technical support engineers during regular local business hours.
- **Software and Firmware updates** for the software listed in Appendix A to ensure your system remains current with evolving industry standards (excludes discontinued and obsolete products).
- **Access To Computer Based Training Materials** to help you get the most from using your Spirent products
- **Access to our software download center** on our exclusive online Customer Service Center at <http://support.spirent.com> to take advantage of Spirent's continual product improvements.
- **Automatic email notification** of major software releases so you can quickly take advantage of the software fixes and enhancements implemented in the release for increased productivity.
- **Access to latest product documentation** to help you effectively utilize your investment.

**Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at <http://support.spirent.com> and obtain a Customer Service**

<p><b>Americas</b> 27349 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b> Spirent Communications (India) Pvt. Ltd 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marath halli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b> Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caudron, Bât. G - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b> Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

<p><b>Americas</b>                  27349 Agoura Road                  Calabasas CA, 91301                  1-800-SPIRENT                  (1-800-774-7368)                  1-818-676-2616                  Support Hours: 8:30AM                  ET - 6:00PM PT                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b>                  Spirent Communications (India) Pvt. Ltd                  9th Floor, Umiya Business Bay, Tower-1 Cessna                  Business Park, Kadubeesanahalli                  Marath halli – Sarjapur Outer Ring Road                  Bangalore - India 560 037                  1 800 419 2111 Direct +91 80 67023400                  Support Hours: 9:00AM - 6:00PM GMT + 5:30                  Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b>                  Spirent Communications                  Business Park Le Val                  Saint Quentin                  2 rue René Caudron, Bât.                  G - France                  +33 1 6137 2270                  0800-111-4363 (UK only)                  Support Hours: 9:00AM -                  6:00PM GMT +1                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b>                  Room 1302, Shining                  Tower, No.35                  Xueyuan Road, Haidian                  District                  Beijing, 100191, China                  +400-810-9529                  (Mainland)                  +86-400-810-9529 (Rest                  of APAC)                  Support Hours: 9:00AM –                  6:00PM GMT +8                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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## Support Maintenance Premium Support with Advance Replacement Agreement

Contract Number:

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at <http://support.spirentcom.com> and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

**Terms of service response time with Premium Support are as follows:** Additional \*response times to issue submissions are targeted to be within the following guidelines based on regional Support center hours of operation in which each product is supported.

Issue Severity	Description	Response Time
Critical	System is inoperable or not usable as a result of hardware or software malfunction. No known workaround available. Follow up communications are once per day until a resolution plan is established	4 Hours
Urgent	System is providing limited functionality. The software or product is malfunctioning and/or has restricted functionality. No known workaround is available. Follow up communications are a minimum once every two days until a resolution plan is established	8 Hours
Normal	System is providing all functionalities but consistently or randomly generates wrong results. Problem is being worked to resolution via the application or configuration details, or a workaround is available. Follow up communications are a minimum once every 3 business days until a resolution plan is established	12 Hours

\* Response time is defined as the time when a customer has been informed or attempts have been made to inform the customer that the issue has a specific owner assigned to be responsible to drive the SR to resolution.

<p><b>Americas</b> 27349 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b> Spirent Communications (India) Pvt. Ltd 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marath halli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b> Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caudron, Bât. G - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b> Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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## Support Maintenance Premium Support with Advance Replacement Agreement

Contract Number:

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at <http://support.spirentcom.com> and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

Additional terms of Premium Support with Advance Replacement are as follows:

1. A customer requiring support in connection with the equipment covered by this agreement should contact Spirent Technical Support. Once Technical Support has determined that the hardware is faulty, a new or refurbished replacement unit will be processed to ship within a forty-eight (48) hour time period. Time of delivery is contingent upon factors such as customs requirements which vary globally.
2. Our customer service representative will also issue an RMA # with instructions for return of the defective product. Customer agrees that the defective product will to be returned to Spirent within thirty (30) days from receipt of the advance replacement unit.
3. Should a defective Product not be returned within thirty (30) days of the shipment of the Advance Replacement Product, Spirent will invoice Customer for defects not returned (DNR) prior to 30 days from shipment of the Advance Replacement. Charges for defects not returned will be based on Spirent's list price of the Advance Replacement Product.
4. All repair charges are covered under this agreement.
5. The standard terms of Spirent's hardware and software warranty that has been executed by both parties are applicable to this service agreement unless where specifically stated otherwise in this agreement.
6. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.
7. Software and firmware updates are restricted to only the ones listed in Appendix A and only for the chassis or modules in which it is licensed per our software license agreement.
8. Spirent shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
9. Spirent shall be under no obligation to release a specific version or any number of versions of the software covered under the Support Services Plans. Customer shall be under no obligation to utilize the newest version and may

<p><b>Americas</b>                  27349 Agoura Road                  Calabasas CA, 91301                  1-800-SPIRENT                  (1-800-774-7368)                  1-818-676-2616                  Support Hours: 8:30AM                  ET - 6:00PM PT                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b>                  Spirent Communications India Pvt. Ltd.                  9th Floor, Umiya Business Bay, Tower-1 Cessna                  Business Park, Kadubeesanahalli                  Marathalli, Bangalore - India 560 037                  1 800 419 2111 Direct +91 80 67023400                  Support Hours: 9:00AM - 6:00PM GMT + 5:30                  Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b>                  Spirent Communications                  Business Park Le Val                  Saint Quentin                  2 rue René Caudron, Bât.                  G - France                  +33 3 6157 2270                  0800-111-4363 (UK only)                  Support Hours: 9:00AM -                  6:00PM GMT +1                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b>                  Room 1302, Shining                  Tower, No.35                  Xueyuan Road, Haidian                  District                  Beijing, 100191, China                  +400-810-9529                  (Mainland)                  +86-400-810-9529 (Rest                  of APAC)                  Support Hours: 9:00AM -                  6:00PM GMT +8                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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**Support Maintenance  
 Premium Support with  
 Advance Replacement Agreement**



continue to utilize prior versions.

10. In cases where Customer does not upgrade to the latest or prior release, Spirent will not recreate or consider any bug fixes optional features or enhancements.

11. This agreement does not cover hardware products which have been designated as "obsolete" as defined by Spirent's Advanced Lifecycle Management policy which can be found on Spirent's website.

12. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.

13. Defective Products and Software under a service agreement shall be, at Spirent's discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent's location in the United States; (b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer; and (c) The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.

14. Repair Return - It is the customer's responsibility to pre-pay shipping to Spirent. Additionally, the customer is responsible to ensure the equipment is packed in containers which meet the same specification as when they were shipped from Spirent. When contacting Spirent for such returns, shipping container standards will be provided upon request. Any damage caused in shipping due to improper packing is not covered by Spirent warranty or any service agreement. Damages due to shipping will be immediately brought to the customer's attention and a quote for repair provided upon request.

Spirent reserves the right to deny service delivery, or charge Customer for repair at Spirent's then-current prevailing rates in accordance with the GSA Schedule Pricelist, should any of the above conditions cause the failure.

Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.

<p><b>Americas</b> 27349 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b> Spirent Communications (India) Pvt. Ltd 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marath halli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b> Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caudron, Bât. G - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b> Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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**Support Maintenance  
Premium Support with  
Advance Replacement Agreement**

Contract Number:

**Appendix A**

**Products Covered under this Support Services Program**

Part Number	Product Name	Chassis ID or S/N
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<p><b>Americas</b> 27349 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b> Spirent Communications (India) Pvt. Ltd 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marath halli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b> Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caudron, Bât. G - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b> Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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**SPIRENT COMMUNICATIONS, INC**  
**SOFTWARE LICENSE AGREEMENT**

This Software License Agreement ("Agreement") is made by and between (i) Spirent Communications, Inc. and its affiliates ("Spirent"), and (ii) the undersigned Ordering Activity under GSA Schedule contracts ("Customer" "You" "User" or "Ordering Activity"), who, intending to be legally bound and for good and valuable consideration hereby acknowledge and agree as follows. If you are accepting the terms of this Agreement on behalf of an entity, you and such entity represent and warrant that you have the authority to bind such entity to this Agreement, and, in such event, "Customer" will refer to such entity.

THIS AGREEMENT GOVERNS CUSTOMER'S USE OF SPIRENT SOFTWARE, INCLUDING EMBEDDED OR PRE-INSTALLED SOFTWARE IN SPIRENT HARDWARE, (THE "SOFTWARE"), UNLESS SPIRENT AND CUSTOMER HAVE EXECUTED A SEPARATE AGREEMENT IN WRITING. BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, CUSTOMER IS EXPRESSLY ACKNOWLEDGING AND AGREEING THAT THIS IS A BINDING AGREEMENT AND CUSTOMER HEREBY AGREES TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT ACCEPT ALL THE TERMS AND CONDITIONS SET FORTH HEREIN, CUSTOMER MAY NOT OPERATE, DOWNLOAD, INSTALL, REGISTER OR OTHERWISE USE THE SOFTWARE.

**1. SOFTWARE LICENSE**

1.1. **Licensed Rights.** Subject to the terms and conditions of this Agreement, Spirent grants to Customer a limited, nonexclusive, nontransferable license, without right of sublicense, to use, solely for Customer's internal business purposes, the Software, in object code form only and only in accordance with (a) the technical specification documentation generally made available by Spirent to its customers with regard to the Software ("Documentation"), (b) this Agreement and (c) any term, user, number of licenses or other restrictions set forth in the applicable Spirent quotation ("Quote") or, if not expressly specified in such Quote, the number of licenses, users and/or test sessions for the part numbers listed in Spirent's price list as of the date of such Quote. Licenses designated as "subscription" licenses are for a twelve (12) month period only (unless otherwise designated in the Quote), and may be renewed for additional successive one (1) year terms by executing a new Purchase Order in writing. Software shall also include any Documentation and any maintenance and support releases, improvements, enhancements, and other updates of the same Software product provided to Customer under this Agreement. The Quote shall specify the license type for each license of the Software:

**Global Floating:** Customer may install the Software on any number of internal systems and any of Customer's employees, consultants or agents may use the Software on behalf of Customer, provided however, no more than the specified maximum number of simultaneous instances may be executed at any one time.

**Floating:** Customer may install the Software on any number of internal systems and any of Customer's employees, consultants or agents may use the Software on behalf of Customer, provided however, that (i) no more than the specified maximum number of simultaneous instances may be executed at any one time, and (ii) the Software may not be installed on any system or used by any user outside of the specified jurisdiction(s).

**Named:** Customer may only permit one registered, unique named individual to use each licensed instance of the Software and may only be installed on a reasonable number of systems utilized by such individuals. Named licenses must be registered with the individual's actual name and may not be shared by individuals or allocated to a job function. Once a license is associated with an individual, the license may not be transferred to another individual without the express prior written consent of Spirent.

**Node Locked:** Customer may install each license of the Software on one specific system and that system is the only one which may access that instance of the Software. Once a license is associated with a specific system, the license may not be transferred to another system without Spirent's prior written consent.

Spirent and Customer may agree on alternate types of licenses as set forth in a Quote. If no license type is specified in a Quote, the Software is licensed as a one-year subscription of a single Named license.

1.1.1 **Pre-installed Software.** To the extent that the Software is pre-installed on Spirent hardware acquired by Customer, Customer may use such Software solely as installed on and to the extent necessary for the normal and intended uses of, such Spirent hardware, subject to the terms of this Agreement.

1.2. **Restrictions on Licensed Rights.** Customer acknowledges that the components of the Software are subject to copyrights owned by Spirent or its licensors and the Software is licensed, and not sold, to Customer. Customer is prohibited from modifying or permitting anyone else to modify the Software or any module or other portion thereof. Except as necessary to exercise the rights expressly granted in this Agreement, Customer is prohibited from copying or duplicating, or permitting anyone else to copy or duplicate the Software or any module or other portion thereof, other than for purposes of replacing a worn copy or creating an archive copy. Any such copy shall contain the same copyright notice and proprietary markings as the copy of the Software furnished by Spirent to Customer hereunder. In addition to the other restrictions in this Agreement, and other than

as may be required or impermissible by applicable law or third-party licenses, Customer shall not, and shall not permit others to: (i) create derivative works, distribute, transmit, license or otherwise transfer the Software directly or through third parties; (ii) reverse engineer, disassemble, decompile the Software or any component of the Software or otherwise attempt to obtain the source code of the Software; (iii) use the Software in a service bureau environment nor use the Software to process any data other than Customer's own internal data; or (iv) use the Software for any illegal or malicious purpose or to access any information not owned by Customer or for which it does not have express permission to access; (v) tamper with, or attempt to circumvent or disable, any license key; or (vi) use the Software on any networks, devices or applications not owned or controlled by the Customer. The Software may contain certain devices or mechanisms that Spirent may use to disable or terminate Customer's access to or use of the Software pursuant to the procedures for bringing a dispute for an alleged breach of this Agreement under the contract Disputes Clause (Contract Disputes Act). Nothing in this Agreement limits or restricts the rights granted to Customer under the license terms applicable to the open source or other third-party software provided hereunder.

**U.S. Government Users.** The Software is commercial computer software and commercial computer software documentation within the meaning of the applicable acquisition regulations. If acquired by or on behalf of a civilian agency of the United States government, the Software will be subject to terms of this Agreement as a "license customarily provided to the public" as specified in 48 C.F.R. ch. 1 Part 12.212 of the Federal Acquisition Regulations and its successors. If Spirent receives a request from any Customer agency of the U.S. Government to provide Software with rights beyond those stated above, Spirent will promptly, in its sole discretion, accept or reject such request.

## 2. INVOICING/PAYMENTS

2.1. **License subject to Payment.** The license of the Software granted under this Agreement is subject to the payment of Spirent's then-current GSA Schedule Pricelist list price for the Software or such other amount as set out in the Quote ("Fees") in accordance with the GSA Schedule Pricelist.

2.2. **Payment of Fees.** Customer shall pay Spirent the Fees for the Software and any associated software or services net thirty (30) days from the receipt date of Spirent's invoice for the same. If Customer wishes to expand the scope of its license, additional agreed-upon license fees shall become due and payable to Spirent prior to the effective date of any expansion of the scope of the Customer's license. Such invoice shall be issued in accordance with the Quote or absent such a Quote upon the delivery or download of the Software whichever is the earlier. Any amounts not paid within such thirty (30) day period shall bear interest governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. All Fees will be paid in US dollars.

2.3. **Taxes.** Spirent shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

## 3. PROPRIETARY RIGHTS; CONFIDENTIAL INFORMATION

3.1. **Ownership of Software.** Other than the limited licenses set forth in this Agreement, any and all rights, title and interest in and to the Software, and the intellectual property and proprietary rights to the Software, shall not pass to Customer, but shall remain the exclusive property of Spirent or its licensors.

3.2. **Spirent Confidential Information.** Customer acknowledges that the following categories of information constitute Spirent Confidential Information: (a) all components of the Software; and (b) reserved; and (c) other information disclosed by Spirent that would reasonably be understood to be confidential or proprietary. Spirent Confidential Information will not include, however, any information which: (a) is or becomes part of the public domain through no act or omission of Customer; (b) was in the Customer's lawful possession prior to the disclosure and had not been obtained by Customer either directly or indirectly from Spirent or the Software; (c) is lawfully disclosed to Customer by a third party without restriction on disclosure; or (d) is independently developed by the Customer. For a period of ten (10) years from and after disclosure of Spirent Confidential Information to Customer, Customer agrees to hold all such Spirent Confidential Information in strict confidence, and agrees not to disclose (or permit others to disclose) it to others or use it in any way, commercially or otherwise, except in exercising its rights pursuant to this Agreement. Customer shall not disclose any Spirent Confidential Information to a recipient not authorized in writing by Spirent or use the Confidential Information for any purpose not expressly authorized by this Agreement. Any disclosures by Customer of Spirent Confidential Information shall only be to Customer's employees, consultants, or agents as expressly permitted hereunder on a "need to know" basis for the purposes of this Agreement and subject to such third parties' acceptance of terms and conditions with respect to the disclosed information at least as restrictive as those set forth in this Agreement. If Customer is compelled by law or a court of competent jurisdiction to disclose Spirent Confidential Information, Customer will promptly notify Spirent in writing and will cooperate at Spirent's expense in seeking a protective order or other appropriate remedy. If disclosure is ultimately required, Customer will furnish only that portion of Spirent Confidential Information that is legally required and will exercise reasonable efforts to obtain assurance that it will receive confidential treatment. Spirent recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

3.3. **Reserved.**

## 4. TERMINATION

4.1. **Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Spirent shall proceed diligently with performance of this Agreement, pending final resolution

of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. **Customer Obligations Upon Termination.** Upon termination of this Agreement for any reason, (a) all licenses granted to Customer hereunder shall immediately terminate and Spirent may disable access to the Software, (b) Customer shall discontinue use of the Software and the other Spirent Confidential Information, and any portion thereof, and return the Software and any and all other Spirent Confidential Information in its possession to Spirent, or, at Spirent's option, destroy the Software and such other Spirent Confidential Information, including all copies or partial copies thereof, and shall certify to Spirent in writing that Customer has retained none of the Spirent Confidential Information, and (c) all outstanding Fees for the Software use prior to the termination date shall become due and payable within thirty (30) days of invoice receipt. The following Sections will survive the expiration or termination of this Agreement: 1.2, 2, 3, 4.2, 5, **Error! Reference source not found.**, and 8.

## 5. LIMITED WARRANTIES AND INDEMNIFICATION; EXCLUSIVE REMEDIES

5.1. **Software.** For a period of ninety (90) days from the date of delivery of the Software to Customer, or such other period as stated in the Quote accepted in writing by Spirent, Spirent warrants to Customer that the Software, if used in accordance with this Agreement, will operate in material conformity with the specifications for the Software which Spirent may publish. The warranties set forth herein do not apply to any material deviation from the accompanying documentation or specifications which results from (a) modification of the Software by anyone other than Spirent or in accordance with Customer's instructions, (b) use of the Software for any purpose other than intended, (c) use of Software in combination with any other software or devices, if such claim would have been avoided but for such combination, (d) any misuse or incorrect use of the Software, (e) Customer's failure to use the latest release of the Software provided by Spirent, or (f) any hardware malfunction. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT BECAUSE OF THE COMPLEX NATURE OF COMPUTER SOFTWARE, SPIRENT CANNOT AND DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET A SPECIFIC REQUIREMENT OR THAT THE OPERATION OF THE SOFTWARE WILL BE WITHOUT INTERRUPTION OR ERROR-FREE. During the aforementioned warranty period, Spirent will, at Spirent's expense and as its entire liability (and Customer's exclusive remedy) for any breach of the warranty and provided Customer has notified Spirent in writing of the nature of the non-conformity within ten (10) days of Customer's discovery of the non-conformity and provided Spirent is able to verify such non-conformity: (i) correct the non-conformity or (ii) replace the non-conforming Software with Software meeting Spirent's then-current published specifications.

### 5.2. Infringement.

5.2.1. **Cure.** In the event of a determination that the Software infringes, or is likely to infringe, any proprietary right of any third party, Spirent shall have the option, at its own discretion and expense, to (a) obtain for Customer the right to continue using the actual or potential infringing component of the Software or (b) replace the actual or potential infringing component of the Software or modify such component so that it becomes non-infringing, or (c) terminate the licensed rights granted herein and grant Customer a refund of the license fee, less reasonable depreciation based on usage, which shall in no event be less than the result of a straight-line computation based upon a three (3) year usable life.

5.2.2. **Indemnification.** Spirent shall indemnify, defend and hold Customer harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys) arising from any claim, demand, action or proceeding initiated by any third party alleging the Software infringes the copyright, US registered patent or trademark of any third party; provided, however, that as a condition to this indemnification obligation, Customer shall promptly (a) notify Spirent of any threat or initiation of any claim, demand, action or proceeding to which the indemnification obligation may apply, (b) assist Spirent in the defense or settlement of the matter, and (c) provide Spirent control over the defense and settlement of such matter. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

5.2.3. **Exclusions.** Spirent shall have no obligations under Section 5.2 for any alleged infringement based upon: (a) modification of the Software by anyone other than Spirent, (b) use of the Software in combination with other software or any other Software or devices if such claim would have been avoided but for such combination, (c) Customer's continued use of the infringing Software after receipt of notice of an infringement claim or after receipt of a remedy from Spirent under this Agreement, (d) Customer's use of the Software other than in accordance with the terms of this Agreement or Documentation, or (e) modifications to the Software made pursuant to Customer's express instruction.

THIS SECTION 5.2 STATES SPIRENT'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

5.3. **Disclaimers.** THE LIMITED WARRANTIES AND INTELLECTUAL PROPERTY INDEMNIFICATION SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF, AND CUSTOMER HEREBY WAIVES, ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SOFTWARE FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

### 5.4. Reserved.

## 6. LIMITATION OF LIABILITY

6.1. **Limitations and Exclusions.** IN NO EVENT SHALL SPIRENT OR ANY OF ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (INCLUDING WITHOUT LIMITATION ANY DAMAGES OR LIABILITY RELATING TO INTERRUPTION OF SERVICE, COST OF PROCUREMENT OF SUBSTITUTE SOFTWARE, LOST PROFITS, OR LOSS OF DATA), INCURRED BY THE CUSTOMER, WITHOUT

REGARD TO CAUSE OR THEORY OF LIABILITY AND REGARDLESS OF WHETHER OR NOT SPIRENT OR ITS SUPPLIERS WERE ADVISED SUCH DAMAGES MIGHT ARISE. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

6.2. **Maximum Liability.** THE LIABILITY OF SPIRENT AND ITS SUPPLIERS UNDER THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT (INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY) OR TORT OR ANY OTHER REASON, SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID TO SPIRENT BY CUSTOMER, AND IF SUCH DAMAGES RELATE TO PARTICULAR SOFTWARE OR HARDWARE SUCH LIABILITY SHALL BE LIMITED TO THE FEES PAID FOR THE RELEVANT SOFTWARE OR HARDWARE GIVING RISE TO THE LIABILITY.

## 7. GOVERNING LAW

7.1. **Governing Law.** This Agreement and any disputes arising from or related to it, or its subject matters, shall be governed, resolved and remedied in accordance with the Federal laws of the United States. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

7.2. **Reserved.**

7.3. **Compliance with Laws; Export Control Laws.** Customer shall be solely responsible for its compliance with, and agrees to comply with, all applicable laws in connection with its use of the Software. Customer acknowledges that the Software may be subject to export controls imposed by the U.S. Export Administration Regulations (the "EAR"). Customer will not export or reexport (directly or indirectly) the Software, or any derivatives of the Software without complying with the EAR or other applicable laws with respect to the export of technology from the United States.

## 8. GENERAL TERMS

8.1. **Amendment; Waiver.** No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Failure of either party to insist upon strict performance of any of the terms and conditions hereunder, or the delay in exercising any of its remedies shall not constitute a waiver of such terms and conditions or a waiver of any default or remedy.

8.2. **Audit.** Customer shall maintain complete and accurate records of its use of the Software during the applicable subscription term (if applicable, or otherwise the term of the Agreement) and for 2 years thereafter. Upon 10 days' written notice from Spirent, and no more than once per calendar year, Customer shall provide Spirent with reasonable access to Customer's premises during normal business hours and subject to Government security requirements to conduct an audit of Customer's records and systems to verify compliance with this Agreement, including calculation of Fees. Spirent shall bear the costs of any such audit.

8.3. **Assignment.** This Agreement and any rights granted hereby may not be assigned by Customer, directly or indirectly, including without limitation by merger, sale of assets or stock, change of control, or operation of law, without the prior written consent of Spirent. Spirent may not assign this Agreement and its rights and obligations hereunder without the prior written consent of the Customer. Any attempt by Customer to assign any rights, duties or obligations without such consent shall be void and without force or effect.

8.4. **Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

8.5. **Reserved.**

8.6. **Severability.** In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions of this Agreement shall remain in full force and effect.

8.7. **Entire Agreement.** This Agreement, together with the Quotes, the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), embodies the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all oral and written prior or contemporaneous agreements related to such subject matter.

8.8. **Headings.** Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purposes, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

8.9. **Relationship of the Parties.** Spirent and Customer will be and shall act as independent contractors, and neither party is authorized to act as an agent or partner of, or joint venturer with, the other party for any purpose. Neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

8.10. **Third-Party Components.** Customer acknowledges that the Software contains components made available to Spirent by third party suppliers.

8.11. **Precedence of Documents:** The terms and conditions of this Agreement, insofar as they relate to the rights licensed to the Software will control over any conflicting or inconsistent terms contained in any Quote, or Spirent invoice unless otherwise mutually agreed to in writing. No terms in any quotation, acknowledgment or other form provided by Customer will modify this Agreement, regardless of whether Spirent objects to such terms, and any such additional or conflicting terms are expressly rejected. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement. Notwithstanding Section 8.7, the terms and conditions of this Agreement insofar as they relate to matters other than the rights licensed to the Software shall be subject to the terms and conditions of the master purchase agreement between Spirent and Customer (if any) (the "Master Agreement") only to the extent that such Master Agreement expressly contradicts the terms and conditions of this Agreement.





## Support Maintenance Extended Hardware Agreement (SVC-1900)

**Attn:  
Name  
Address  
State/City/Country**

**Agreement Number:  
PO Number:  
Account:  
Start Date:  
Expiration Date:**

**Thank you for purchasing Spirent Communications' Extended Hardware support. The specific hardware listed in Appendix A shall be entitled to the following support for the term of the agreement:**

- **Repair of hardware failure** Discontinued Hardware Repair, customarily 7-20 business days at one of our repair facilities, for any hardware failures, once failure is confirmed by Customer Service (excludes shipping time)
- **Telephone support** from technical support engineers during regular local business hours to help determine HW fault condition.
- **Escalation of service requests** by our technical support engineers

**Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at <http://support.spirentcom.com> and obtain a Customer Service Center user account.**

<p><b>Americas</b> 27349 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b> Spirent Communications (India) Pvt. Ltd 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marath halli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b> Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caudron, Bât. G - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b> Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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**Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.**

<p><b>Americas</b>                  27349 Agoura Road                  Calabasas CA, 91301                  1-800-SPIRENT                  (1-800-774-7368)                  1-818-676-2616                  Support Hours: 8:30AM                  ET - 6:00PM PT                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b>                  Spirent Communications (India) Pvt. Ltd                  9th Floor, Umiya Business Bay, Tower-1 Cessna                  Business Park, Kadubeesanahalli                  Marath halli – Sarjapur Outer Ring Road                  Bangalore - India 560 037                  1 800 419 2111 Direct +91 80 67023400                  Support Hours: 9:00AM - 6:00PM GMT + 5:30                  Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b>                  Spirent Communications                  Business Park Le Val                  Saint Quentin                  2 rue René Caudron, Bât.                  G - France                  +33 1 6137 2270                  0800-111-4363 (UK only)                  Support Hours: 9:00AM -                  6:00PM GMT +1                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b>                  Room 1302, Shining                  Tower, No.35                  Xueyuan Road, Haidian                  District                  Beijing, 100191, China                  +400-810-9529                  (Mainland)                  +86-400-810-9529 (Rest                  of APAC)                  Support Hours: 9:00AM –                  6:00PM GMT +8                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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## **Support Maintenance Extended Hardware Agreement (SVC-1900)**

**Additional terms of Extended Hardware Advance Replacement support are as follows:**

1. A customer requiring support in connection with the equipment covered by this agreement should contact Spirent Technical Support. Once Technical Support has determined that the hardware is faulty, a new or refurbished replacement unit will be processed to ship within a forty-eight (48) hour time period. Time of delivery is contingent upon factors such as customs requirements which vary globally.
2. Our customer service representative will also issue an RMA # with instructions for return of the defective product. Customer agrees that the defective product will to be returned to Spirent within thirty (30) days from receipt of the advance replacement unit.
3. Should a defective Product not be returned within thirty (30) days of the shipment of the Advance Replacement Product, Spirent will invoice Customer for defects not returned (DNR) prior to 30 days from shipment of the Advance Replacement. Charges for defects not returned will be based on Spirent's list price in accordance with the GSA Schedule Pricelist of the Advance Replacement Product.
4. The standard terms of Spirent's limited hardware warranty that both parties have executed in writing are applicable to this service agreement unless where specifically stated otherwise in this agreement.
5. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this agreement.
6. Spirent shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
7. This agreement does not cover hardware products which have been designated as "obsolete" as defined by Spirent's Advanced Lifecycle Management policy which can be found on Spirent's website.
8. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.
9. Defective Products and Software under a service agreement shall be, at Spirent's discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent's

<p><b>Americas</b>                  27349 Agoura Road                  Calabasas CA, 91301                  1-800-SPIRENT                  (1-800-774-7368)                  1-818-676-2616                  Support Hours: 8:30AM                  ET - 6:00PM PT                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b>                  Spirent Communications (India) Pvt. Ltd                  9th Floor, Umiya Business Bay, Tower-1 Cessna                  Business Park, Kadubeesanahalli                  Marath halli – Sarjapur Outer Ring Road                  Bangalore - India 560 037                  1 800 419 2111 Direct +91 80 67023400                  Support Hours: 9:00AM - 6:00PM GMT + 5:30                  Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b>                  Spirent Communications                  Business Park Le Val                  Saint Quentin                  2 rue René Caudron, Bât.                  G - France                  +33 1 6137 2270                  0800-111-4363 (UK only)                  Support Hours: 9:00AM -                  6:00PM GMT +1                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b>                  Room 1302, Shining                  Tower, No.35                  Xueyuan Road, Haidian                  District                  Beijing, 100191, China                  +400-810-9529                  (Mainland)                  +86-400-810-9529 (Rest                  of APAC)                  Support Hours: 9:00AM –                  6:00PM GMT +8                  Email:  <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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location in the United States;(b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer; and (c)The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.

10. . Repair Return - It is the customers responsibility to pre-pay shipping to Spirent. Additionally, the customer is responsible to ensure the equipment is packed in containers which meet the same specification as when they were shipped from Spirent. When contacting Spirent for such returns, shipping container standards will be provided upon request. Any damage caused in shipping due to improper packing is not covered by Spirent warranty or any service agreement. Damages due to shipping will be immediately brought to the customers attention and a quote for repair provided upon request.

Spirent reserves the right to deny service delivery, or charge Customer for repair, at Spirent's then-current prevailing rates, should any of the above conditions caused the failure.

**Support Maintenance  
Extended Hardware  
Agreement (SVC-1900)**

<p><b>Americas</b> 27349 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b> Spirent Communications (India) Pvt. Ltd 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marath halli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b> Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caudron, Bât. G - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b> Room 1302,Shining Tower,No.35 Xueyuan Road,Haidian District Beijing,100191,China +400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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**Support Maintenance  
Extended Hardware  
Agreement (SVC-1900)**

**Agreement Number:**

**Appendix A**

**Hardware products covered under this Support Services program:**

Part Number	Product Name	Serial Number
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<p><b>Americas</b> 27349 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>India</b> Spirent Communications (India) Pvt. Ltd 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marath halli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111      Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Europe - Middle East - Africa</b> Spirent Communications Business Park Le Val  Saint Quentin 2 rue René Caudron, Bât. G - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1  Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>	<p><b>Asia Pacific</b> Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM – 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></p>
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## Support Maintenance Software Support Agreement

Contract Number:  
**(SVC-1010)**

**Attn:**  
**Name Address:**  
**City/State/Country:**

**Contract  
Number:**  
**PO Number:**  
**Account:**  
**Start Date:**  
**Expiration Date:**

**Thank you for purchasing Spirent Communications' Software Support. The specific software listed in Appendix A shall be entitled to the following support for the term of the agreement:**

- **Telephone support** from technical support engineers during regular local business hours.
- **Escalation of service requests** by our technical support engineers.
- **Software and Firmware updates** for the software listed in Appendix A to ensure your system remains current with evolving industry standards (excludes discontinued and obsolete products).
- **Access to our software download center** on our exclusive online Customer Service Center at <http://support.spirentcom.com> to take advantage of Spirent's continual product improvements.
- **Access To Computer Based Training Materials** to help you get the most from using your Spirent products
- **Email Notification** of major software releases so you can quickly take advantage of the software fixes and enhancements implemented in the release for increased productivity
- **Access to latest product documentation** to help you effectively utilize your investment.

**Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.**

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at <http://support.spirentcom.com> and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_



## **Support Maintenance Software Support Agreement**

**Contract Number:  
(SVC-1010)**

**Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at <http://support.spirent.com> and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.**

### **Additional terms of Basic Support are as follows:**

1. The standard terms of Spirent's hardware and software warranty that both parties have executed in writing are applicable to this service agreement unless where specifically stated otherwise in this agreement.
2. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.
3. Software and firmware updates are restricted to only the ones listed in Appendix A and only for the chassis or modules in which it is licensed per our software license agreement.
4. Spirent shall be under no obligation to release a specific version or any number of versions of the software covered under the Support Services Plans. Customer shall be under no obligation to utilize the newest version and may continue to utilize prior versions.
5. In cases where Customer does not upgrade to the latest or prior release, Spirent will not recreate or consider any bug fixes optional features or enhancements.
6. This agreement does not cover hardware products which have been designated as "obsolete" as defined by Spirent's Advanced Lifecycle Management policy which can be found on Spirent's website.



## **Support Maintenance Software Support Agreement**

Contract Number:  
**(SVC-1010)**

### **Appendix A Products Covered under this Support Services Program**

<b>Part Number</b>	<b>Product Name</b>	<b>Chassis ID or S/N</b>
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**Spirent Communications**  
27349 Agoura Road  
Calabasas CA, 91301 1-800-SPIRENT  
(1-800-774-7368)  
1-818-676-2616  
Support Hours: 8:30AM ET - 6:00PM PT  
Email: [support@spirent.com](mailto:support@spirent.com)

**SQUIRRELWERKZ, INC.**  
**20258 ISLAND VIEW COURT**  
**STERLING, VA 20165**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

**Scope.** This Rider and the attached SquirrelWERKZ, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC

America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract").

Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17



U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SQUIRRELWERKZ, INC.**

**SQUIRRELWERKZ INC. WARRANTY AND SUPPORT TERMS**

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**1. Definitions.**

**"Affiliate"** means any entity controlled by, controlling, or under common control with a party. For the purposes of this definition, the term "control" will mean the ownership of voting stock or other equity interest entitling the owner to exercise at least fifty percent (50%) of the voting rights of the applicable entity.

**"Agreement"** includes these General Terms and all Schedules attached hereto.

**"Authorized Representative"** means, the person(s) designated by Ordering Activity in this Agreement, or in another writing provided with ten (10) days prior written notice, as authorized to instruct SquirrelWerkz with respect to all matters and policies related to the performance of Ordering Activity's obligations under this Agreement.

**"Ordering Activity Account"** means the individual account that is established for Ordering Activity for the purpose of its access to the applicable Services.

**"Ordering Activity Confidential Data"** means, collectively, any and all information provided by Ordering Activity to SquirrelWerkz in connection with the Services that is considered private, confidential or proprietary and is labeled as such.

**"Reports"** means reports generated through the use of the Services or otherwise delivered to Ordering Activity as part of the Services.

**"Service Portal"** means the web-based resources made available to Ordering Activity by SquirrelWerkz through which Ordering Activity may access its Ordering Activity Account.

**"Service Provider Data"** means collectively all data exclusively owned and stored within the SquirrelWerkz, or authorized partner, data store for use within the context of its services delivery model or separately licensed for use by Ordering Activities.

**"Services"** means the services provided by SquirrelWerkz to Ordering Activity for Ordering Activity and its Users under this Agreement, as more particularly set out in the attached Schedules.

**"System"** means the computer hardware, network, software, tools and other equipment used by SquirrelWerkz through which the Services are provided.

**"User(s)"** means the individual employees of Ordering Activity identified by Ordering Activity as eligible to use the Services on Ordering Activity's behalf.

**"User Account"** means the individual log on account that is established for each User for the purpose of such User's access to the Services, which shall be sub-accounts of Ordering Activity Account.

**Reserved.**

**Services.**

During the term specified in the applicable purchase order, SquirrelWerkz will provide to Ordering Activity and its Users the Services related to the Subscription Level selected by Ordering Activity, as set forth on the first page of this Agreement and as described in Schedule A attached hereto.

The Services, including the Reports, are provided solely at Ordering Activity's request and instruction and SquirrelWerkz is not acting as an agent or advisor, legal or otherwise, to Ordering Activity.

SquirrelWerkz reserves the right to make modifications, updates and changes to the Services and to change its policies (including, without limitation, terms of use and privacy policies) relating to the System and the Services at any time, effective upon posting of notice of such changes or updated version of the policy on the Service Portal or emailing such changes or updated version of the policy to Ordering Activity's Authorized Representative.

**Reserved.**

**Ordering Activity and User Obligations.** Ordering Activity and its Users may use the Services and all information generated using the Services, including the Reports, only for Ordering Activity's internal business purposes. Ordering Activity will take all necessary action to ensure that the access, use and security of the Services and all information generated using the Services, including the Reports, is in accordance with the terms of this Agreement, the underlying GSA Schedule Contract, Schedule Pricelist and the applicable purchase order. Ordering Activity may not allow any unauthorized persons or entities to access or use the Services using Ordering Activity Account or any User Account. Ordering Activity will not (i) use, disclose or store data in violation of third party privacy or other rights; (ii) upload or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs to the System; (iii) interfere with or disrupt the integrity or performance of the Services; (iv) attempt to gain unauthorized access to the System; or (v) attempt to gain access to data which is not included in the Reports provided to Ordering Activity.

**Restrictions.** Ordering Activity will not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services; (ii) make any Reports generated through the Services or delivered to Ordering Activity available to any third party, except as required by applicable law; or (iii) otherwise use or permit the use of the Services or the Reports in violation of this Agreement. Notwithstanding the foregoing, Ordering Activity may use data and conclusions contained in the Reports

externally, and provide such information to third parties, if and only if such data and conclusions are incorporated into materials created by Ordering Activity and Ordering Activity does not represent such data and conclusions as having originated with SquirrelWerkz.

**Ordering Activity Account.** Ordering Activity is responsible for all activity occurring under Ordering Activity Account, including the User Accounts. Ordering Activity will: (i) notify SquirrelWerkz immediately of any unauthorized use of any password or of Ordering Activity Account or any User Accounts or any other known or suspected breach of security; and (ii) report to SquirrelWerkz immediately and use all available efforts to stop immediately any violations of this Agreement using Ordering Activity Account or any of the User Accounts known or suspected by Ordering Activity. Ordering Activity must immediately notify SquirrelWerkz of any change in its Users who have terminated employment or otherwise changed job status or function and are no longer authorized by Ordering Activity to use the Services.

**Authorized Representative.** SquirrelWerkz may act in total reliance upon, and will have no liability with respect to, any instruction, instrument or signature reasonably believed by SquirrelWerkz to be from an Authorized Representative. SquirrelWerkz may assume that any Authorized Representative who gives any written notice, request or instruction has the effective authority to do so on behalf of Ordering Activity. As relating to any User and as between the parties hereto, Ordering Activity will bear sole responsibility with respect to any conduct, error or omission by any of its Authorized Representatives and Users. Ordering Activity will provide SquirrelWerkz at least ten (10) days prior written notice of a change of its Authorized Representative.

**Ordering Activity's Certifications and Warranties.** Ordering Activity understands that its access to the Services and information generated using the Services is provided in reliance upon the following certifications and warranties of Ordering Activity. Ordering Activity certifies that:

**it has the legal power and authority to enter into this Agreement, that the information it has provided is complete, accurate and correct;**

**it will use the Services, the Reports, and any information therein only as contemplated by the terms of this Agreement; and it will ensure that its Users will not request a Report or obtain access to Ordering Activity Account, except in the exercise of their duties for Ordering Activity.**

**Ordering Activity Property.** Ordering Activity will retain ownership of Ordering Activity Confidential Data delivered to SquirrelWerkz for use in the performance of the Services under this Agreement. SquirrelWerkz agrees to deliver to Ordering Activity any Ordering Activity Data, other than archive copies, upon expiration or termination of this Agreement. SquirrelWerkz may retain archival copies of all information relating to the performance of the Services, as required by law, and as necessary to permit it to enforce its rights or defend any claims arising from or relating to this Agreement.

**SquirrelWerkz Property.** Title to and ownership of all right, title and interest in and to the Service Provider Data and the System, including, without limitation, any methodologies or analytical techniques used in generating the Reports or other work product made, conceived or developed by SquirrelWerkz alone or with others which in any way result from or relate to the Services pursuant to this Agreement, will at all times remain the sole property of SquirrelWerkz.

**Reserved.**

**Reserved.**

**Reserved.**

**SquirrelWerkz Warranties.** SQUIRRELWERKZ will provide a 60 day express warranty for repair and/or replacement of defective products/services. Ordering Activity understands that the Services may be subject to limitations, delays and other problems inherent in the use of the Internet and electronic communications. SquirrelWerkz is not responsible for delays, delivery failures or otherwise resulting from connection to the Internet (*i.e.*, problems with Ordering Activity's internet service provider, modem, cable, DSL or dial-up connection or other Ordering Activity Internet connectivity issues) or any other Ordering Activity equipment, Ordering Activity's firewall software, hardware or security settings, Ordering Activity's configuration of anti-virus software or anti-spyware or malware software, or any other misuse or operator error of Ordering Activity.

**Reserved.**

**Reserved.**

**No Solicitation.** Ordering Activity will not, during the term of this Agreement and for a period of one (1) year thereafter, solicit, seek to hire or engage in employment any person, who while employed by SquirrelWerkz, assists or has assisted in the performance of the Services under this Agreement, provided, however, the foregoing shall not apply to general solicitation through advertisements that are not targeted at such employees of SquirrelWerkz.

**Reserved.**

**Relationship of Parties.** The parties hereto understand and agree that each party hereto is an independent contractor in the performance of its obligations under this Agreement, and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith. Neither party hereto nor its agents or employees are the representatives of the other party for any purpose and neither party hereto has the power or authority as agent, employee or any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other party for any purpose whatsoever.

**No Third Party Beneficiaries.** This Agreement has been entered into for the sole benefit of the parties hereto and their respective successors and permitted assigns. Except as specifically set forth in this Agreement with respect to indemnification, the parties hereto do not intend the benefits of this Agreement to inure to any third party, and nothing contained herein will be construed as creating any right, claim or cause of action in favor of any such third party against any party hereto. Furthermore, this Agreement will not create any contract, legal relationship, interest or right whatsoever between SquirrelWerkz and any individual, beneficiary, User, applicant or assignee under this Agreement.

**Reserved.**

**Notices.** Except as otherwise provided in this Agreement, notices under this Agreement will be sufficient only if in writing, personally delivered, delivered by a major commercial delivery courier service, postage or charges prepaid, return receipt requested to a party hereto at its addresses set forth on the first page of this Agreement, or as amended by notice pursuant to this Section. Notwithstanding the foregoing, SquirrelWerkz may give notice by means of a general notice on the Service Portal, or by electronic mail to Ordering Activity's Authorized Representative's e-mail address on record in the SquirrelWerkz account information. Such notice will be deemed



to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email).

**Reserved.**

**Modification; Waiver.** This Agreement, including referenced schedules and attachments, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s) contains the entire understanding between SquirrelWerkz and Ordering Activity with respect to the subject matter hereof, and merges and supersedes all prior and contemporaneous agreements, dealings and negotiations. Except as otherwise permitted in this Agreement, no modification, alteration, amendment or addition will be effective unless made in writing, dated and signed by the Authorized Representative of Ordering Activity, and an authorized representative of SquirrelWerkz. No waiver of any breach hereof will be held to be a waiver of any other or subsequent breach.

**Headings; Interpretation.** The headings provided in this Agreement are for convenience only and will not be used in interpreting or construing this Agreement. The parties desire that this Agreement be construed according to its terms, in plain English, without constructive presumptions against the drafting party.

**Severability.** If any provision of this Agreement is finally determined to be contrary to, prohibited by, or invalid under applicable laws or regulations, such provision will be renegotiated so as to give effect to the intent of the Parties to the maximum possible extent. Such determination and renegotiation will not affect or invalidate the remaining provisions of this Agreement, which will remain in full force and effect, except as modifications may be required for consistency with renegotiated terms.

**Reserved.**

**Reserved.**

**STACKROX, INC.  
700 EAST EL CAMINO REAL  
MOUNTAIN VIEW, CA 94040**

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**STACKROX, INC.**

**STACKROX, INC. WARRANTY AND SUPPORT TERMS**

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**1. Order Forms; Product License**

StackRox, Inc. ("StackRox") and the Ordering Activity ("Customer" or "Ordering Activity") placing an order under a GSA Schedule contract that includes this Agreement (any such order being an "Order Form") mutually agree to be bound to these Terms. Subject to Customer's compliance with the Terms, StackRox grants Customer the right and license to use the software product specified in each Order Form (the "Product") during the applicable Order Form Term (as defined below) for the business purposes of Customer, only in object code form and as provided herein and only in accordance with StackRox's applicable official product documentation (the "Documentation").

**2. Implementation; Support**

StackRox agrees to use reasonable commercial efforts to provide standard implementation assistance for the Product only if and to the extent such assistance is set forth on such Order Form as authorized, in advance, by StackRox ("Implementation Assistance").

StackRox will provide support for the Product in accordance with the attached StackRox Support Policy.

**3. Product Updates**

From time to time, StackRox may provide upgrades, patches, enhancements, or fixes for the Product to its customers generally without additional charge ("Updates"), and such Updates will become part of the Product and subject to this Agreement; provided that StackRox shall have no obligation under this Agreement or otherwise to provide any such Updates. Customer understands that StackRox may cease supporting old versions or releases of the Product (which Customer failed to Update) at any time in its sole discretion; provided that StackRox shall use commercially reasonable efforts to give Customer sixty (60) days prior notice of any major changes and will give Customer a reasonable opportunity to implement available Updates to retain support.

**4. Ownership; Feedback; Customer Data**

As between the parties, StackRox retains all right, title, and interest in and to the Product, and all software, works, and other intellectual property and moral rights related thereto or created, used, or provided by StackRox for the purposes of this Agreement, including any copies and derivative works that are minor modifications of the foregoing. All software which is distributed or otherwise provided to Customer hereunder is licensed and not sold. No rights or licenses are granted except as expressly and unambiguously set forth in this Agreement. Customer may from time to time provide suggestions, comments or other feedback to StackRox with respect to the Product ("Feedback"). Feedback, even if designated as confidential by Customer, shall not create any confidentiality obligation for StackRox notwithstanding anything else. Customer shall, and hereby does, grant to StackRox a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royaltyfree, fully paid up license to use and exploit the Feedback for any purpose. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71. Nothing in this Agreement will impair StackRox's right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with any products, software or technologies that Customer may develop, produce, market, or distribute.

As between the parties, Customer shall own all right, title, and interest in and to the Customer Data. For the avoidance of doubt, except as expressly set forth herein, Customer does not grant StackRox any rights (i) to any Customer Data (other than for StackRox to perform its obligations under the Agreement), and (ii) any intellectual property rights owned or licensed by Customer. "Customer Data" means all data or information contained in Customer's virtual containers, submitted by or on behalf of Customer or protected by the Product.

StackRox does not permit its third-parties licensors, including third-party licensors of software or technology providers (e.g., open source software, online software applications, software-as-a-service, application program interfaces, and offline software products) delivered with, incorporated into or interoperate with the Product or that interoperate with and/or are incorporated into the Product (the "Third-Party Applications"), to access Customer Data except to the extent required for the interoperation of such Third-Party Applications with Products or as specifically set forth in the Agreement, the applicable Product Schedule and/or Documentation. StackRox may freely use, copy, modify, disclose and make available to third parties for their use and other exploitation, and otherwise exploit any aggregated, anonymized data that does not specifically identify Customer, submitted to, collected by, or generated by StackRox in connection with Customer's use of the Products (including without limitation, for purposes of improving, testing, operating, promoting and marketing products and services).

**5. Fees; Payment**

Payment terms are as set forth in the Order Form between Customer and the prime contractor in accordance with the GSA Schedule Pricelist. All Fees paid are non-refundable by StackRox and are not subject to set-off against any other StackRox payment, except that, if the Ordering Activity is entitled to a refund under the prime contract, such refund shall be paid by the prime contractor and not by StackRox.

**6. Restrictions**

Except as expressly set forth in this Agreement, Customer shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying structure, ideas, or algorithms of the Product (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Product; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Product; (iv) use the Product for the benefit of an unauthorized third party; (v) remove or otherwise alter any proprietary notices or labels from the Product or any portion thereof; (vi) use the Product to build an application or product that is competitive with any StackRox product; (vii) interfere with the proper working of the Product; or (viii) bypass any measures StackRox may use to prevent or restrict access to the Product (or other accounts, computer systems or networks connected to StackRox). Customer is responsible for all of Customer's activity in connection with the Product, including but not limited to handling Customer's data used with the Product. Customer (i) shall use the Product in compliance with all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Product (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws), and (ii) shall not use the Product in a manner that violates any third party intellectual property, contractual or other proprietary rights.

#### **7. Confidentiality**

Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (i) to give access to such Proprietary information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial order or subpoena, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. StackRox recognizes that Federal agencies are subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, which requires that GDSVF&H\2668473.2 GSA Approved 17-Jun-19 3

certain information be released if not exempt from release under FOIA, and Customer recognizes that Proprietary Information that is "trade secrets and commercial or financial information obtained from a person and privileged or confidential" is exempt from release under FOIA (5 U.S.C. 552(b)(4)). Subject to 48 C.F.R. §552.203-71 (Restriction on Advertising – Sept 1999) if the Customer purchased under a GSA prime contract, StackRox is permitted to disclose (including through display of Customer's logo) that Customer is one of its customers (including in its publicity and marketing materials) to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

#### **8. Term; Termination**

This Agreement shall commence upon the Effective Date set forth in the first Order Form, and, unless earlier terminated in accordance herewith, shall last until the expiration of all Order Form Terms. For each Order Form, the "Order Form Term" shall begin as of the Effective Date set forth on such Order Form, and unless earlier terminated as set forth herein, (x) shall continue for the initial term specified on the Order Form (the "Initial Order Form Term"), and (y) following the Initial Order Form Term, may be renewed for additional successive one (1) year terms by executing a new Agreement in writing (each, a "Renewal Order Form Term") if Customer exercises an option for such successive period or enters into a new Order Form with the prime contractor. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, StackRox shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Notwithstanding the foregoing, any dispute regarding a material breach or regarding whether such breach has been materially and timely cured shall be subject to the Contract Disputes Act. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

#### **9. Indemnification**

StackRox ("Indemnitor") shall defend (subject to 28 USC §516), indemnify, and hold harmless Customer, its affiliates and each of its and its affiliates' employees, contractors, directors, suppliers and representatives (collectively, the "Indemnitee") from all liabilities, claims, and expenses paid or payable to an unaffiliated third party (including reasonable attorneys' fees) ("Losses"), that arise from or relate to any third-party claim that (i) Customer's use of the Product violates any applicable statute, regulation, ordinance or other law (so long as Customer's use is in accordance with the Product's intended use and in compliance with the Product's documentation), (ii) StackRox gross negligence or willful misconduct or, (iii) the Product infringes, violates, or misappropriates any third party intellectual property or proprietary right. Indemnitor's indemnification obligations hereunder shall be conditioned upon the Indemnitee providing the Indemnitor with: (i) prompt written notice of any claim (provided that a failure to provide such notice shall only relieve the Indemnitor of its indemnity obligations if the Indemnitor is materially prejudiced by such failure); (ii) the option to assume control over the defense and settlement of any claim (subject to 28 USC §516 and provided that the Indemnitee may participate in such defense and settlement at its own expense); and (iii) reasonable information and assistance in connection with such defense and settlement (at the Indemnitor's expense). The foregoing obligations of StackRox do not apply with respect to the Product or any information, technology, materials or data (or any portions or components of the foregoing) to the extent (i) not created or provided by StackRox, (ii) made in whole or in part in accordance to Customer specifications, (iii) modified after delivery by StackRox, (iv) combined with other products, processes or materials not provided by StackRox (where the alleged Losses arise from or relate to such combination), (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) Customer's use of the Product is not strictly in accordance herewith. Nothing contained herein

shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

#### **10. Disclaimer**

StackRox warrants that the Software will, for a period of sixty (60) days from the start date of the Term, perform substantially in accordance with Documentation. THE PRODUCT IS ACCEPTED IN ACCORDANCE WITH GSA SCHEDULE TERMS AND CONDITIONS AND EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE PRODUCT IS PROVIDED "AS IS" AND "AS AVAILABLE" AND IS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

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

EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS IN SECTION 9 OR BREACH OF SECTION 6 (RESTRICTIONS) or 7 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY, NOR STACKROX'S DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE CONTRACT PRICE, INCLUDING FEES PAID (OR PAYABLE) BY CUSTOMER TO STACKROX HEREUNDER. FOR PURPOSES OF THIS SECTION 11, LIMITATION OF LIABILITY, "CONTRACT PRICE" MEANS AN ORDER PLACED UNDER THE GSA SCHEDULE PRIME CONTRACT. THE PARTIES AGREE THAT THEIR TOTAL LIABILITY SHALL NOT EXCEED THE LIABILITY OF THE OTHER PARTY, IF THE LIABILITY OF A PARTY IS LIMITED FOR ANY REASON.

**12. U.S. Government Rights.** The Product and accompanying Documentation are "commercial items" as that term is defined at FAR 2.101. If Licensee is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), StackRox provides the Product and Documentation, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. In addition, if DFARS 252.227-7015 (Technical Data – Commercial Items) is applicable to the contract, this clause governs technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with StackRox to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government's needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use in accordance with Contract Disputes Act of the Product and Documentation and return the Product and Documentation and any other software or technical data delivered as part of the Product and Documentation, unused, to StackRox. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

#### **13. Miscellaneous**

This Agreement represents the entire agreement between Customer and StackRox with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Customer and StackRox with respect thereto. Nothing in this Agreement modifies Customer's agreement with the prime contractor, however, the prime contractor's terms and conditions are solely between prime contractor and Customer and are not a part of this Agreement between Customer and StackRox. The Agreement shall be governed by and construed in accordance with the Federal laws of the United States. All notices under this

Agreement shall be in writing and shall be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Notices must be sent to the contacts for each party set forth on the Order Form with a copy to Legal Department, StackRox, Inc., 700 E El Camino Real #200, Mountain View, CA 94040, USA. Either party may update its notice address herein by giving notice in accordance with this section. Except as otherwise provided herein, this Agreement may be amended only by a writing executed by both parties. Excusable delays shall be governed by FAR 52.212-4(f). In addition to the terms at 52.212-4(f), the following are expressly considered excusable delays under this Agreement: earthquake; vandalism; accidents; sabotage; power failure; denial of service attacks or similar attacks; Internet failure; acts of war; acts of terrorism; riots; civil or public disturbances; strikes, lock-outs or labor disruptions; any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts. Neither party may transfer any or all of its rights or obligations hereunder without the other party's consent; and (ii) StackRox may utilize contractors/subcontractors in the performance of its obligations hereunder provided that StackRox shall remain liable for the actions and services provided by such subcontractors at all times. Any assignment is subject to the requirements of FAR 42.12 Novation and Change-of-Name Agreement to the extent applicable to this Agreement and/or to GSAR 552.212-4(w) if this is included in an Order Form under a GSA prime contract. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of either party to act with respect to a breach of this Agreement by the other party shall not constitute a waiver and shall not limit such party's rights with respect to such breach or any subsequent breaches.

### **STACKROX SUPPORT POLICY**

During the applicable Order Form Term, StackRox will provide support to Customer for defects with the Product as follows:

Channels	Support portal with documentation & case management Support via phone Support via e-mail
Coverage	P1 issues:24x7x365 All other issues: 6am-6pm Pacific Time, excluding holidays
Target response time	P1 (significant widespread degradation of software): <b>1 hour</b> P2 (major, isolated degradation of software): <b>4 business hours</b> P3 (all other requests): <b>1 business day</b>
Number of support issues allowed	Unlimited
Emergency fixes	As needed, based on issue severity

Customer may designate up to 4 support contacts ("Designated Support Contacts"), and all support requests must come through the Designated Support Contacts. Customer may update the Designated Support Contacts by providing notice to StackRox. Contact information for support channels are provided when the Product is delivered.

SUNVIEW SOFTWARE, INC.  
10210 HIGHLAND MANOR DRIVE SUITE 275  
TAMPA, FL 33610

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached SunView Software, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.



h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.



s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A – SUNVIEW

### USER AGREEMENT AND SOFTWARE LICENSE TERMS

This Agreement applies to an order that incorporates these terms and conditions entered into between the eligible Ordering Activity under GSA Schedule contracts ("you", "your", or "Ordering Activity") and the GSA Multiple Award Schedule Contractor acting by and through its supplier, SunView Software Inc., ("SunView Software") which sets forth all of the terms, conditions, obligations, responsibilities and remedies between you and Contractor with regard to your Use of SunView Software ChangeGear Software.

#### Section 1 - Definitions:

The following definitions apply throughout this Agreement: "Software" means SunView Software ChangeGear Software, the computer software and all associated printed materials, which may include "online" or electronic documentation; "Use" means storing, loading, installing, executing or displaying the Software; "Computer" means a central processing unit ("CPU") or group of CPU's that accesses its or their own individual non-cache Random Access Memory; "Server" means a Computer that permits Concurrent Use by multiple users; "Client" means a Computer used to access a Server; "Concurrent Use" means access, directly or indirectly, by a licensed user of the Software executing on a Server.

#### Section 2 - License Grant - Usage in General:

You may Use the Software pursuant to the terms of the particular license(s) you have acquired as specified below. Your license to the Software is perpetual unless you elect to subscribe to the Software for a specified period, in which case the terms specified in the attached Subscription License Addendum will also apply.

SunView Software grants to you, and you accept, the non-exclusive, non-transferable limited right to Use the Software in object code form only, and only on a single Computer.

You may have either a Named User License or a Concurrent User License, subject to the terms below.

(a) Named User License: If you have a "Named User License," the Software may only be used by the individual designated by the administrator as the "Named User" for that copy of the Software. The Named User may Use that particular copy of the Software on any Computer.

(b) Concurrent User License: If you have a "Concurrent User License," you are only authorized to permit the Concurrent Use of the Software installed on a Server by the number of Clients for which you have purchased Concurrent Use Licenses. The Software may contain codes that enforce Concurrent Use restrictions. You may only Use the Software installed on the Server if the Use of the Software on such Server is properly licensed and complies with the conditions and restrictions (including any Concurrent Use restrictions) of such Server license.

### Section 3 - License Rights and Restrictions:

(a) Ownership: You acknowledge and agree that the Software is owned and copyrighted by SunView Software or its third party suppliers and/or licensors. Your license confers no title or ownership in the Software and is not a sale of any rights in the Software. All ownership rights remain in SunView Software or its third party suppliers and/or licensors, as the case may be. SunView Software and ChangeGear are trademarks or service marks or registered trademarks of SunView Software in the United States of America and/or in other countries. All other marks in the Software are the marks of their respective owners.

(b) Copies: You may only make one (1) copy of the object code of the Software, which you may Use, subject to the terms of this Agreement, solely for (i) backup or archival purposes and (ii) development and testing purposes, or when copying is an essential step in the authorized Use of the Software. You must reproduce all copyright and other proprietary or restricted rights notices in the original Software on the authorized copy. You may not copy any of the books or printed materials provided in connection with the Software.

(c) Additional Restrictions: The Software contains SunView Software trade secrets, which you must not disclose. You must also not decompile, reverse engineer, disassemble, copy, modify, translate, or adapt the Software, or create derivative works based on the Software, or otherwise reduce the Software to human-perceivable form except to the extent that such rights cannot be excluded by mandatory applicable law. You must not disable any licensing, anti-piracy or other control features of the Software. Except to the extent expressly permitted herein, you must not: permit other individuals to Use the Software; rent, resell for profit, distribute, sublicense, lease, grant a security interest in, or otherwise transfer or assign any rights to the Software; or remove any proprietary notices or labels on the Software. You must not use the Software to create competitive products or applications or to create software or products using similar features, functions or graphics of the Software. You must not disclose to third parties any benchmark tests or other evaluations of the Software. You have no rights to the Software except as explicitly granted to you by SunView Software in this Agreement.

(d) Upgrades: If the Software you purchased is an upgrade of a SunView Software product, you may Use that upgraded product only in accordance with this Agreement. If the Software is an upgrade of a component of a package of software programs that you licensed as a single product, the Software may be Used and transferred only as part of that single product package and may not be separated for Use on more than one Computer. You must not loan, rent, lease, or otherwise transfer the original non-upgraded product to another user.

(e) Content: Any non-SunView Software materials (Third-Party Content") you access via the Software (online or otherwise) is the property of the applicable owner and may be protected by applicable copyright law. This Agreement grants you no rights to Third-Party Content.

Section 4 - Reserved.

Section 5 - Remedies:

(a) Limited Returns; Defective Software:

If you identify that the Software is defective, you may (i) obtain a refund of the purchase or subscription price of the Software or the Software upgrade (as applicable), or (ii) request replacement Software provided that, you return to SunView Software the Software and any copies thereof, any accompanying documentation and dated proof of purchase within sixty (60) days from the date of your purchase of the Software.

THIS SECTION 5(a) SETS FORTH SUNVIEW SOFTWARE'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDIES IN RELATION TO SOFTWARE DEFECTS OR YOUR DISSATISFACTION WITH THE SOFTWARE.

(b) Limited Warranty and Disclaimers:

(i) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, SUNVIEW SOFTWARE, FOR ITSELF AND ITS SUPPLIERS, DISCLAIMS ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, RELATED DOCUMENTATION AND OTHER MATERIALS AND SERVICES, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, SUNVIEW SOFTWARE DOES NOT WARRANT THAT THE SOFTWARE SHALL PERFORM WITHOUT INTERRUPTION OR BE ERROR FREE, OR THAT IT IS FREE FROM BUGS, VIRUSES, ERRORS, OR OTHER PROGRAM LIMITATIONS. YOU ACKNOWLEDGE THAT THE SOFTWARE IS PROVIDED "AS IS" AND YOU ACCEPT THE ENTIRE RISK AS TO THE SOFTWARE'S QUALITY AND PERFORMANCE.

(ii) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SUNVIEW SOFTWARE AND ITS LICENSORS, THEIR RESPECTIVE EMPLOYEES, DISTRIBUTORS, DEALERS OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE REPRESENTATIONS, WARRANTIES, TERMS OR CONDITIONS IN CONNECTION WITH THE SOFTWARE OR ANY SERVICE RELATED THERETO.

(iii) SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF IMPLIED REPRESENTATIONS, WARRANTIES, AND/OR TERMS OR CONDITIONS, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. IN THAT EVENT, TO THE EXTENT YOUR JURISDICTION PERMITS SUCH LIMITATIONS, ANY IMPLIED REPRESENTATIONS, WARRANTIES, AND/OR TERMS OR CONDITIONS ARE LIMITED IN DURATION TO SIXTY (60) DAYS FROM THE DATE YOU PURCHASED OR SUBSCRIBED TO THE SOFTWARE OR TO THE SHORTEST PERIOD PERMITTED BY APPLICABLE LAW, IF LONGER. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS AS WELL, WHICH MAY VARY ACCORDING TO JURISDICTION.

(c) Reserved.

(d) Reserved.

Section 6 - Export Controls:

None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which the United States of America has embargoed goods; and/or (ii) to anyone on the United States of America's Treasury Department's list of Specially Designated Nationals or the United States of America's Commerce Department's Table of Denial Orders and/or (iii) otherwise in breach of United States laws and regulations related to exports and to all administrative acts of the US Government pursuant to such laws and regulations. By downloading, installing and/or Using the Software, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any country or on a list in breach of this Section 6. In addition, you are responsible for complying with any local laws in your jurisdiction which may impact your right to import, export or Use the Software, and you represent that you have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

#### Section 7 - U.S. Government End Users:

The Software is a "commercial item," as that term is defined in 48 C.F.R. 12.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995) and the Department of Defense Federal Acquisition Regulations Sections 252.227-7014(a)(1), (5). Consistent with 48 C.F.R. 12.212, all U.S. Government End Users acquire the Software with only those rights set forth herein. The manufacturer is SunView Software Inc., 10210 Highland Manor Drive Suite 275, Tampa, FL 33610.

#### Section 8 - Reserved.

#### Section 9 - Technical Support:

SunView Software shall provide Software support and maintenance to you in accordance with Exhibit A attached hereto, subject to the terms below. If you are granted a perpetual license to the Software, following the initial one (1) year period of Software support and maintenance, such support and maintenance may be renewed for subsequent one (1) year periods by executing a new purchase order for the subsequent period. If you are granted a subscription license to the Software, support and maintenance is included in the license fee as described in the Subscription License Addendum hereto.

#### Section 10 - Reserved.

#### Section 11 - Reserved.

### **Exhibit A: Support and Maintenance**

SunView Software shall provide the Software support and maintenance described in this Exhibit A in order to ensure that the Software remains in good working order and operates in accordance with its documentation and specifications.

SunView Software shall advise you on the use of the Software and shall assist you in identifying and solving any problems encountered in such use and reported by you by rendering the following support and maintenance:

(i) Corrective maintenance. Corrective maintenance includes diagnosis and correction by SunView Software of actual errors or defects in the program codes of the Software and in the documentation. An error or defect is the failure of the Software to operate materially in accordance with the documentation and its specifications.

(ii) Perfective maintenance. Perfective maintenance includes the modification of the Software in order to improve and extend its functionality.

(iii) Releases. All permanent solutions developed for problems encountered in the Use of the Software, all corrections of errors and defects in the Software and all enhancements, improvements and modifications of the Software referred to hereinabove shall be incorporated by SunView Software as soon as reasonably possible in a release, a copy of which shall be provided to you as soon as it is ready for release together with the updated documentation.

A release of any particular item of the Software shall be based on the previously offered version and shall have equivalent or enhanced functionality with such corrections and amendments as SunView Software reasonably decides to include.

You are free to adopt a new release or to continue to Use the current release.

### **Subscription License Addendum**

When the Software is licensed hereunder for a particular subscription period (“Subscription Licensed Software”), the following terms apply and prevail over any conflicting terms in this Agreement:

1. The Software is licensed for the agreed term indicated in the applicable purchase order.
2. Maintenance for Subscription Licensed Software commences as of delivery and is included in the annual Subscription Period license fee. Maintenance ceases if the Subscription Period expires and is not renewed.
3. Reserved.
4. Reserved.
5. If you do not renew your license for Subscription Licensed Software , within five (5) business days following the end of the Subscription Period, you must present a certification signed by you or a corporate officer of your enterprise stating that the Software has been uninstalled from all devices, you have retained no copies, and you acknowledge that you have no right to continue using the Software. You acknowledge that following the expiration of the Subscription Period, any data that is retained in formats only readable by the Software will not be accessible.

**SYFERLOCK TECHNOLOGY CORPORATION  
917 BRIDGEPORT AVENUE  
SHELTON, CT 06484**

**EC America Rider to Product Specific License Terms and Conditions**

All references to Syferlock in these Terms and Conditions should be read as "Contractor (immixTechnology, Inc.), acting by and through its supplier, Syferlock."

**TERMS AND CONDITIONS FOR SYFERLOCK PRODUCTS AND SERVICES**

**1. Definitions**

Defined terms are capitalized and have the meanings indicated in Definitions section below

**2. Right to Use Software**

SyferLock hereby grants to Customer a non-exclusive, royalty-free, non-assignable license to use the Software, subject to the terms and conditions set forth herein and in the applicable Attachment(s). SyferLock hereby grants to Customer a nonexclusive, royalty-free, non-assignable license to use, subject to the terms and conditions set forth herein, SyferLock's trademarks and trade names set forth on Attachment H hereof ("SyferLock Marks") solely for the purpose of using the Software in accordance with this Agreement. Customer shall comply with SyferLock's trademark guidelines as provided from time to time by SyferLock. Customer agrees to use no other trademarks or trade names in connection with the Software, except for the use, in addition to the SyferLock Marks, of its own trademark as approved in writing by SyferLock. To the extent that SyferLock will authorize any use of a composite trademark comprised out of SyferLock Mark(s) and other trademarks or expressions, such composite trademark shall only be used for the purpose of using the Software in accordance with this Agreement and upon termination of the right to use the Software any use of such composite trademark shall immediately cease and be prohibited. Any use of Customer's trademarks with the SyferLock Marks must maintain the distinctness of each trademark. Subject to the foregoing, the SyferLock Marks are the only trademarks and trade names that Customer is authorized by SyferLock to employ in connection with the Software and Customer agrees that it has no rights therein other than those specifically granted herein. All benefit and goodwill arising from Customer's use of the SyferLock Marks shall inure to the benefit of SyferLock. The license set forth in this Section 2 is not sub-licensable.

**3. Restrictions on Use of Software**

Customer's use of the Software is subject to the following restrictions. Except as expressly permitted in this Agreement, Customer shall not, and shall not permit others to, (a) use, modify, copy (except for one back-up copy containing SyferLock's copyright notices and other SyferLock Marks), or otherwise reproduce the Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Software; (c) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for Service Bureau purposes, or otherwise transfer the Software or Customer's right to use the Software; or (d) remove any copyright, trademark, proprietary rights, disclaimer, warning notice or other SyferLock Marks included on or embedded in any part of the Software, (e) install, reconfigure or uninstall any Software on any CPU or Server other than by its IT personnel who have been pre-approved in writing by SyferLock (such that no end-user of the Software installed on a mobile or stationary device used by such user, such as a PDA, lap top computer, tablet computer, Server or desktop computer, will be permitted or able to carry out such installation, reconfiguration or un-installation), (f) reserved, or (g) distribute copies of the Software, or electronically transfer the Software from one CPU or Server to another or over a network. All rights not expressly granted to Customer are reserved by SyferLock. There are no implied rights. Customer shall install the Software only on Enterprise Servers and/or CPUs, as the case may be, located in the country specified on the Cover page.

**4. Third Parties**

Customer's use and disclosure of the Software is restricted solely to its employees, professional advisors who acknowledge the confidential nature of the Software and agents and independent contractors who agree in writing to be bound by the Confidentiality Provisions set forth in this Agreement. Customer agrees that it is fully responsible for the actions of each of its employees, professional advisors, agents and independent contractors with respect to the proper use and protection of the Software, whether or not such individual is or was acting within the scope of his or her employment or authority. The rights granted to Customer herein expressly exclude the right (i) to provide training to third parties in the use of the Software unless pre-approved in writing by SyferLock, (ii) to enter into time-sharing arrangements for use of the Software with third parties, (iii) to rent the Software to third parties, or (iv) to distribute or sublicense the Software to third parties. Customer shall not use the Software in any manner other than as expressly provided for in this Agreement.

**5. Reserved.**

a)

**6. Effect of Termination or Expiration**

Reserved.

Reserved.

Each party shall immediately cease using and return all property in its possession belonging to the other party, including without limitation all Software, Documentation, and tangible embodiments of Confidential Information.

Customer shall not, in advertising or otherwise, use or display any of SyferLock Marks or any name, mark, or logo that is the same as or similar to SyferLock Marks, represent itself to be a licensee of SyferLock, or in any way identify itself with SyferLock or contains any portion of a SyferLock Mark.

Reserved.

Sections 5, 6, 7(a), 7(b), 7(e), 8, 10-14, and 15 hereof, will survive termination or expiration of this Agreement. g) Reserved.

**7. Inspection/Acceptance**

The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("SYFERLOCK") published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may



require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights- (1) Within the warranty period; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

#### **8. Proprietary Rights**

As between SyferLock and Customer, SyferLock shall have sole and exclusive ownership of all right, title, and interest in and to the Software and Documentation, including all associated intellectual property rights therein and thereto and in and to any other deliverable made available by SyferLock to Customer in connection with this Agreement. Customer acknowledges that, as between SyferLock and Customer, the Software, including associated screen displays and menu features, the SyferLock Marks and Documentation constitutes the valuable trade secrets of SyferLock and are copyrighted works owned by SyferLock and protected by federal and international copyright laws. Customer shall not permit any personnel to remove any SyferLock Marks or any other proprietary or other legends or restrictive notices contained or included in any materials provided by SyferLock. In partial consideration of SyferLock granting Customer the rights set forth in this Agreement, Customer agrees that all intellectual property rights and all other ownership in any ideas, feedbacks, modifications, enhancements, improvements, inventions, works of authorship or any suggestion Customer or any of Customer personnel or third party proposes, creates, authors or develops relating to the Software, Documentation, SyferLock Marks or any other deliverable made available by SyferLock in connection with this Agreement or any portion of any of the foregoing (collectively, the "Suggestions") are hereby assigned to SyferLock, shall be the sole and exclusive property of SyferLock and shall be considered SyferLock Confidential Information for all purposes hereof. At SyferLock's expense, Customer agrees to take any action (and to cause its personnel to take any action) SyferLock requests to perfect SyferLock's ownership in the Software and/or any Suggestion.

#### **9. Software Maintenance and Support Services; Other Services**

Customer may purchase Maintenance and Support Services, and installation, training, and development and/or consulting services together with the license of any Software. SyferLock shall provide the Standard Maintenance and Support Services described on Attachment E during the Warranty Period at no charge and thereafter during each maintenance term for the fees set forth on the Cover Page. If selected by Customer on the Cover Page, all such services will be provided by SyferLock in accordance with the terms set forth hereunder and applicable Statement(s) of Work. Customer will be entitled to receive Updates only if Customer is a paid-up Maintenance and Support Services customer at the time an Update is commercially released. Customer shall have the option to purchase Upgrades in accordance with SyferLock's pricing structure in effect at the time an Upgrade is commercially released.

#### **10. SyferLock's Duty of Indemnification**

To the extent permitted by federal law, SyferLock, at its expense, shall defend any action, suit or proceeding brought against Customer which alleges that any Software infringes any United States copyright and SyferLock shall pay damages finally awarded against Customer (including attorneys' reasonable fees), provided that (a) Customer notifies SyferLock promptly in writing of the claim, (b) SyferLock has sole control of the defense and all related settlement negotiations, and (c) Customer provides SyferLock with all requested assistance, information and authority to perform the above at SyferLock's expense. In the event that Customer's use of the Software is enjoined by a court of competent authority, SyferLock shall, at its sole option and at its expense, either: (i) procure for Customer the right to use the Software or (ii) modify the Software to avoid infringement without material impairment of its functionality or (iii) if neither of the foregoing remedies can be obtained upon terms commercially reasonable in the judgment of SyferLock, require Customer to remove and return to SyferLock the Software involved and, if Perpetual Term is selected on the Cover Page, refund Customer a portion of the price thereof as depreciated over a three (3) year life of the Software commencing on the date of delivery. The foregoing indemnity shall not apply if the alleged infringement is attributable to (i) any adjustment, enhancement, revision, development or addition to the Software based on Customer provided guidelines, requests and/or specifications, (ii) the combination of the Software and products and/or other materials not provided by SyferLock under this Agreement, (iii) if the Software is modified or altered by any person or entity other than SyferLock, (iv) if the Software is used in any way other than as set forth in the Documentation, or (v) if the Software is otherwise used outside the scope of this Agreement. THIS SECTION STATES SYFERLOCK'S SOLE LIABILITY HEREUNDER WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS.

#### **11. Reserved**

#### **12. Limited Warranty**

SyferLock warrants that for a period of thirty (30) days following initial delivery of the Software to Customer ("Warranty Period"), SyferLock will use commercially reasonable efforts to resolve programming errors in the Software or Documentation to make the Software function in material conformity with the Documentation, provided that SyferLock receives a written claim from Customer under this limited warranty within the Warranty Period. This

Warranty does not apply if Customer or any third party changes or modifies the Software without the authorization of SyferLock.

SyferLock does not warrant that the Software will be error free or that all errors can be remedied.

SyferLock warrants that the services provided by SyferLock in connection with this Agreement will be rendered by qualified personnel and consistent with commercial practices standard in the industry. The foregoing shall be SyferLock's entire liability and Customer's sole and exclusive remedy under this warranty.

THE EXPRESS WARRANTIES GRANTED UNDER THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY SYFERLOCK WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, ANY SERVICES PROVIDED HEREUNDER OR ANY DELIVERABLE MADE AVAILABLE HEREUNDER, EXPRESS OR IMPLIED, AND THEY ARE MADE IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES. SYFERLOCK HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE, AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO, FEATURES OR CAPABILITIES OF THE SOFTWARE, SYFERLOCK'S COMPUTERS AND SERVERS, INFORMATION, REPORTS OR OTHER MATTERS PRODUCED OR PROVIDED IN CONNECTION WITH THIS AGREEMENT, EXCEPT AS REQUIRED BY THE LOCAL LAW OF CUSTOMER. IN ADDITION TO AND WITHOUT LIMITATION OF THE FOREGOING, SYFERLOCK SPECIFICALLY DOES



NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF ANY SOFTWARE OR FEATURE OR CAPABILITY OF THE SOFTWARE, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, SECURITY, OR OTHERWISE. SYFERLOCK EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE QUALITY OR CONTINUITY OF CUSTOMER OR ANY THIRD-PARTY TELECOMMUNICATION OR INFORMATION SYSTEMS OR SERVICES, SERVER CONNECTION SPEEDS, OR THE FUNCTIONALITY, OPERABILITY, OR RELIABILITY OF SYFERLOCK'S OR ANY THIRD PARTY'S DATA SECURITY FEATURES OR SYSTEMS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

### 13. Limitation of Liability

CUSTOMER'S SOLE REMEDY AND SYFERLOCK'S SOLE OBLIGATION WITH RESPECT TO ANY CLAIMS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT SHALL BE GOVERNED BY THIS AGREEMENT, AND IN ALL CASES CUSTOMER'S REMEDY SHALL BE LIMITED TO THE LESSER OF (A) THE ACTUAL MONEY DAMAGES, OR (B) AN AMOUNT NOT EXCEEDING THE SOFTWARE LICENSE FEES PAID TO SYFERLOCK BY CUSTOMER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL SYFERLOCK OR ITS SUPPLIERS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE PERFORMANCE OF THIS AGREEMENT ON BEHALF OF SYFERLOCK, INCLUDING ITS EMPLOYEES, AGENTS, PARTNERS, REPRESENTATIVES, OR SUBCONTRACTORS, BE LIABLE FOR ANY (A) DAMAGES CAUSED BY CUSTOMER'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, (B) INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, INCIDENTAL, EXEMPLARY, COVER OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, LOST BUSINESS OPPORTUNITIES, LOST SAVINGS, LOST DATA, LOSSES CAUSED BY DELAY OR THE DOWNTIME OF SYFERLOCK COMPUTERS OR SERVERS, OR LOSSES FROM INTERRUPTION, TERMINATION, OR FAILED OPERATION OF THE INTERNET OR THIRD-PARTY TELECOMMUNICATION SERVICES, EVEN IF SYFERLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) CLAIMS AGAINST CUSTOMER BY ANY THIRD PARTY OTHER THAN THOSE DETERMINED TO BE INDEMNIFIABLE CLAIMS UNDER SECTION 10 BY AN UNAPPEALABLE COURT RULING AND ONLY TO THE EXTENT PROVIDED FOR ABOVE, OR (D) DAMAGES, INCLUDING PRODUCT LIABILITY DAMAGES, CAUSED BY ANY NON-SYFERLOCK PRODUCT, SERVICES OR DELIVERABLES. CUSTOMER RECOGNIZES THAT THE FEES HEREUNDER ARE BASED IN PART ON THE LIMITED WARRANTY AND LIMITATION OF LIABILITY AND REMEDIES SET FORTH HEREIN.

### 14. Confidentiality

Each party acknowledges that by reason of its relationship to the other party under this Agreement it may have access to Confidential Information. Each party agrees to maintain in confidence and use only as expressly permitted in this Agreement all Confidential Information received from the other, both orally and in writing, provided that the parties' obligations of nondisclosure under this Agreement shall not apply to Confidential Information which the receiving party can demonstrate: (i) is or becomes a matter of public knowledge through no fault of the receiving party; (ii) was rightfully in the receiving party's possession prior to disclosure by the disclosing party; (iii) subsequent to disclosure, is rightfully obtained by the receiving party from a third party in lawful possession of such Confidential Information; or (iv) is independently developed by the receiving party without reference to Confidential Information. In the event a subpoena or other legal process is served upon a party receiving Confidential Information of the other party hereunder that, pursuant to the requirement of a governmental agency or law of the United States or any state thereof (or any governmental or political subdivision thereof), requires the disclosure of such Confidential Information, the receiving party will notify the disclosing party promptly upon receipt of such subpoena or other request for legal process, and will cooperate with the disclosing party, at the disclosing party's expense, in any lawful effort by the disclosing party to contest the legal validity or scope of such subpoena or other legal process.

### 15. Miscellaneous

#### Assignment

Customer may not sublicense, assign (by operation of law or otherwise) or otherwise transfer this Agreement or any license or any right, duty or obligation under this Agreement without SyferLock's prior written consent, and any attempt to do so shall be null and void. Subject to the foregoing limitations, this Agreement will mutually benefit and be binding upon the parties, their successors and assigns.

#### Export Control

Customer acknowledges that the export of any Software is or may be subject to export or import control and Customer agrees that any Software or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Customer obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law.

#### U.S. Government Restricted Rights

Use, duplication, or disclosure of the Software by the U.S. government is subject to the restrictions set forth in subparagraph (C)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and subparagraphs (C)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

#### License subject to Licensor's Rights

Customer acknowledges that portions of the Software may have been licensed to SyferLock by one or more third parties. All rights and obligations provided by SyferLock to Customer under this Agreement shall be limited to the extent that such underlying rights and obligations have been provided to SyferLock. e) Reserved

#### Reserved

#### Waiver

A failure or delay by either party to enforce any right under this Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under this Agreement. Any waiver by either party of any right under this Agreement shall not constitute a waiver of such right in the future. All rights and remedies evidenced hereby are in addition to and cumulative to rights and remedies available at law or equity or otherwise available under any other contract.

Severability

If any provision or portion of this Agreement is held to be unenforceable or invalid, the remaining provisions and portions shall nevertheless be given full force and effect, and the parties agree to negotiate, in good faith, a substitute valid provision which most nearly affects the parties' intent in entering this Agreement. i) Force Majeure

Excluding the payment of money, neither party will be deemed in default of any obligation hereunder nor be liable for any failure or delay in performance which results directly or indirectly from any cause beyond its reasonable control, including without limitation, "Acts of God," delays or failures in the Internet or related carriers and third-party equipment, acts of civil or military authority, strikes, fire, theft, delays by suppliers, or action or inaction by the other party or any third party.

Reserved

Reserved

Compliance with Law

Customer is solely responsible for ensuring that its use of the Software is in compliance with all foreign, federal, state, and local laws and regulations, and Customer represents and warrants to SyferLock that it will comply with this subsection.

Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

Reserved

Reserved

No Third Party Beneficiaries

Except as set forth herein, no person or entity who is not a party to this Agreement shall derive any rights whatsoever hereunder as a third party beneficiary of this Agreement.

Reserved

**DEFINITIONS**

**"Agreement"** means this License Agreement, together with agreed upon terms in the ordering documents.

**"Confidential Information"** means non-public information or materials (including all deliverables made available hereunder) that, if disclosed in written form, is labeled "confidential" or, if disclosed orally, is identified as confidential and submitted to the other party within thirty (30) days in a writing labeled "confidential" or by a similar legend, provided, however, that the following types of information are always to be considered Confidential Information, regardless of compliance with the foregoing marking requirements, regardless of format, written or oral): the Documentation, the Software, the terms of this Agreement, information relating to the Company's products and the marketing thereof, product development plans and general business strategies, forecasts, research activities, pricing models, training materials, training tools, personnel information, customer data, trade secrets, techniques, know-how, formulas, processes, product ideas, inventions, improvements, copyrightable or patentable materials, schematics, and other technical, business and financial information relating to Company and the Software.

**"Cover Page"** means the quote.

**"CPU"** means the single processing system consisting of either a single or multiple processor unit and its associated RAM memory and disk storage units, regardless of platform or operating environment, on which Customer will load, execute, and use the Software. For all purposes hereof, each virtual machine functioning as a single CPU that can be identified by an IP address shall also be considered a CPU, shall be priced as a single CPU and shall be listed on the quote as a single CPU.

**"Documentation"** means end user materials, including manuals and training materials, in any form or medium, provided by SyferLock for use with the Software.

**"Effective Date"** means the effective date indicated on the Cover Page.

**"Maintenance and Support Services"** means the services provided to Customer by SyferLock in accordance with the terms set forth herein.

**"Response (Time)"** means contact to Customer via phone or an electronic means.

**"Resolution (Time)"** means a corrective measure(s) to address an Error.

**"Server" or "Enterprise Server"** means a central a computing system which hosts one or more of the applications listed on the Cover Page and is accessed by one or more named users.

**"Service Bureau"** means a person or entity that uses the Software to deliver services or the functionality of the Software to a third party where such person or entity receives directly or indirectly in return anything of value.

**"Severity Level"** means a reported anomaly or error isolated to software, and as defined herein.

**"Severity Level 1 (SL1)"** means an error isolated to software that renders product inoperative or causes the product to fail catastrophically, major system impact or system down (e.g. users cannot logon to their system).

**"Severity Level 2 (SL2)"** means an error isolated to software which causes one of the GridCore servers to fail. The user can still logon onto their system due to the failover process.

**"Severity Level 3 (SL3)"** means an error isolated to software that substantially degrades the performance of the product or materially restricts business with no work around, moderate system impact, system hanging.

**"Severity Level 4 (SL4)"** means a reported anomaly in the licensed product which does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions. Additionally, an error isolated to software which materially restricts business which has a work around.

**"Severity Level 5 (SL5)"** means an enhancement request.

**"Software"** means one or more of the commercially available software products, available from SyferLock, as specified on the Cover Page.

**“Update” or “Upgrade”** means an improved and enhanced version of the Software released by SyferLock subsequent to the version licensed by Customer hereunder that SyferLock may make available to licensees of the Software for an additional fee.

**“Version”** means any update, version, release, revision, patch, bug fix or modified form of the Software that SyferLock, in its sole discretion, elects to make available at no additional charge to licensees of the Software that have purchased Maintenance and Support Services.

**“Warranty Period”** has the meaning set forth in Section 12(a).

**STANDARD SOFTWARE MAINTENANCE AND SUPPORT SERVICES**

**E-1) Maintenance and Support Services**

SyferLock will provide Customer with the Software Maintenance and Support Services set forth in the table below for the most current release of the Software and the most current previous release of the Software. The Maintenance and Support Services shall apply only to the Software licensed by Customer as specified on the Cover Page; SyferLock is not responsible for the configuration, maintenance or correction of third-party software, hardware or communications facilities. SyferLock shall not be obligated to provide Maintenance and Support Services if such services are required as a result of (a) Customer’s neglect or misuse of the Software, (b) modification of the Software by a person or entity other than SyferLock without the prior written consent of SyferLock, or (c) any other cause beyond the reasonable control of SyferLock. SyferLock shall not be obligated to respond to requests for support from any person or entity other than a representative of Customer’s IT department that have been pre-approved in writing by SyferLock. SyferLock shall have no liability to any third party with respect to the Maintenance and Support Services.

**E-2) Versions**

Upon commercial release of a new Version, SyferLock shall provide such Version to paid-up Maintenance and Support Services Customers.

**E-3) Error Correction**

Customer may call to report an “Error” in the Software (i.e., a failure of the Software to function in material conformity with the Documentation) that requires at least Second Tier (as defined below) support services during the hours specified in the table below and shall provide SyferLock all information necessary for diagnosis of the Error. SyferLock will use commercially reasonable efforts to contact Customer with respect to such reported Error within one (1) business day following the business day upon which it was submitted. SyferLock shall make commercially reasonable efforts to either: provide a software solution or workaround; provide an avoidance procedure; address the request in the next revision/iteration; or discuss with Customer possible custom professional services to resolve Customer’s request. The foregoing support services during the hours specified in the table below are unlimited in any given month.

**E-4) Reserved**

**E-5) Reserved**

**E-6) SyferLock Personnel**

In the performance of the Maintenance and Support Services, SyferLock reserves the right to determine the assignment of SyferLock personnel, to replace or reassign such personnel and to subcontract with qualified third persons for part or all of the services. No person performing services on behalf of SyferLock hereunder shall be restricted or prevented from performing services for others that are similar to the services provided under this Agreement.

**E-7) On-Site Visits**

For purposes of performing the Maintenance and Support Services, Customer shall permit authorized SyferLock service engineers to inspect periodically during normal business hours Customer’s computer systems operating the Software (it is agreed that such inspection shall be done, to the extent commercially reasonable, concurrently with on-site visits initiated following a reported Error (or other service request) by Customer). If SyferLock is unable by remote telephone or on-line support to address an Error, then SyferLock, at its sole discretion, may dispatch a software engineer to Customer’s site to address the Error. The travel and other reasonably-incurred expenses of such on-site assistance (excluding the personnel cost) shall be borne by Customer. Dispatch shall be within two (2) business days after SyferLock has determined at its sole discretion that telephone or on-line assistance is not sufficient. If Customer requests an on-site software support visit and SyferLock reasonably determines that the reported problem is not the responsibility of SyferLock, Customer shall work with SyferLock to determine the costs reasonably incurred by the SyferLock personnel in making such visit.

<b>Deliverable</b>	<b>Support</b>
Support Provided	Second Tier*, On-Line and Phone Support during Support Hours
Support Hours	Monday – Friday 9 A.M. to 5 P.M. Eastern time Excluding National Holidays. SyferLock will reply to Customer’s call or email/on-line Error report within the time frames set forth in Section E-3 above.
Staff	Access to technical support staff
Diagnostics & Resolution	Services shall include making commercially reasonable efforts for the purposes of (i) diagnosis of the Error and (ii) a resolution of the Error. Diagnostics & Resolution shall be conducted via remote assistance where possible.

\* Second Tier Support shall mean support requests that have been reviewed and assessed by one or more members of the Customer IT staff identified pre-approved for such purpose in writing by SyferLock. It is agreed and clarified that First Tier Support (defined as support request originating from end users) shall be rendered by Customer personnel trained for such purpose and that no First Tier Support shall be rendered by SyferLock.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SYFERLOCK TECHNOLOGY CORPORATION**

**SYFERLOCK TECHNOLOGY CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS**

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**1. Definitions**

Defined terms are capitalized and have the meanings indicated in the Definitions section hereunder.

**2. Right to Use Software**

Contractor hereby grants to Ordering Activity a non-exclusive, royalty-free, non-assignable license to use the Software, subject to the terms and conditions set forth herein. Contractor hereby grants to Ordering Activity a non-exclusive, royalty-free, non-assignable license to use, subject to the terms and conditions set forth herein, Contractor's trademarks and trade names set forth ("Contractor Marks") solely for the purpose of using the Software in accordance with these terms. Ordering Activity agrees to use no other trademarks or trade names in connection with the Software, except for the use, in addition to the Contractor Marks, of its own trademark as approved in writing by Contractor. To the extent that Contractor will authorize any use of a composite trademark comprised out of Contractor Mark(s) and other trademarks or expressions, such composite trademark shall only be used for the purpose of using the Software in accordance with these terms and upon termination of the right to use the Software any use of such composite trademark shall immediately cease and be prohibited. Any use of Ordering Activity's trademarks with the Contractor Marks must maintain the distinctness of each trademark. Subject to the foregoing, The Contractor Marks are the only trademarks and trade names that Ordering Activity is authorized by Contractor to employ in connection with the Software and Ordering Activity agrees that it has no rights therein other than those specifically granted herein. All benefit and goodwill arising from Ordering Activity's use of the Contractor Marks shall inure to the benefit of Contractor. The license set forth in this Section 2 is not sub-licensable.

**3. Restrictions on Use of Software**

Ordering Activity's use of the Software is subject to the following restrictions. Except as expressly permitted in these terms, Ordering Activity shall not, and shall not permit others to, (a) use, modify, copy (except for one back-up copy containing Contractor's copyright notices and other Contractor Marks), or otherwise reproduce the Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Software; (c) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for Service Bureau purposes, or otherwise transfer the Software or Ordering Activity's right to use the Software; or (d) remove any copyright, trademark, proprietary rights, disclaimer, warning notice or other Contractor Marks included on or embedded in any part of the Software, (e) install, reconfigure or uninstall any Software on any CPU or Server other than by its IT personnel who have been pre-approved in writing by Contractor (such that no end-user of the Software installed on a mobile or stationary device used by such user, such as a PDA, lap top computer, tablet computer, Server or desktop computer, will be permitted or able to carry out such installation, reconfiguration or un-installation), (f) reserved or (g) distribute copies of the Software, or electronically transfer the Software from one CPU or Server to another or over a network. All rights not expressly granted to Ordering Activity are reserved by Contractor. There are no implied rights. Ordering Activity shall install the Software only on Enterprise Servers and/or CPUs, as the case may be, located in the country specified on the quote.

**4. Third Parties**

Ordering Activity's use and disclosure of the Software is restricted solely to its employees, agents, consultants and/or independent contractors (collectively referred to as "employees," hereinafter) who acknowledge the confidential nature of the Software and agents, consultants and independent contractors who agree in writing to be bound by the Confidentiality Provisions set forth herein. Ordering Activity agrees that it is fully responsible for the actions of each of its employees, professional advisors, agents and independent contractors with respect to the proper use and protection of the Software, whether or not such individual is or was acting within the scope of his or her employment or authority. The rights granted to Ordering Activity herein expressly exclude the right (i) to provide training to third parties in the use of the Software unless pre-approved in writing by Contractor, (ii) to enter into time-sharing arrangements for use of the Software with third parties, (iii) to rent the Software to third parties, or (iv) to distribute or sublicense the Software to third parties. Ordering Activity shall not use the Software in any manner other than as expressly provided for herein these terms.

**5. Terms of Agreement Termination**

The Order shall commence upon the Effective Date and, unless terminated in accordance with the FAR, the underlying GSA Schedule Contract, and/or any applicable GSA Customer Purchase Orders. and shall remain in effect for the term specified on the Order (either perpetual or yearly subscription, each as defined below).

- a) Yearly Subscription Term. If yearly subscription term is ordered, this License shall have an initial term of 12 (twelve) months.
- b) Perpetual Term. If perpetual term is ordered, the term of this License shall be perpetual with respect to the version of the Software licensed hereunder.

**6. Effect of Termination or Expiration**

- a) Each party shall immediately surrender all rights, licenses, and privileges granted under this Attachment A.
- b) Each party shall immediately cease using and return all property in its possession belonging to the other party, including without limitation all Software, Documentation, and tangible embodiments of Confidential Information.

**7. Reserved**

#### 8. Proprietary Rights

As between SyferLock and Ordering Activity, SyferLock shall have sole and exclusive ownership of all right, title, and interest in and to the Software and Documentation, including all associated intellectual property rights therein and thereto and in and to any other deliverable made available by SyferLock to Ordering Activity in connection with these terms. Ordering Activity acknowledges that, as between SyferLock and Ordering Activity, the Software, including associated screen displays and menu features, the SyferLock Marks and Documentation constitutes the valuable trade secrets of SyferLock and are copyrighted works owned by SyferLock and protected by federal and international copyright laws. Ordering Activity shall not permit any personnel to remove any SyferLock Marks or any other proprietary or other legends or restrictive notices contained or included in any materials provided by SyferLock. In partial consideration of Contractor through SyferLock granting Ordering Activity the rights set forth herein, Ordering Activity agrees that all intellectual property rights and all other ownership in any ideas, feedbacks, modifications and enhancements.

#### 9. Software Maintenance and Support Services; Other Services

Ordering Activity may purchase Maintenance and Support Services, and installation, training, and development and/or consulting services together with the license of any Software. Contractor through SyferLock shall provide the Standard Maintenance and Support Services described herein below during the Warranty Period at no charge and thereafter during each maintenance term for the fees set forth in the GSA Customer Purchase Order. If selected by Ordering Activity, all such services will be provided by Contractor in accordance with the terms herein below (Software Maintenance and Support Services), and applicable Statement(s) of Work. Ordering Activity will be entitled to receive Updates only if Ordering Activity is a paid-up Maintenance and Support Services Ordering Activity at the time an Update is commercially released. Ordering Activity shall have the option to purchase Upgrades pursuant to the execution of a new GSA Customer Purchase Order.

10. Reserved

11. Reserved

#### 12. Limited Warranty

a) Contractor warrants that for a period of thirty (30) days following initial delivery of the Software to Ordering Activity ("Warranty Period"), Contractor will use commercially reasonable efforts to resolve programming errors in the Software or Documentation to make the Software function in material conformity with the Documentation, provided that Contractor receives a written claim from Ordering Activity under this limited warranty within the Warranty Period. This Warranty does not apply if Ordering Activity or any third party changes or modifies the Software without the authorization of Contractor. Contractor does not warrant that the Software will be error free or that all errors can be remedied. Contractor warrants that the services provided by Contractor in connection with these terms will be rendered by qualified personnel and consistent with commercial practices standard in the industry. The foregoing shall be Contractor's entire liability and Ordering Activity's remedy under this warranty.

b) THE EXPRESS WARRANTIES GRANTED HERUNDER ARE THE ONLY WARRANTIES MADE BY CONTRACTOR WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, ANY SERVICES PROVIDED HEREUNDER OR ANY DELIVERABLE MADE AVAILABLE HEREUNDER, EXPRESS OR IMPLIED, AND THEY ARE MADE IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES. CONTRACTOR HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT, AND WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE, AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO, FEATURES OR CAPABILITIES OF THE SOFTWARE, CONTRACTOR'S COMPUTERS AND SERVERS, INFORMATION, REPORTS OR OTHER MATTERS PRODUCED OR PROVIDED IN CONNECTION WITH THESE TERMS, EXCEPT AS REQUIRED BY FEDERAL LAW. IN ADDITION TO AND WITHOUT LIMITATION OF THE FOREGOING, CONTRACTOR SPECIFICALLY DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF ANY SOFTWARE OR FEATURE OR CAPABILITY OF THE SOFTWARE, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, SECURITY, OR OTHERWISE. CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE QUALITY OR CONTINUITY OF ORDERING ACTIVITY OR ANY THIRD-PARTY TELECOMMUNICATION OR INFORMATION SYSTEMS OR SERVICES, SERVER CONNECTION SPEEDS, OR THE FUNCTIONALITY, OPERABILITY, OR RELIABILITY OF CONTRACTOR'S OR ANY THIRD PARTY'S DATA SECURITY FEATURES OR SYSTEMS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THESE TERMS.

13. Reserved

14. Reserved

15. Miscellaneous

a) Reserved

b) Export Control

Ordering Activity acknowledges that the export of any Software is or may be subject to export or import control and Ordering Activity agrees that any Software or the direct or indirect product thereof will not be exported (or re exported from a country of installation) directly or indirectly, unless Ordering Activity obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law.

c) U.S. Government Restricted Rights

Use, duplication, or disclosure of the Software by the U.S. government is subject to the restrictions set forth in subparagraph (C)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and subparagraphs (C)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

d) License subject to Licensor's Rights



Ordering Activity acknowledges that portions of the Software may have been licensed to Contractor by one or more third parties. All rights and obligations provided by Contractor to Ordering Activity hereunder shall be limited to the extent that such underlying rights and obligations have been provided to Contractor.

- e) Reserved
- f) Reserved.
- g) Reserved
- h) Reserved
- i) Reserved
- j) Reserved
- k) Reserved
- l) Reserved
- m) Reserved
- n) Reserved
- o) Reserved
- p) Reserved

**DEFINITIONS**

“Agreement” means this License Agreement.

“Confidential Information” means non-public information or materials (including all deliverables made available hereunder) that, if disclosed in written form, is labeled “confidential” or, if disclosed orally, is identified as confidential and submitted to the other party within thirty (30) days in a writing labeled “confidential “ or by a similar legend, provided, however, that the following types of information are always to be considered Confidential Information, regardless of compliance with the foregoing marking requirements, regardless of format, written or oral): the Documentation, the Software, , information relating to the Company’s products and the marketing thereof, product development plans and general business strategies, forecasts, research activities, pricing models, training materials, training tools, personnel information, Ordering Activity data, trade secrets, techniques, know-how, formulas, processes, product ideas, inventions, improvements, copyrightable or patentable materials, schematics, and other technical, business and financial information relating to Company and the Software.

“Cover Page” means the first two pages of this Agreement.

“CPU” means the single processing system consisting of either a single or multiple processor unit and its associated RAM memory and disk storage units, regardless of platform or operating environment, on which Ordering Activity will load, execute, and use the Software. For all purposes hereof, each virtual machine functioning as a single CPU that can be identified by an IP address shall also be considered a CPU, shall be priced as a single CPU and shall be listed in ordering documents as a single CPU.

“Documentation” means end user materials, including manuals and training materials, in any form or medium, provided by Contractor for use with the Software.

“Effective Date” means the effective date indicated on the quote.

“Maintenance and Support Services” means the services provided to Ordering Activity by Contractor in accordance with the terms set forth herein.

“Response (Time)” means contact to Ordering Activity via phone or an electronic means.

“Resolution (Time)” means a corrective measure(s) to address an Error.

“Server” or “Enterprise Server” means a central a computing system which hosts one or more of the applications listed on the Cover Page and is accessed by one or more named users.

“Service Bureau” means a person or entity that uses the Software to deliver services or the functionality of the Software to a third party where such person or entity receives directly or indirectly in return anything of value.

“Severity Level” means a reported anomaly or error isolated to software, and as defined and set for the in section G-8 of herein.

“Severity Level 1 (SL1)” means an error isolated to software that renders product inoperative or causes the product to fail catastrophically, major system impact or system down (e.g. users cannot logon to their system).

“Severity Level 2 (SL2)” means an error isolated to software which causes one of the GridCore servers to fail. The user can still logon onto their system due to the failover process.

“Severity Level 3 (SL3)” means an error isolated to software that substantially degrades the performance of the product or materially restricts business with no work around, moderate system impact, system hanging.

“Severity Level 4 (SL4)” means a reported anomaly in the licensed product which does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions. Additionally, an error isolated to software which materially restricts business which has a work around.

“Severity Level 5 (SL5)” means an enhancement request.

“Software” means one or more of the commercially available software products, available from Contractor, as specified on the Cover Page.

“Update” or “Upgrade” means an improved and enhanced version of the Software released by Contractor subsequent to the version licensed by Ordering Activity hereunder that Contractor may make available to licensees of the Software for an additional fee.

“Version” means any update, version, release, revision, patch, bug fix or modified form of the Software that Contractor, in its sole discretion, elects to make available at no additional charge to licensees of the Software that have purchased Maintenance and Support Services.

“Warranty Period” has the meaning set forth in Section 12(a).

**STANDARD SOFTWARE MAINTENANCE AND SUPPORT SERVICES**

- E-1) Maintenance and Support Services

Contractor through SyferLock will provide Ordering Activity with the Software Maintenance and Support Services set forth in the table below for the most current release of the Software and the most current previous release of the Software. The Maintenance and Support Services shall apply only to the Software licensed by Ordering Activity as specified on the Cover Page; Contractor is not responsible for the configuration, maintenance or correction of third-party software, hardware or communications facilities. Contractor shall not be obligated to provide Maintenance and Support Services if such services are required as a result of (a) Ordering Activity's neglect or misuse of the Software, (b) modification of the Software by a person or entity other than Contractor without the prior written consent of Contractor, or (c) any other cause beyond the reasonable control of Contractor. Contractor shall not be obligated to respond to requests for support from any person or entity other than a representative of Ordering Activity's IT department that have been pre-approved in writing by Contractor. Contractor shall have no liability to any third party with respect to the Maintenance and Support Services.

**E-2) Versions**

Upon commercial release of a new Version, Contractor through SyferLock shall provide such Version to paid-up Maintenance and Support Services Ordering Activities.

**E-3) Error Correction**

Ordering Activity may call to report an "Error" in the Software (i.e., a failure of the Software to function in material conformity with the Documentation) that requires at least Second Tier (as defined below) support services during the hours specified in the table below and shall provide Contractor through SyferLock all information necessary for diagnosis of the Error. Contractor will use commercially reasonable efforts to contact Ordering Activity with respect to such reported Error within one (1) business day following the business day upon which it was submitted. Contractor shall make commercially reasonable efforts to either: provide a software solution or workaround; provide an avoidance procedure; address the request in the next revision/iteration; or discuss with Ordering Activity possible custom professional services to resolve Ordering Activity's request. The foregoing support services during the hours specified in the table below are unlimited in any given month.

**E-4) Term**

**E-5)** The initial term of Maintenance and Support Services shall be one year (the "Term") commencing on the expiration of the Warranty Period if Ordering Activity has elected a perpetual term on the Cover Page, and commencing on the Effective Date if Ordering Activity has elected a Yearly Subscription term on the Cover Page. In the event that Ordering Activity elects to reinstate Maintenance and Support Services following termination of such services by Ordering Activity, execution of a new GSA Customer Purchase Order will be required.

**E-6) Contractor Personnel**

In the performance of the Maintenance and Support Services, Contractor through SyferLock reserves the right to determine the assignment of Contractor personnel, to replace or reassign such personnel and to subcontract with qualified third persons for part or all of the services. No person performing services on behalf of Contractor hereunder shall be restricted or prevented from performing services for others that are similar to the services provided hereunder.

**E-7) On-Site Visits**

For purposes of performing the Maintenance and Support Services, Ordering Activity shall permit authorized Contractor through SyferLock service engineers to inspect periodically during normal business hours Ordering Activity's computer systems operating the Software (it is agreed that such inspection shall be done, to the extent commercially reasonable, concurrently with on-site visits initiated following a reported Error (or other service request) by Ordering Activity). If Contractor is unable by remote telephone or on-line support to address an Error, then Contractor, at its sole discretion, may dispatch a software engineer to Ordering Activity's site to address the Error. The travel and other reasonably-incurred expenses of such on-site assistance (excluding the personnel cost) shall be borne by Ordering Activity and shall be billed to Ordering Activity in accordance with the Federal Joint Travel Regulations. Dispatch shall be within two (2) business days after Contractor has determined at its sole discretion that telephone or on-line assistance is not sufficient.

Deliverable Support

Support Provided Second Tier\*, On-Line and Phone Support during Support Hours

Support Hours Monday – Friday 9 A.M. to 5 P.M. Eastern time Excluding National Holidays. Contractor will reply to Ordering Activity's call or email/on-line Error report within the time frames set forth in Section E-3 above.

Staff Access to technical support staff

Diagnostics & Resolution Services shall include making commercially reasonable efforts for the purposes of (i) diagnosis of the Error and (ii) a resolution of the Error. Diagnostics & Resolution shall be conducted via remote assistance where possible.

\* Second Tier Support shall mean support requests that have been reviewed and assessed by one or more members of the Ordering Activity IT staff identified pre-approved for such purpose in writing by Contractor. It is agreed and clarified that First Tier Support (defined as support request originating from end users) shall be rendered by Ordering Activity personnel trained for such purpose and that no First Tier Support shall be rendered by Contractor.



SYNCD OG, INC.  
1818 LIBRARY STREET, SUITE 500  
RESTON, VA 20190

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

- 1. Scope.** This Rider and the attached SyncDog, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
- 2. Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
  - Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**SYNCDOG, INC**

**SYNCDOG, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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**SYNCDOG LICENSE AGREEMENT**

**SyncDog Software: Ordering.**

**SyncDog Software.** SyncDog licenses its software products on a subscription basis. Software is made available as a software-only (or "virtual") solution, as a hosted solution, or on a physical appliance. Ordering Activity's rights to use SyncDog software apply only to the SyncDog software licensed under an applicable Order.

Reserved.

**Delivery.** For downloadable versions of the SyncDog software, Ordering Activity may download the software from a link provided by SyncDog. For hosted versions of the SyncDog Solution, access shall be provided through a password-protected web interface.

**Definitions.** Unless otherwise specified, capitalized terms used in this Agreement will have the meanings attributed to them in this Section 2.

**"SyncDog Solution"** means the object code versions of the SyncDog software identified on an Order and includes related Server Software, Client Software, Updates, and Documentation, but does not include Open Source Software, which is provided pursuant to Section 3.5.

**"Affiliate"** means an entity, which directly or indirectly controls, is controlled by or is under common control with a Party to this Agreement.

**"Client Software"** means the object code versions of the desktop client software for the licensed SyncDog Solution.

**"Designated User"** means the number of users for whom Ordering Activity has purchased rights to use the SyncDog Solution, as set forth on the applicable Order, plus any additional True-Up Users added pursuant to Section 5.3 below. Designated Users may consist of: (i) employees and independent contractors of Ordering Activity and its Affiliates, and (ii) individual representatives of vendors and/or service providers of Ordering Activity and its Affiliates.

**"Documentation"** means SyncDog's standard written materials and specifications for the SyncDog Solution licensed by Ordering.

**"Effective Date"** means (i) for Orders submitted to SyncDog, the date that SyncDog accepts the Order; or (ii) for orders submitted to a Channel Partner on a form other than an SyncDog Order form, the date SyncDog makes the software available to Ordering Activity for download or, for software provided on a physical appliance, the date of shipment.

**"Hardware"** means computer equipment, if any, purchased from SyncDog by Ordering.

**"Hosted Services"** means the remote access and use of a hosted version of the SyncDog Solution as hosted by SyncDog.

**"License Term"** means the subscription period for use of the SyncDog Solution, as identified on the applicable Order.

**"Maintenance Support Services"** means the support services provided by SyncDog as described in Section 4.

**"Release"** means a version of the SyncDog Solution for which SyncDog charges a separate fee.

**"Server Software"** means the object code server software version of the SyncDog Solution, as identified on the applicable Order.

**"Update"** means additions, upgrades, or modifications to the SyncDog Solution. Updates do not include Releases.

**License Terms.**

**License Grant.** SyncDog hereby grants to Ordering Activity during the License Term, a non-exclusive, non-transferable and non-sublicenseable license to: (a) install and use the Client Software on supported environments for up to the number of Designated Users; and (b) use, access, and for SyncDog not hosted by SyncDog, copy the Server Software on supported environments for up to the number of copies identified on the Order for Ordering Activity's internal business purposes.

**License Restrictions.** Ordering Activity shall not copy the SyncDog Solution except to make a reasonable number of copies for the purposes of security back-up, relocation or disaster recovery; provided, however, that Ordering Activity may make and use the number of copies of Client Software that it deems appropriate unless the number of copies of Client Software is restricted as set forth on the applicable Order. The SyncDog Solution may not be modified, disclosed, reverse-engineered, disassembled, or decompiled except and to the extent allowed by applicable law. Ordering Activity shall not transfer, sell, license, sublicense, outsource, rent or lease the SyncDog Solution or use it for service bureau or other third-party use. All rights not expressly granted hereunder are reserved. Ordering Activity is solely responsible and liable for the use of and access to the SyncDog Solution by Designated Users and for all files and data transmitted, shared, or stored using the SyncDog Solution. Ordering Activity acknowledges and agrees that the licenses granted herein are neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by SyncDog with respect to future functionality or features.

**Ownership.** All right, title, and interest, including without limitation all intellectual property rights, in and to the SyncDog Solution, including any and all modifications, enhancements, derivative works, Updates and Releases, are the sole and exclusive property of SyncDog and its licensors. Ordering Activity shall not remove, and shall reproduce on any permitted copies, all proprietary, copyright, trademark and trade secret notices contained in or placed upon the SyncDog Solution. Ordering Activity will take reasonable precautions (including the precautions used for Ordering Activity's own confidential information) to prevent the unauthorized use or disclosure of the SyncDog Solution, the Documentation, or the results of any performance or benchmark tests of the SyncDog Solution.

**Maintenance Support Services.** SyncDog provides Maintenance and Support Services for the License Term at no additional charge. As part of Maintenance Support Services, SyncDog will make available to Ordering Activity all Updates that SyncDog makes generally available to its other Ordering Activities.

#### **Reports.**

**5.4 Automated Reporting.** The Server Software periodically transmits technical data to SyncDog. That data does not include the content of any emails or attachments, file names or any personally identifiable information. The transmitted information contains aggregate non-personal usage information for each day the SyncDog Solution is in use, including but not limited to: (i) the number and type of messaging senders and recipients, (ii) account usage information, (iii) technical data about messaging transmissions and management; and (iv) the type of SyncDog Solution features used and related data. Ordering Activity will not in any way attempt to prevent the transmission or delivery of such usage data. SyncDog uses such data only for SyncDog's own internal business purposes. SyncDog only discloses such data (a) in an aggregated form with data from other Ordering Activities in which neither Ordering Activity's identity nor that of Designated Users are revealed, or (b) as required by applicable law.

#### **Reserved.**

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#### **Limited Warranties and Disclaimer.**

##### **Limited SyncDog Solution and Hardware Performance Warranty.**

**Warranty.** SyncDog warrants to Ordering Activity that: (i) the media on which the SyncDog Solution is furnished under normal use will be free from material defects in materials and workmanship for a period of thirty (30) days after the delivery date; (ii) the Hardware sold to Ordering Activity, if any, will be free from defects in materials and workmanship for a period of one (1) year from the date it is furnished to Ordering Activity; and (iii) the SyncDog Solution and Open Source Software will operate in substantial conformance with the Documentation for a period of thirty (30) days after the delivery date.

**Remedy.** Any warranty claim must be made by written notice to SyncDog within the applicable warranty period. SyncDog's liability and Ordering Activity's remedy under the warranty in subsection (a) above shall be replacement or repair of the defective media, Hardware or SyncDog Solution that does not meet SyncDog's limited warranty and if SyncDog is unable to repair or replace defective components of the SyncDog Solution within a reasonable period of time (not to exceed thirty (30) days from SyncDog's receipt of Ordering Activity's notice), this Agreement shall terminate, in which case: (i) SyncDog shall (a) refund all license fees received by SyncDog for the SyncDog Solution (and Hardware fees, if any); and (b) the fees received by SyncDog for the unexpired term of Maintenance Support Services, and (ii) Ordering Activity shall (a) uninstall and destroy the nonconforming SyncDog Solution and certify in writing that it has done the same; and (b) return the Hardware, if any, at SyncDog's expense. SyncDog is not liable under any warranty or otherwise for defects or liability caused by the use of the SyncDog Solution or Hardware in any manner or for any purpose other than that for which it was licensed to Ordering Activity, or for causes not within SyncDog's reasonable control. Warranties are void if failures are caused in whole or in part by accident, abuse, misuse, or modifications not authorized in writing by SyncDog.

Virus Protection. SyncDog warrants to Ordering Activity that, to the best of SyncDog's knowledge as of the date of delivery, the SyncDog Solution will be free from any viruses, spyware, trojans, or disabling or malicious code, provided that Server Software includes disabling mechanisms that prevent access to the Server Software following expiration of the License Term.

Limited Services Warranty. SyncDog warrants that for a period of thirty (30) days following installation or professional services, such services will be provided in a professional and workmanlike manner consistent with generally accepted industry standards. As Ordering Activity's sole and exclusive remedy and SyncDog's sole and exclusive liability for breach of the foregoing warranty, SyncDog will, at its sole option and expense, and provided that SyncDog is notified of any such breach during the warranty period, re-perform the services, or if SyncDog is unable to perform the services as warranted, refund the fees paid to SyncDog for the services.

Disclaimer. THE EXPRESS LIMITED WARRANTIES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, CONTRACTUAL OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SYNCDOG DOES NOT WARRANT THAT THE USE OF THE SYNCDOG SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL NONMATERIAL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. SYNCDOG MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PRODUCTS OR SERVICES PROVIDED BY ITS CHANNEL PARTNERS OR ANY HOSTED SERVICES PROVIDERS, AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY ACT OR OMISSION OF ANY CHANNEL PARTNER OR HOSTED SERVICES PROVIDERS. NO CHANNEL PARTNER OR HOSTED SERVICES PROVIDER SHALL HAVE ANY AUTHORITY TO BIND SYNCDOG TO ANY TERMS OR CONDITIONS OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN

**Reserved.**

**Reserved.**

**Reserved.**

**11.**

Government Licensing. If the SyncDog Solution is accessed or used by any agency or other part of the U.S. Government, the U.S. Government acknowledges that (i) the SyncDog Solution and accompanying materials constitute "commercial computer software" and "commercial computer software documentation" under paragraphs 252.227.14 of the DoD Supplement to the Federal Acquisition Regulations ("DFARS") or any successor regulations, and the Government is acquiring only the usage rights specifically granted in this Agreement; (ii) the SyncDog Solution constitutes "restricted computer software" under paragraph 52.227-14 of the Federal Acquisition Regulations ("FAR") or any successor regulations and the government's usage rights are defined in this Agreement and the FAR.



TANIUM  
1625 SHATTUCK AVE., SUITE 200  
BERKELEY, CA 94709

## End User License Agreement

### GRANT OF LICENSE;

**License. Affiliates and Managing Parties.** During the term of this Agreement, Tanium grants Customer a revocable, nontransferable, nonexclusive license to use the proprietary software in object code form and related proprietary components provided by Tanium to Customer in connection with this Agreement (the “**Licensed Software**”) in accordance with the Documentation for Customer’s internal use only during the applicable Licensed Term. The term “Licensed Software” will include Tanium’s then-current documentation made generally available by Tanium to its licensees for use of the Licensed Software, as updated from time-to-time by Tanium in its discretion (the “**Documentation**”), and any updates, bug fixes, and versions (collectively, “**Enhancements**”) made generally available by Tanium in connection with a Support Services entitlement or subscription-based license grant to use the Licensed Software (the “**License**”).

**License Metric.** The Licensed Software is licensed on a per Managed OS Instance basis. A “**Managed OS Instance**” means a physical or virtual hardware device where the Licensed Software can be installed, and where that device is capable of processing data. Managed OS Instances include any of the following types of computer devices: mobile/smart phone, diskless workstation, personal computer workstation, networked computer workstation, homeworker/teleworker, home-based system, file server, print server, e-mail server, internet gateway device, storage area network server, terminal servers, or portable workstation connected or connecting to a server or network. In the case of a virtual system, in addition to the virtual Managed OS Instances, the hypervisor is considered to be a single instance if Licensed Software is installed at the hypervisor level.

**Affiliates and Managing Parties.** The term “Affiliate” means an entity that is controlled by, controls, or is under common control of the Customer, where “control” means the ownership, in the case of a corporation, of more than fifty percent (50%) of the voting securities in such corporation or, in the case of any other entity, the ownership of a majority of the beneficial or voting interest of such entity. Customer may allow its Affiliate(s) to use the Licensed Software provided that (a) the Affiliate only uses the Licensed Software for Customer’s or Affiliate’s internal business purposes and up to the authorized number of Managed OS Instances in accordance with the terms and conditions of this Agreement and (b) Customer is responsible for and remains liable for the Affiliate’s use of the Licensed Software in compliance with the terms and conditions of this Agreement. If Customer enters into a contract with a third party that manages Customer’s information technology resources (“**Managing Party**”), Customer may allow its Managing Party to use Licensed Software, provided that (a) the Managing Party only uses the Licensed Software for Customer’s internal business purposes and not for the benefit of any third party or for the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (c) Customer is responsible for and remains liable for the Managing Party’s use of the Licensed Software in compliance with the terms and conditions of this Agreement.

**System Configuration.** Hardware and software requirements for proper installation and use of the Licensed Software are set forth in the relevant Documentation. Customer is solely responsible and fully liable for purchasing, providing, installing, and using all required equipment, networks, peripherals, third-party software and hardware, including, but not limited to, third-party software, scripts or other technologies that may interoperate and be used in conjunction with the Licensed Software, all of which are expressly excluded from all warranty, indemnity and support obligations described elsewhere in this Agreement.

**Restrictions.** Customer’s license to the Licensed Software is subject to the following license conditions and restrictions:

**Customer’s Benefit.** Customer must not use or permit the Licensed Software to be used in any manner, whether directly or indirectly, that would enable Customer’s personnel or any other person or entity to use

the Licensed Software for anyone's benefit other than Customer or its Affiliates. Customer must purchase each license it intends to use.

*Limitations on Copying and Distribution.* Customer must not copy or distribute the Licensed Software, whether directly or indirectly, except to the extent that copying is necessary to use the Licensed Software for the purposes set forth herein. Customer may make a single copy of the Licensed Software for backup and archival purposes.

*Limitations on Reverse Engineering and Modification.* Except to the extent such a limitation is expressly prohibited by applicable law, Customer must not reverse engineer, decompile, disassemble, modify or create derivative works of the Licensed Software whether directly or indirectly.

*Sublicense, Rental and Third Party Use.* Except to the extent expressly permitted by this Agreement, Customer must not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Licensed Software, or directly or indirectly permit any third party to use or copy the Licensed Software. Customer must not operate a service bureau or other similar service for the benefit of third parties using the Licensed Software.

*Proprietary Notices.* Customer must not remove any proprietary notices (e.g., copyright and trademark notices) from the Licensed Software. Customer must reproduce the copyright and all other proprietary notices displayed on the Licensed Software on each permitted back-up or archival copy.

*Use in Accordance with Documentation.* All use of the Licensed Software shall be in accordance with the Documentation and this Agreement.

*Use of the Licensed Software.* Customer shall be solely responsible and fully liable for its use of the Licensed Software, including, but not limited to, for ensuring that the use of the Licensed Software is in compliance with all applicable foreign, federal, state and local laws, rules, and regulations.

*Tanium's Intellectual Property.* Customer shall not use the Licensed Software or Tanium Confidential Information whether directly or indirectly to contest the validity of any Tanium intellectual property, including the Licensed Software.

*Competition.* Customer shall not use the Licensed Software or Tanium Confidential Information in a manner to compete with Tanium or to assist a third party in competing with Tanium, or for benchmarking or competitive analysis.

The Licensed Software is licensed to Customer, not sold. The Licensed Software, Documentation, and Services provided by Tanium contain material that is protected by United States copyright, trade secret law, and other intellectual property law, and by international treaty provisions. All rights not expressly granted to Customer under this Agreement are reserved by Tanium. All copyrights, patents, trade secrets, trademarks, service marks, trade names, moral rights, and other intellectual property and proprietary rights in the Licensed Software, Documentation, and Services provided by Tanium whether or not registered will remain the sole and exclusive property of Tanium or its licensors and suppliers, as applicable. Customer shall notify Tanium promptly upon learning of any attempt by anyone to misuse, misappropriate, copy, modify, derive, or reverse engineer any Licensed Software and Customer shall cooperate and assist Tanium in discovering, preventing, and recovering damages for any such misappropriation, copying, modification, derivation, or reverse engineering of the Licensed Software.

If Customer enters into a contract with a third party that manages Customer's information technology resources ("**Managing Party**"), Customer may allow its Managing Party to use the Licensed Software on Customer's Managed OS Instances, provided that (a) the Managing Party only uses the Licensed Software for Customer's internal business purposes and not for the benefit of any third party or for the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (c) Customer is responsible for and remains liable for the Managing Party's use of the Licensed Software in compliance with the terms and conditions of this Agreement. In addition, Customer shall ensure that its personnel comply with the terms of this Agreement.



**Term and Termination.** Unless otherwise agreed in a Schedule, the License(s) will commence upon the initial delivery of the license keys that allow Customer to download or access the Licensed Software (“**Delivery**”) and will continue for the term of the applicable License(s) or until this Agreement is terminated as provided in this Section, whichever occurs first (the “**Licensed Term**”). When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Tanium shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief,

claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon any termination or expiration of this Agreement, the license granted in Section 1 (Grant of License) will automatically terminate and Customer will have no further right to possess or use the Licensed Software. Tanium reserves the right to seek all remedies available at law and in equity for Customer’s material breach of this Agreement.

#### **FEES AND EXPENSES; DELIVERY AND TAXES.**

*Fees and Expenses.* Notwithstanding anything else to the contrary, if Customer orders from a Tanium authorized business partner (“**Reseller**”), final terms of the transaction (e.g., pricing, discounts, fees, payments, and taxes) are solely subject to the agreement between Customer and its Reseller of choice. This Agreement will govern Tanium’s provision and Customer’s license to the Licensed Software and Services whether Customer orders the Licensed Software and Services from Tanium or a Reseller. Unless Customer orders directly from a Reseller, Customer will pay the Licensed Software and Services fees directly to Tanium and Tanium will fulfill all orders. The parties will enter into a schedule(s) or purchase order(s) that describe the Licensed Software and/or Services to be acquired by Customer (each a “**Schedule**”). This Agreement applies to any Schedule that references this Agreement. When a purchase order will be utilized as a Schedule, the purchase order must reference and be made pursuant to this Agreement and the applicable Quote. Notwithstanding anything else to the contrary, any terms and conditions in the purchase order that conflict or are inconsistent with the current approved Tanium-provided quote issued to the Customer for the Licensed Software and Services in accordance with the GSA Schedule Contract and GSA Schedule Pricelist (the “**Quote**”) or this Agreement will have no force or effect. The purchase order will not add or remove terms from the Quote or this Agreement. Tanium further reserves the right to expressly reject any purchase order that does not comport to the requirements of this Section.

Unless otherwise set forth in a Schedule: (a) fees for Licenses and Support Services will be billed, due, and payable fully in thirty (30) days after Customer’s receipt of an invoice. Payments will be made by electronic transfer to a bank account designated by Tanium on the invoice in the amount of fees for the Licensed Software and Services ordered (less any applicable credits and deductions and plus any applicable shipping and other charges). The effective date of payment shall be the date on which the entire amount due is credited to Tanium’s bank account or the instrument enabling immediate collection of the entire amount due is received. All payments not made by Customer when due will be subject to late charges of the maximum amount permitted under the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

*Taxes.* Tanium shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. Taxes do not include any taxes payable by Tanium for its employees or for its net income.

All Licensed Software will be delivered and accessed electronically. In conjunction with the billing, collection and payment of any Taxes, Customer must provide Tanium with a physical address of the download site for the Licensed Software. This address will be used as the “shipped to address” on all invoices.

#### **SERVICES; SYSTEMS INFORMATION.**

*Services.* The term “**Services**” means, collectively, the Support Services, training and any other services acquired by Customer from Tanium. If Customer has a current Support Services entitlement or License

governed by this Agreement, then Tanium will provide Customer with the support and maintenance services described in Exhibit A (the “**Support Services**”). Once the relevant Support Services entitlement or License has expired, Customer has no further right to receive any Support Services. All Services are provided subject to the terms and conditions of this Agreement.

**Systems Information.** During the term of the Agreement, Customer may provide to Tanium or Tanium’s Licensed Software and Services may collect information including, but not limited to, performance and analytics information relating to Customer’s use of Tanium’s products and services, metadata relating to Customer’s networks and systems, device identifiers, network telemetry, endpoint telemetry, system configuration, and data generated through any of the foregoing (collectively, “**Systems Information**”). Customer agrees that Tanium may use Systems Information to provide Customer with technical support and to research, develop, and improve

Tanium’s products and services, and, on an aggregated, anonymized basis, for marketing purposes (the “**Permitted Purpose**”). To the extent Systems Information constitutes Customer’s Confidential Information, Systems Information will be held in confidence by Tanium in accordance with Section 10 (Confidentiality). For clarity, any data that is derived by Tanium from its use of the Systems Information for the Permitted Purpose, such that the Customer cannot be identified from the derived data, is not considered Customer’s Confidential Information. Customer, rather than Tanium, determines which types of data, including Personal Data (as defined in the Data Processing Addendum), exists on its systems. To the extent that Tanium obtains Personal Data in connection with providing the Licensed Software and Services, Tanium will process such Personal Data pursuant to the Data Processing Addendum found at <http://www.tanium.com/dpa>. Because Customer’s endpoint environment is unique in configurations and naming conventions, the Systems Information could potentially include Personal Data. Customer may redact, edit, or otherwise suppress any Systems Information, including Personal Data, prior to providing to Tanium for processing. To the extent any Systems Information includes Personal Data, Customer represents and warrants that it has made all necessary disclosures and has a lawful basis to share the Personal Data with Tanium for the Permitted Purpose. In addition, Tanium may process, use or disclose such Personal Data only: (i) in furtherance of its obligations pursuant to this Agreement; (ii) as required or permitted by law; (iii) as directed or instructed by Customer; or (iv) with prior informed consent of the data subject to whom the Personal Data pertains. As between Customer and Tanium, the foregoing states Tanium’s entire obligation with respect to Personal Data.

**Limited Warranty; Disclaimer.** Tanium warrants that (i) for a period of ninety (90) days from the Effective Date, the Licensed Software will operate in substantial conformity with the Documentation; and (ii) it shall use commercially reasonable efforts to screen the Licensed Software prior to Delivery to Customer for viruses, Trojan horses, and other malicious code. The foregoing warranties are solely for the benefit of Customer and Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer, and the sole and exclusive liability of Tanium, for breach of the foregoing warranties in this Section, shall be to repair or replace the non-conforming Licensed Software, or if repair or replacement would, in Tanium’s opinion, be commercially unreasonable, then Tanium shall terminate the relevant licenses and refund to Customer the portion of prepaid license fees paid for such non-conforming Licensed Software. This warranty is contingent upon the proper installation and use of the Licensed Software as described in the Documentation and this Agreement; Tanium shall not be responsible for Customer’s use of the Licensed Software if not operated in a manner recommended in the Documentation. Any modification to the Licensed Software by Customer or any third party or failure by Customer to implement any Enhancements to the Licensed Software may void Tanium’s obligation to provide Support Services and Tanium’s warranties under this Section. EXCEPT AS PROVIDED IN THIS SECTION, THE LICENSED SOFTWARE AND ALL SERVICES ARE PROVIDED ON AN “AS-AVAILABLE,” “AS-IS” BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE AND SERVICES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. TANIUM DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR SERVICES WILL MEET CUSTOMER’S REQUIREMENTS, OR WILL CAUSE CUSTOMER TO BE COMPLIANT WITH APPLICABLE LAW; THAT CUSTOMER’S USE OF THE LICENSED SOFTWARE OR SERVICES WILL SATISFY ANY STATUTORY OR REGULATORY

OBLIGATIONS; THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT ERRORS OR DEFECTS IN THE LICENSED SOFTWARE WILL BE CORRECTED. TANIAM DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE PERFORMANCE OR RESULTS OF THE LICENSED SOFTWARE OR SERVICES. TANIAM DOES NOT PROVIDE WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCTS, SCRIPTS, CONTENT OR OTHER TECHNOLOGIES. NO ORAL OR WRITTEN INFORMATION OR ADVICE, INCLUDING, BUT NOT LIMITED TO, SUGGESTIONS, ROUTINES, SCRIPTS OR QUERIES, PROVIDED BY TANIAM SHALL CREATE ANY ADDITIONAL TANIAM WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF WARRANTIES OR TANIAM'S LIABILITY OR OBLIGATIONS UNDER THIS AGREEMENT. TANIAM HAS NO RESPONSIBILITY OR LIABILITY FOR ANY THIRD-PARTY PRODUCTS OR TECHNOLOGIES USED BY CUSTOMER WHETHER INDEPENDENTLY OR IN CONJUNCTION WITH THE LICENSED SOFTWARE. If applicable law affords Customer implied warranties, guarantees or conditions despite these

exclusions, those warranties will be limited to one (1) year from the Effective Date and Customer's remedies will be limited to the maximum extent allowed by Sections 7 (Limited Warranty; Disclaimer) and 9 (Limitation of Liability).

**Indemnities.** If a third party claims that Customer's licensed use of the Licensed Software in compliance with the terms of this Agreement infringes a United States: (i) patent, (ii) copyright, or (iii) trade secret of that third party, Taniam, at its sole cost and expense, will have the right to intervene to defend Customer against any such claim, and indemnify Customer from any damages, liabilities, costs and expenses awarded by a court to the third party claiming infringement or set forth in a settlement agreed to by Taniam. The foregoing obligation of Taniam is contingent upon Customer promptly notifying Taniam in writing of such claim, permitting Taniam authority to control the defense or settlement of such claim, and providing Taniam reasonable assistance in connection therewith. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If a claim of infringement under this Section occurs, or if Taniam determines a claim is likely to occur, Taniam will have the right, in its sole discretion, to either: (i) procure for Customer the right or license to continue to use the Licensed Software; or (ii) modify the Licensed Software to make it non-infringing, without loss of material functionality. If either of these remedies is not reasonably available to Taniam, Taniam may, in its sole discretion, immediately terminate this Agreement and return the license fees paid by Customer for the infringing Licensed Software, prorated for use over the lesser of: (i) reserved (ii) the remaining unused Licensed Term. Notwithstanding the foregoing, Taniam shall have no obligation with respect to any claim of infringement that is based upon or arises out of (the "**Excluded Claims**"):

(i) the use or combination of the Licensed Software with any third-party or Customer hardware, software, products, data or other materials; (ii) modification or alteration of the Licensed Software by anyone other than Taniam; (iii) Customer's failure to implement any fix or release that would have avoided the claim; (iv) Customer's use of the Licensed Software in excess of the rights granted in this Agreement; (v) any third-party components; or (vi) a business method or process that is inherent to Customer's business. The provisions of this Section state Customer's sole and exclusive remedy and the sole and exclusive obligations and liability of Taniam and its licensors and suppliers for any claim of intellectual property infringement arising out of or relating to the Licensed Software and/or this Agreement and are in lieu of any implied warranties of non-infringement, all of which are expressly disclaimed.

**Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL TANIAM OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES, WHICH THE PARTIES EXPRESSLY AGREE SHALL INCLUDE, WITHOUT LIMITATION AND REGARDLESS OF ITS LEGAL CATEGORIZATION, ANY DAMAGES FOR LOST PROFITS, LOST DATA AND BUSINESS

INTERRUPTION, COMPUTER FAILURE AND MALFUNCTION, AND/OR COST OF REPLACEMENT GOODS AND SERVICES OR ANY OTHER DAMAGES ARISING OUT OF OR RELATED TO THE LICENSED SOFTWARE, SERVICES OR THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY ACTIONS OR ITEMS DISCLAIMED IN SECTION 7 (LIMITED WARRANTY; DISCLAIMER), EVEN IF TANIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE MAXIMUM AGGREGATE LIABILITY OF TANIUM AND ITS LICENSORS AND SUPPLIERS UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER FOR PURCHASE ORDER(S) GIVING RISE TO SUCH CLAIM. THE FOREGOING IS INTENDED TO BE AN AGGREGATE LIMIT, NOT PER INCIDENT. THE PARTIES ACKNOWLEDGE THAT ONLY CUSTOMER CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO THEIR OWN NEEDS TO PROTECT THEMSELVES IF AN ERROR IN THE SOFTWARE CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE REASONS, CUSTOMER AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGES THAT WITHOUT CUSTOMER'S AGREEMENT TO THESE TERMS, THE FEE CHARGED FOR THE LICENSED SOFTWARE WOULD BE HIGHER. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF ANY OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER SUCH ACTION ACCRUED. IN THE EVENT TANIUM MAKES A REFUND PURSUANT TO AN EXPRESS REMEDY UNDER THIS AGREEMENT, ANY SUCH MONIES REFUNDED BY TANIUM WILL BE APPLIED TO THE MEASURE OF DAMAGES SUBSEQUENTLY AWARDED BY THE COURT, IF ANY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**Confidentiality.** Each party agrees to hold the other party's (and that of its affiliates disclosed in connection with this Agreement) Confidential Information in confidence using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all times exercising at least a commercially reasonable degree of care in the protection of such Confidential Information), and not to make each other's Confidential Information available in any form to any third party (other than their authorized agents) or to use each other's Confidential Information for any purpose other than as specified in this Agreement (subject, in all cases, to the rights granted to Tanium in Section 11.2). Each party agrees to take all reasonable steps to ensure that Confidential Information of the other party is not disclosed, used or distributed by its employees, agents, or consultants in violation of the provisions of this Agreement. In addition, Customer must ensure that any Managing Party will hold Tanium's Confidential Information in confidence and otherwise comply with this Section. "**Confidential Information**" shall mean, with respect to a party hereto, all information or material disclosed or made available by one party or its affiliates to the other or its affiliates in connection with this Agreement which (i) gives that party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of that party; or (ii) from all the relevant circumstances should reasonably be assumed to be confidential. Confidential Information includes, but is not limited to, the Licensed Software. Each party's Confidential Information shall remain the sole and exclusive property of that party. Neither party shall have any obligation with respect to Confidential Information which:

(i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party without restrictions on disclosure; (iii) is independently developed by the receiving party without reliance upon or use of the disclosing party's Confidential Information; or (iv) is approved for release by the disclosing party in writing. Notwithstanding the foregoing, Customer acknowledges and agrees that Tanium may use Customer's Confidential Information internally at Tanium for sales/support analytics and training. In the event the parties previously executed a non-disclosure agreement related to Customer's prospective license of the Licensed Software or Services, the terms of this Section 10 (Confidentiality) will supersede such non-disclosure agreement from and after the Effective Date.

#### **EVALUATION SOFTWARE AND FEEDBACK.**

**Evaluation Software.** This Section only applies to Licensed Software designated by Tanium as "**Evaluation Software**." Subject to Section 2 (Restrictions), Tanium grants to Customer a non-transferable, non-

exclusive limited license to use the Evaluation Software for its internal evaluation and lab purposes only. The term of this license is for a period of thirty (30) days following Delivery of the Evaluation Software (“**Evaluation Period**”). Tanium may extend the Evaluation Period in writing at its discretion. Unless otherwise agreed in writing by Tanium, Customer agrees to use the Evaluation Software in a non-production environment. Customer bears the sole risk of using the Evaluation Software. TANIUM PROVIDES THE EVALUATION SOFTWARE TO CUSTOMER “AS-IS” AND GIVES NO REPRESENTATION, WARRANTY, INDEMNITY, GUARANTEE OR CONDITION OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM’S TOTAL AGGREGATE LIABILITY AND THAT OF ITS LICENSORS, SUPPLIERS, AND PARTNERS IS EXPRESSLY LIMITED TO FIVE HUNDRED DOLLARS (\$500) FOR ANY AND ALL DAMAGES REGARDLESS OF THE NATURE OF THE CLAIM OR THEORY OF LIABILITY. Because the Evaluation Software is provided “AS-IS,” Tanium may not provide Services for it. This Section supersedes any inconsistent term in the Agreement for purposes of the Evaluation Software.

**Feedback.** Customer may provide suggestions, comments, or other feedback (collectively, “**Feedback**”) to Tanium with respect to its products and services, including the Licensed Software. Feedback is voluntary and Tanium is not required to hold it in confidence. Tanium may use Feedback for any purpose without obligation

of any kind. To the extent a license is required under Customer’s intellectual property rights to make use of the Feedback, Customer hereby grants Tanium an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with Tanium’s business, including enhancement of the Licensed Software. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

**Beta Software.** If the Licensed Software released to Customer has been identified by Tanium as “**Beta Software**,” then the provisions of Section 11.1 (Evaluation Software) will apply, in addition to this Section 11.3. Customer is under no obligation to use any Beta Software; doing so is in Customer’s sole discretion. Because Beta Software can be at various stages of development, operation and use of the Beta Software may be unpredictable. Customer acknowledges and agrees that: (1) Beta Software has not been fully tested; (2) use or operation of Beta Software should not occur in a production environment; (3) Customer’s use of Beta Software will be for purposes of evaluating and testing new functionality and providing Feedback to Tanium; and (4) Customer will inform its personnel regarding the nature of the Beta Software. In addition, Tanium has no obligation to Customer to (1) further develop or release the Beta Software or (2) provide Services for the Beta Software. If Tanium releases another version of the Beta Software, Customer will return or destroy all prior version(s) or release(s) of the Beta Software that it received from Tanium.

**Governing Law/Jurisdiction.** This Agreement will be governed by and construed in accordance with the Federal laws in force in the United States. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply.

**General.** This Agreement, together with the attached Data Processing Addendum, Schedules and any exhibits attached hereto, constitutes the entire understanding and agreement between Tanium and Customer with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications, including without limitation pre-printed terms and conditions on Customer’s purchase order, with respect to the subject matter of this Agreement, all of which are merged in this Agreement. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties. In the event any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall remain valid and enforceable according to its terms. Any failure by Tanium to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. All notices, demands, or consents given under this Agreement will be in writing to the address on Page 1 of this Agreement, “Attention Legal Department.” Notices will be considered when delivered personally, or three (3) days after deposit in the mail (registered mail), or one

(1) day after being sent by overnight courier. There are no intended or implied third-party beneficiaries of this Agreement. The following provisions shall survive any termination or expiration of this Agreement:



Sections 2 (Restrictions), 4 (Term and Termination), 5.1 (Fees and Expenses; Delivery and Taxes), 6.2 (Systems Information), 9 (Limitation of Liability), 10 (Confidentiality), 11.2 (Feedback), 12 (Governing Law/Jurisdiction), 13 (General), 15 (U.S. Government Rights), 16 (Audit), 17 (Force Majeure), and Customer's indemnity obligations hereunder. Tanium may assign any of its rights or obligations hereunder as it deems necessary. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.**

**Export.** Customer acknowledges that the Licensed Software is subject to the export control, economic sanctions, and import laws, regulations and requirements of the United States and other countries including European Union regulations. Without limiting the foregoing, Customer agrees that it will not export, re-export, or re-transfer the Licensed Software or Services in contravention of the foregoing, or provide the Licensed Software or Services to any person, in any jurisdiction, or to any user that would create a licensing requirement under U.S. Export control and economic sanctions laws, regulations and requirements without first obtaining any such license. Customer acknowledges that certain Licensed Software that contains encryption may be subject to export and/or import restrictions in other countries. Tanium will reasonably cooperate, in Tanium's discretion, in assisting Customer with respect to an application for any required export or import licenses and approvals; however, Customer acknowledges it is Customer's ultimate responsibility to comply with all export and import laws and that Tanium has no further responsibility after the initial sale to Customer within the original

country of sale. In addition to the other requirements of this Section, Customer shall be solely responsible for complying with the import laws and regulations and other relevant restrictions, if any, of any country into which Customer imports the Licensed Software or Services. Customer will not export or use any Licensed Software or Services in any country not supported by Tanium, including, but not limited to, embargoed and sanctioned countries as promulgated by the United States Government.

**U.S. Government Rights.** The Licensed Software is commercial computer software as described in DFARS 252.227-7014(a) (1) and FAR 2.101. If acquired by or on behalf of any agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

**Audit.** During the term of this Agreement and for one (1) year thereafter, no more than once in any twelve (12) month period, Tanium may audit Customer's use of the Licensed Software ("**Audit**"). An Audit will generally consist of Customer providing a system-generated deployment report evidencing Customer's deployment of the Licensed Software. An Audit may also include the inspection and review of computers or servers on which the Licensed Software has been installed or hosted, and Customer's compliance with the terms of this Agreement. Tanium (or an auditor retained by Tanium) shall provide Customer at least five (5) days' advance notice of an Audit. Customer will reasonably cooperate with Tanium and any auditor retained by Tanium in the conduct of the Audit. Audits will be conducted during Customer's normal business hours and are subject to Government security requirements. The cost of the Audit shall be borne by Tanium. Customer will immediately remit payment for any Licensed Software deployed in excess of the Licensed Software licenses purchased by Customer under this Agreement.

**Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

*[Signature Page Follows]*

Tanium and Customer have executed this Agreement to become effective as of the Effective Date.

**TANIUM INC.**

**CUSTOMER**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A**

**TANIUM SUPPORT SERVICES TERMS AND CONDITIONS**

**TANIUM WILL PROVIDE SUPPORT SERVICES TO CUSTOMER ACCORDING TO THE AGREEMENT AND SUPPORT SERVICES TERMS AND CONDITIONS SET FORTH BELOW. CAPITALIZED TERMS NOT OTHERWISE DEFINED HEREIN WILL HAVE THE MEANING SET FORTH IN THE AGREEMENT.**

**Definitions.**

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**“Error”** means a failure of the Licensed Software to perform in substantial accordance with the Documentation.

**“Error Correction”** or **“Correction”** means the use of reasonable commercial efforts to correct Errors.

**“Fix”** means the repair or replacement of object or executable code versions of Licensed Software to remedy an Error.

**“Previous Sequential Release”** means at any time the release of Licensed Software that has been replaced by the then-current release of the same Licensed Software. Notwithstanding anything else, a Previous Sequential Release will be



supported by Tanium only for a period of three (3) months after release of the then-current release. For example, Tanium will support 1.0 for a period of three (3) months following release of 1.1.

“**Severity 1 Error**” means an Error that renders Licensed Software inoperative or causes Licensed Software to fail catastrophically.

“**Severity 2 Error**” means an Error that substantially degrades the performance of Licensed Software or materially restricts Customer’s use of the Licensed Software.

“**Severity 3 Error**” means an Error that causes only a minor impact on the performance of Licensed Software or Customer’s use of Licensed Software.

“**Support Services**” or “**Support**” means Tanium support services as described in Section 4 (Standard Support Services), Section 6 (Premium Support), and/or Section 7 (Premium Onsite Support and Enterprise Services Resources), as applicable.

“**Support Request**” means a Customer request made to Tanium in accordance these Support Services Terms and Conditions.

“**Telephone Support**” means technical support telephone assistance provided by Tanium to the TechnicalSupport Contact concerning the installation and use of the then-current release of Licensed Software and the Previous Sequential Release.

“**Technical Support Contact**” means the person designated by Customer that may contact Tanium for support.

“**Workaround**” means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer’s use of Licensed Software.

**Support Term; Renewal Fees. Unless otherwise set forth in a Schedule, the term of Support shall be one (1) year from the Support order date (the “Initial Support Term”). After the Initial Support Term, the Support may be renewed by both parties exercising an option, or a new purchase order, and all applicable fees shall be due at the commencement of each successive one (1) year period or other period specified in a Schedule (each a “Renewal Support Term”). The Initial Support Term and any Renewal Support Terms, if any, are referred to collectively as the “Support Term.”** Unless otherwise set forth in a Schedule, following the InitialSupport Term, Tanium may change the fees for Support set forth above by providing Customer with thirty (30) days’ written notice in advance of the effective date of any change in such fees.

RESERVED.

## **Support Services.**

*General.* During the Support Term, Tanium shall provide Customer with (i) reasonable support for Customer’s Technical Support Contact(s), (ii) Error Correction, and (iii) Enhancements that Tanium in its sole discretion makes generally available to its other customers at no charge. Support Services are available Monday through Friday, 7 a.m. to 7 p.m. Pacific Standard Time, excluding Tanium holidays. Tanium will

endeavor to work with Customer during Customer's normal business hours in the time zone in which the Customer located. Customer may designate up to a maximum of two (2) Technical Support Contacts with Tanium's standard Support Services. Tanium is only obligated to provide Support Services to Customer in countries supported by Tanium.

Customer may contact Tanium for support by:

submitting a request via the Tanium Support Portal;  
emailing [support@tanium.com](mailto:support@tanium.com); or  
calling Telephone Support (1 510 900 9443).

Tanium will make commercially reasonable efforts to assist Customer with the installation and configuration of the Licensed Software, during the hours specified in Section 4.1 as part of Support Services, which will include, but not be limited to:

Specifying hardware and software requirements; and  
Reviewing Tanium's pre-deployment and production deployment checklist(s), as applicable.

Customer will support remote delivery via teleconference or screen sharing application (e.g., WebEx). Customer will assign qualified technical administrators and project management personnel to perform hands-on installation and configuration tasks. Customer will make a good-faith effort to ensure timeliness of deployment and Customer will provision alternate physical or virtual server(s) to permit initial agent deployment, if necessary; and Customer will ensure server(s) are in one location. Unless otherwise agreed in writing, Customer will not provide Tanium with direct access to Customer's systems.

**Error Correction.** Tanium shall use commercially reasonable efforts to correct reproducible Errors reported by Customer in the current unmodified release of the Licensed Software, in accordance with the severity level reasonably assigned to such Error by Tanium:

**Severity 1 Error:** Tanium shall promptly commence the following procedures: (i) assign Tanium engineers to correct the Error; (ii) notify Tanium management that such Error has been reported and of steps being taken to correct such Error; (iii) provide Customer with periodic reports on the status of the corrections; and (iv) initiate work to provide Customer with a Workaround or Fix.

**Severity 2 Error:** Tanium shall exercise commercially reasonable efforts to include a Fix for the Error in the next regular Licensed Software maintenance update.

**Severity 3 Error:** Tanium may include a Fix for the Error in a later major release of the Licensed Software.

**Unsupported Failures.** If Tanium believes that a problem reported by Customer may not be due to an Error in the Licensed Software, Tanium will so notify Customer. If Customer informs Tanium that it does not wish the problem pursued at Customer's possible expense or if such determination requires effort more than Customer's instructions, Tanium may, at its sole discretion, elect not to investigate the problem without liability therefor.

**Exclusions.** Notwithstanding the foregoing, Tanium shall have no obligation to provide Support Services for: (i) altered, damaged or modified Licensed Software or any portion of the Licensed Software incorporated with or into other software; (ii) Licensed Software that is not the then-current release or Previous Sequential Release; (iii) Licensed Software issues caused by Customer's negligence, abuse or misapplication, Customer's use of Licensed Software other than as specified in the Documentation, or by

other factors beyond the control of Tanium; or (iv) third-party products.

**Customer's Obligations.** Customer shall have the following obligations:

Customer will provide the location of its server(s) to Tanium.

All Support Requests shall be submitted by Customer to Tanium through Customer's Technical Support Contact(s). Customer may change its designation of Technical Support Contact(s) upon written notice to Tanium.

Customer shall provide Tanium with the personnel who have free and full access to the Licensed Software for purposes of rendering Support Services, including, where appropriate, dedicated modem access.

Customer is responsible for (1) preparing and maintaining their systems and facilities in accordance with the specifications of the appropriate suppliers, (2) securing all required permits, inspections, and licenses, (3) providing adequate personnel to assist Tanium in carrying out its duties under this Agreement, (4) installing any

Fixes and Enhancements to the Licensed Software made generally available by Tanium, and (5) complying with all applicable state and federal laws.

Customer shall ensure the appropriate Customer personnel have been trained in the operation, support, and management of the Licensed Software.

Customer shall be solely responsible for maintaining all necessary backup and recovery procedures to prevent loss of its data.

Customer shall install and implement Fixes and Enhancements to the Licensed Software made generally available by Tanium within sixty (60) days of their general availability, unless a delay is mutually agreed upon in writing by the parties. Customer's failure to install and implement Fixes and Enhancements may result in Customer's inability to (1) receive future Fixes or Enhancements, or (2) achieve compatibility among the Licensed Software products made available by Tanium.

Customer shall obtain at Customer's expense the latest level of third-party technology as designated by Tanium.

**Premium Support.** If Customer purchases Tanium Premium Support ("TPS"), Tanium will provide an expanded support offering over the duration of the TPS Support Term that, in addition to Tanium's standard Support Services, includes:

*Priority Support Portal Notification* – Technical Account Manager ("TAM") management team copied on each Support Request submitted by Customer to ensure immediate escalation.

*Prioritization* – TAMs assigned to Customer will prioritize Support Requests submitted by Customer.

*Implementation Review and Advice* - TAMs assigned to Customer will be available to assist with the deployment and configuration of the Licensed Software and provide ongoing advice to the Customer.

*Remote Support* – TAMs assigned to the Customer will provide remote support.

*24-Hour Support* – For Severity 1 Error and Severity 2 Error Support Requests, 24-hour support is available via telephone, Support Portal or email.

*Technical Support Contacts* – Customer may designate up to a maximum of six (6) Technical Support Contacts with TPS.

*24-Hour Support Process.*

During normal business hours, support for Severity 1 Error and Severity 2 Error Support Requests following the guidelines specified in the relevant Standard Support Services and Premium Support Services sections. During off-business hours, Support is extended through TPS.

*Support Portal* – Support Requests made through the Support Portal during off hours are automatically assigned to active TAMs. For appropriate escalation, Support Requests must be flagged as “Severity 1 Error” or “Severity 2 Error” and must be filed through a user account where the domain of the configured email matches a customer entitled to TPS. If the Support Request is not engaged or opened in a timely fashion, active TAM managers are automatically notified.

*Phone Support* – Support Requests via telephone during off hours are sent to active TAMs. Only Support Requests that are verbally verified as “Severity 1 Error” or “Severity 2 Error” will be engaged and supported during off hours.

*Support Portal-Email Support* – Support Requests via email to [support@tanium.com](mailto:support@tanium.com) cannot be escalated with the appropriate “Severity 1 Error” or “Severity 2 Error” classification. However, once submitted, the Technical Support Contact or reporter of the Support Request may enter the Support Portal and directly update the Support Request to include the “Severity 1 Error” or “Severity 2 Error” classification to engage in the 24-hour support process accordingly.

**Premium Onsite Support and Enterprise Services Resources.** If Customer purchases Premium Onsite Support Services or an Enterprise Support Services Resource, the terms and conditions of Appendix A will apply.

**APPENDIX A TO EXHIBIT A**

**Premium Onsite Support Services and Enterprise Support Services Resources**

**PREMIUM ONSITE SUPPORT.**

*General.* Tanium Premium Onsite Support may be obtained from Tanium at its then-current list price or a mutually negotiated price in accordance with the GSA Schedule Pricelist. Premium Onsite Support consists of a fixed number of onsite support visits to be provided by a qualified Tanium Technical Account Manager (“**TAM**”). Unless otherwise set forth in the Agreement or Schedule, each unit of Premium Onsite Support will entitle Customer to a maximum number of site visits during the relevant premium support term, the length of which is specified in the Agreement or Schedule (“**Premium Support Term**”). A site visit will generally be based on an eight (8) hour workday, during normal business hours, but a particular visit may vary based on the specific needs of the Customer that can reasonably be accomplished in a business work day. If Customer purchases Premium Onsite Support Services, Tanium will perform the support services for Customer in accordance with the following terms and conditions.

*During the site visits, the TAM may:*

act as a primary Tanium console operator in a staff augmentation capacity for the Customer;  
help plan, communicate and monitor the status, health and challenges associated with installation and deployment of the Licensed Software in Customer’s environment;  
provide consolidated reporting of current deployment status to Tanium’s senior technical and sales leadership and designated Customer representatives;  
maintain ongoing technical relationships with Customer and provide weekly reporting to Tanium’s senior technical and sales leadership and designated Customer representatives;  
track all tickets, bugs, feature requests, improvement requests and ongoing communications regarding the Licensed Software within the customer’s environment;  
observe ongoing operations for potential problems and improvements; such observations will be brought to the attention of Tanium’s senior technical and sales leadership and designated Customer representatives; and  
independently undertake tuning and configuration of the Tanium system as well as provide more advanced technical support.

*The TAM will not and the Customer shall ensure that its personnel do not request that the TAM:*

create custom content such as sensors, packages, and ‘Saved Questions’ for the Licensed Software;  
execute an action (e.g., deploying a patch) using the Licensed Software without the advance written review and approval by a designated Customer representative;  
use the Licensed Software to perform any incident response services;  
use any destructive content (e.g., file delete action) on behalf of the Customer; or

act in a capacity to directly support the underlying operating system, hardware, network or other involved hardware or software on which the Tanium instance is running or dependent.

In addition, Tanium will designate a lead onsite TAM during the Premium Support Term (“**Lead OTAM**”) where Tanium and Customer agree that the level of support and/or necessary access and privileges require the TAM to be a named individual. The Lead OTAM will be the primary TAM supporting Customer during the Premium Support Term. Tanium and Customer will cooperate to select a Lead OTAM who will be eligible for all necessary access and privileges to perform the support services described herein. Customer acknowledges and agrees that the timeline for the Lead OTAM to on-board at Customer’s location is approximately sixty (60) to ninety (90) days from the order date (“**On-Boarding Period**”). During the On-Boarding Period, Tanium will assign an interim support resource, which may be an interim Lead OTAM or other available TAM, to facilitate the support services. In any event, site visits for all resources will be scheduled by phone, email, or through the Tanium’s TAM scheduling tool and in accordance with applicable Government security requirements. Customer may not be able to schedule a site visit for specific days due to paid-time-off, illness, holidays, training, vacations or meetings. Even on days when a TAM is not available for a site visit, Customer may obtain TAM support through interim resources using the TAM scheduling tool or through Tanium’s standard Technical Account Management procedures set forth in the Agreement. The interim TAM will support Customer until the Lead OTAM commences or returns, as applicable, or a new Lead OTAM is designated by Tanium.

TAMs will work with Customer to schedule site visits. Scheduling may be accomplished by planning visits one day at a time or by designating regular office hours on a recurring basis. If the Lead OTAM is unavailable or has not yet been designated, an interim lead or other TAM resource will conduct site visit(s). Customer bears the ultimate responsibility to schedule the TAM site visits. No refunds for Premium Onsite Support Services will be provided because Customer did not schedule visits or was unable to provide access, materials, credentials, escorts or anything else necessary to conduct the support services described herein during the Premium Support Term.

*Customer Responsibilities.* While Tanium endeavors to complete Support Services in a reasonable period of time, certain factors are beyond Tanium’s control, including force majeure events and delays caused by third parties and Customer. Tanium shall not be responsible for any delays or liabilities resulting from such factors. In addition to any Customer responsibilities set forth in the Agreement, to facilitate prompt and efficient completion of the Support Services, Customer and its personnel shall cooperate fully with Tanium and its personnel in all respects, including, without limitation, providing information as to Customer requirements, providing access to the equipment/hardware on which the Licensed Software is or will be installed, and providing access to all necessary information regarding Customer’s systems. Customer shall be responsible for making, at its own expense, any changes or additions to Customer’s current systems, software, and hardware that may be required to support operation of the Licensed Software. In addition, Customer is responsible for providing the TAM or Lead OTAM with all access, materials, credentials, escorts, or anything else necessary to conduct the Support Services described herein.

In addition, Customer will assign an action reviewer/approver to act in as the final Tanium Action Approver for all Tanium Actions submitted by the Lead OTAM who will have final approval authority for all actions issued in the Tanium console; and enable action approver within the Tanium console and enforce the use thereof.

*Scope and Progress Meeting.* Tanium and Customer will develop a mutually acceptable work plan for any services that are beyond the scope of Premium Onsite Support Services set forth above. Customer will appoint a senior-level technology professional to serve as a liaison with the Lead OTAM. Customer’s representative and the Lead OTAM will meet once a week to discuss the status and progress of all work related to the Premium Onsite Support Services.



*Remote Support.* Certain Support Services may be provided remotely via telephone or electronic communications. Customer agrees that Tanium resources may access Customer's systems during the relevant Premium Support Term, using a defined standard virtual private network (VPN). If a network connection between Tanium and Customer's systems is required for Tanium to perform the Support Services, Customer will provide such access as follows:

Customer is responsible for ensuring that (i) its network and systems comply with specifications provided by Tanium; (ii) all components of Customer's Tanium environment are accessible through the VPN; and (iii) the VPN is installed in a timely manner for Tanium to perform the Support Services.

Customer is responsible for acquiring and maintaining any equipment and performing any activities necessary to set-up and maintain network connectivity at and to Customer's Tanium environment.

Customer will provide and maintain user accounts for, and access to, the VPN for the Tanium resources, including, but not limited to, Tanium's onsite and remote resources.

Tanium is not responsible for network connection issues, problems or conditions arising from or related to network connections, such as bandwidth issues, excessive latency, network outages, and/or any other conditions that are caused by an internet service provider, or the network connection. If Customer's VPN client software and/or VPN infrastructure fails to allow Tanium access to perform Support Services, Customer agrees to pay for any increased costs resulting from such failure.

#### **ENTERPRISE SUPPORT SERVICES RESOURCES.**

*General.* Tanium Enterprise Support Services Resources may be obtained from Tanium at its then-current list price or mutually negotiated price during the relevant Enterprise Support Services term, the length as specified in the Agreement or Schedule ("**ESR Support Term**"). The Enterprise Support Services Resource ("**ESR**") will be available to provide Enterprise Support Services for a specified period of time, as determined by Tanium, during the ESR Support Term, which may consist of remote and onsite support. If applicable, unless otherwise set forth in the Agreement or Schedule, Tanium and Customer will determine the number of site visits required during the ESR Support Term. A site visit will generally be based on an eight (8) hour work day, during normal business hours, but a particular visit may vary based on the specific needs of the Customer that can reasonably be accomplished in a business work day. If Customer purchases Tanium Enterprise Support Services, Tanium will provide an ESR to Customer in accordance with the following terms and conditions.

*The ESR may:*

act as a primary Tanium console operator in a staff augmentation capacity for the Customer;  
help plan, communicate and monitor the status, health and challenges associated with installation and deployment of the Licensed Software in Customer's environment;  
provide consolidated reporting of current deployment status to Tanium's senior technical and sales leadership and designated Customer representatives;  
maintain ongoing technical relationships with Customer and provide weekly reporting to Tanium's senior technical and sales leadership and designated Customer representatives;  
track all tickets, bugs, feature requests, improvement requests and ongoing communications regarding the Licensed Software within the customer's environment; and  
observe ongoing operations for potential problems and improvements; such observations will be brought to the attention of Tanium's senior technical and sales leadership and designated Customer representatives.

*The ESR will not and the Customer shall ensure that its personnel do not request that an ESR:*

create custom content such as sensors, packages, and 'Saved Questions' for the Licensed Software;  
execute an action (e.g., deploying a patch) using the Licensed Software without the advance written review and approval by a designated Customer representative;  
use the Licensed Software to perform any incident response services;  
use any destructive content (e.g., file delete action) on behalf of the Customer;  
act in a capacity to directly support the underlying operating system, hardware, network or other involved hardware or software on which the Tanium instance is running or dependent; or  
change any settings, undertake Tanium server or client tuning or conduct advanced troubleshooting without direct instruction from the assigned primary TAM or such delegate as assigned by said primary TAM.

Customer acknowledges and agrees that the timeline for the ESR to on-board at Customer's location is approximately thirty (30) to ninety (90) days from the order date ("**On-Boarding Period**"). During the On-Boarding Period, Tanium will assign an interim support resource, which may be the TAM, to facilitate the Enterprise Support Services until the parties agree upon the individual to be placed as the ESR. Tanium and Customer will work together in good faith to select the ESR. In the event Customer rejects the ESR candidate or delays in the selection of a reasonable candidate Tanium has offered for consideration, Tanium will assign an interim ESR. The ESR will work during normal business hours or as mutually agreed upon between Tanium and Customer. The ESR may be required to be out-of-the-office due to PTO, illness, holidays, training, vacations or meetings. During this time out-of-the-office, or should the ESR's employment with Tanium end, Tanium may provide to Customer an interim support resource that will support Customer until the ESR returns or a new ESR is designated by Tanium through the ESR Support Term. In all instances, an interim support resource will provide Enterprise Support Services remotely and may be a shared resource.

Customer acknowledges that any delay in the selection of an ESR candidate may: (1) result in Customer not being able to have its desired individual perform the Enterprise Support Services; (2) result in the use of an interim support resource; and (3) hinder the performance of the Enterprise Support Services as described herein. Customer also acknowledges that it might not be possible to retain a particular individual for the ESR Support Term. Customer will not receive any refunds or credits for any period in which an interim support resource is utilized.

**Customer Responsibilities.** While Tanium endeavors to complete Enterprise Support Services in a reasonable period of time, certain factors are beyond Tanium's control, including force majeure events and delays caused by third parties and Customer. Tanium shall not be responsible for any delays or liabilities resulting from such factors. In addition to any Customer responsibilities set forth in the Agreement, to facilitate prompt and efficient completion of the Enterprise Support Services, Customer and its personnel shall cooperate fully with Tanium and its personnel in all respects, including, without limitation, providing information as to Customer requirements, providing access to the equipment/hardware on which the Licensed Software is or will be installed, and providing access to all necessary information regarding Customer's systems. Customer shall be responsible for making, at its own expense, any changes or additions to Customer's current systems, software, and hardware that may be required to support operation of the Licensed Software. In addition, Customer is responsible for providing the ESR with all access, materials, credentials, escorts, or any other thing necessary to conduct the Support Services described herein.

In addition, Customer will assign an action reviewer/approver to act in as the final Tanium Action Approver for all Tanium Actions submitted by the ESR who will have final approval authority for all actions issued in the Tanium console; and enable action approver within the Tanium console and enforce the use thereof.

**Scope and Progress Meeting.** Tanium and Customer will develop a mutually acceptable work plan for any services that are beyond the scope of Enterprise Support Services set forth above. Customer will appoint a senior-level technology professional to serve as a liaison with the ESR. Customer's representative and the ESR will meet once a week to discuss the status and progress of all work related to the Enterprise Support Services.

**Remote Support.** Certain Support Services may be provided remotely via telephone or electronic communications. Customer agrees that Tanium resources may access Customer's systems during the relevant ESR Support Term, using a defined standard virtual private network (VPN). If a network connection between Tanium and Customer's systems is required for Tanium to perform the Enterprise Support Services, Customer will provide such access as follows:

Customer is responsible for ensuring that (i) its network and systems comply with specifications provided by Tanium; (ii) all components of Customer's Tanium environment are accessible through the VPN; and (iii) the VPN is installed in a timely manner for Tanium to perform the Support Services.

Customer is responsible for acquire and maintaining any equipment and performing any activities necessary to set-up and maintain network connectivity at and to Customer's Tanium environment.

Customer will provide and maintain user accounts for, and access to, the VPN for the Tanium resources, including, but not limited to, Tanium's onsite and remote resources.

Tanium is not responsible for network connection issues, problems or conditions arising from or related to network connections, such as bandwidth issues, excessive latency, network outages, and/or any other conditions that are caused by an internet service provider, or the network connection. If Customer's VPN client software and/or VPN infrastructure fails to allow Tanium access to perform Support Services, Customer agrees to pay for any increased costs resulting from such failure.

**SOFTWARE LICENSE RIDER – U.S. GOVERNMENT**

This Software License Rider (“Rider”) supersedes the commercial computer software End User License Agreement (“EULA”) which is included as “click-wrap” within the commercial computer software and/or included as an attachment to the EC America GSA Contract (“Agreement”). This Rider brings the EULA into compliance with the “Notice of Class Deviation to Commercial Supplier Agreement Terms Inconsistent with Federal Law,” 80 Fed. Reg. 15011 (March 20, 2015), and GSA Acquisition Letter MV-15-03, “Memorandum for the Acquisition Workforce: Class Deviation Addressing Commercial Supplier Agreement Terms that Conflict or Are Incompatible with Federal Law” (July 31, 2015). FAR 12.212(a) require the Government procure commercial computer software under the licenses customarily provided to the public except to the extent that those licenses are inconsistent with Federal law. The EULA is modified as follows:

**CLICK-WRAP. NO GOVERNMENT NOR ANY GOVERNMENT AUTHORIZED END USER SHALL BE DEEMED TO HAVE AGREED TO ANY CLAUSE BY VIRTUE OF IT APPEARING IN THE EULA, RATHER THE EULA AND THIS SOFTWARE RIDER ARE ACCEPTED BY INCLUSION IN THE AGREEMENT BY AN AUTHORIZED OFFICIAL. IF THE EULA OR ANY OTHER THIRD-PARTY EULA IS INVOKED THROUGH AN “I AGREE” CLICK BOX OR OTHER COMPARABLE MECHANISM (E.G., “CLICK-WRAP” OR “BROWSE-WRAP” AGREEMENTS), EXECUTION DOES NOT BIND THE GOVERNMENT OR ANY GOVERNMENT AUTHORIZED END USER TO SUCH CLAUSE; SUCH INDEMNITY CLAUSE IS DEEMED TO BE STRICKEN FROM THE EULA. THE GOVERNMENT ACKNOWLEDGES THAT THIRD PARTY TERMS MAY APPLY BUT DOES NOT AGREE TO BE BOUND BY THEM UNLESS PROVIDED FOR REVIEW. INCLUSION OF THESE THIRD PARTY LICENSE AGREEMENT(S) WITHIN RELEASE NOTES WITHIN THE LICENSED SOFTWARE FILE IS AN ACCEPTABLE PRESENTATION OF THE THIRD PARTY LICENSE AGREEMENT(S), PROVIDED THAT THE THIRD PARTY LICENSE AGREEMENT(S) WILL NOT CREATE ANY NEW MONETARY OBLIGATION UPON THE END USER OR DIMINISH THE END USER’S RIGHT TO USE THE LICENSED SOFTWARE AS SET FORTH IN THE EULA WHERE THE END USER IS IN COMPLIANCE WITH THE EULA. ANY CLAUSE TO THE CONTRARY IS HEREBY DELETED.**

***Applicability.*** The EULA and this Software License Rider is a part of the Agreement between Tanium and the U.S. Government for the acquisition of the supply or service that necessitates a license, except to the extent inconsistent with Federal law.

***End user.*** This Software License Rider and the EULA shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

***Law and disputes.*** This Software License Rider and the EULA are governed by Federal law.

Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

Other disputes will be resolved through the Disputes Clause in the Agreement.

**Continued performance.** If the supplier or licensor believes the ordering activity to be in breach of the Agreement, it shall continue performance while pursuing rights under the Disputes Clause in the Agreement.

**Arbitration; equitable or injunctive relief.** In the event of a claim or dispute arising under or relating to the Agreement, (a) binding arbitration shall not be used unless specifically authorized by agency guidance, and (b) equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

**Additional terms.**

**THIS SOFTWARE LICENSE RIDER MAY UNILATERALLY INCORPORATE ADDITIONAL TERMS BY REFERENCE. TERMS MAY BE INCLUDED BY REFERENCE USING ELECTRONIC MEANS (E.G., VIA WEB LINKS, CLICK AND ACCEPT, ETC). SUCH TERMS SHALL BE ENFORCEABLE ONLY TO THE EXTENT THAT:**

When included by reference using electronic means, the terms are readily available at referenced locations; and

Terms do not materially change Government obligations; and

Terms do not increase Government prices; and

Terms do not decrease overall level of service; and

Terms do not limit any other Government rights addressed elsewhere in this contract. order of precedence clause of this contract notwithstanding, any software license terms unilaterally revised subsequent to award are not enforceable against the Government.

**No automatic renewals.** If any license or service tied to periodic payment is provided under the EULA (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express Government approval.

**Indemnification & Liability.** Any clause of the EULA requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. § 516. The Government shall not indemnify any entity. The Government agrees to pay for any loss, liability or expense, which arises out of or relates to the Government's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Government is established by a court of law or where settlement has been agreed to by the Government agency with, where appropriate, coordination of the Department of Justice. This provision shall not be construed to limit the Government's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of the Agreement.

**Audits.** Any clause of the Agreement permitting the commercial supplier or licensor to audit the end user's compliance with the Agreement is hereby amended as follows: (a) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order. (b) This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at FAR 52.233-1; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process; (c) Any audit requested by the Contractor will be performed at the Contractor's expense, without reimbursement by the Government and in accordance with Government security requirements.

**Taxes or surcharges.** Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

**Non-assignment.** The Agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval.

**Use of Government logos.** Notwithstanding any contrary provision contained in the Agreement, the vendor shall not be permitted to use U.S. Government logos for advertising or endorsement purposes, without obtaining the separate written consent of the Government.

**Right of entry.** No provision in the Agreement shall provide any Party the right of entry to any Government facility.

**Termination.** Termination, including termination for convenience of the government, may occur in accordance with the procedures described in Paragraph 4 of the Tanium EULA in the GSA Schedule Contract. Any terms of unilateral termination by Tanium are hereby deleted. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.



**Grant of License.**

## SUBSCRIPTION AGREEMENT FOR TANIUM CLOUD AND TANIUM-AS-A-SERVICE (TAAS)

This Subscription Agreement for Tanium Cloud and Tanium-as-a-Service (the "**Agreement**") is entered into by and between Tanium Inc., a company organized under the laws of Delaware with offices located at 3550 Carillon Point, Kirkland, Washington 98033 ("**Tanium**"), and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order (hereinafter "**Customer**"), to permit the use of the Service and Support, as defined herein. This Agreement is made effective as of the last date signed below (the "**Effective Date**"). The parties will enter into schedule(s) or purchase order(s) that describe the Service and any Support to be acquired by Customer as set forth in this Agreement (each a "**Schedule**"). Tanium and Customer may be referred to collectively as the "**parties**" or individually as "**party**." The Agreement consists of two parts: PART 1 – General Terms; and PART 2 – Countryspecific Terms. The terms of PART 2 may replace or modify those of PART 1.

### PART 1 – General Terms

#### 1. Grant of License.

- 1.1 License.* Subject to the terms and conditions of this Agreement, Tanium grants Customer a revocable, non-transferable, non-exclusive, term-based license ("**Subscription License**") to access and use the internet-based service, and to access, use and copy the proprietary software in object code form and related proprietary components, APIs, sensors, scripts, packages, actions, and 'Saved Questions' made Generally Available by Tanium and provided by or on behalf of Tanium to Customer in connection with this Agreement, as may be updated by Tanium from time to time (collectively, the "**Service**") in accordance with the Documentation for Customer's internal use only during the applicable Service Period (as defined in Section 4). The term "Service" includes Tanium's then-current documentation made available by Tanium in English for use of the Service, as updated from time-to time by Tanium in its discretion (the "**Documentation**"). During the Service Period, Tanium may also provide Customer with non-GA materials including 'Labs' or 'Community' content, sensors, scripts, releases, and 'Saved Questions' (the "**Support Materials**"). Customer may use the Support Materials during the applicable Service Period only as needed for Customer to use the Service. The term "**Generally Available**" or "**GA**" means a production version of the Service made available to all of Tanium's customer base.
- 1.2 Ownership.* The Service and Support Materials are licensed to Customer, not sold. The Service, Documentation, Support Materials, and Services provided by Tanium contain material that is protected by copyright, patent, trade secret law, and other intellectual property law, and by international treaty provisions. All rights not expressly granted to Customer under this Agreement are reserved by Tanium. All copyrights, patents, trade secrets, trademarks, service marks, trade names, moral rights, and other intellectual property and proprietary rights in the Service, Support, and Support Materials provided by Tanium, whether or not registered, will remain the sole and exclusive property of Tanium or its suppliers, as applicable.
- 1.3 License Metric.* The Service is licensed on a per Managed OS Instance basis. A "**Managed OS Instance**" means a physical device or virtual machine where the Service can be installed, and where that device is capable of processing data. Managed OS Instances include: mobile/smart phone, diskless workstation, personal computer workstation, networked computer workstation, homemaker/teleworker, home-based system, file server, print server, e-mail server, internet gateway device, storage area network server, terminal servers, portable workstation connecting to a server or network, or container (host and/or constituent container). Certain Tanium modules may be licensed and charged on a per container basis, as more fully set forth in the Tanium provided quote for the Service and/or Support (the "**Quote**") or Schedule. In the case of a virtual system, in addition to the virtual Managed OS Instance(s), the hypervisor is considered to be a single Managed OS Instance if the Service is installed at the hypervisor level. Customer acknowledges that the Service includes access to certain software to be installed on Customer's Managed OS Instances, all of which is included in the defined term, "Service."
- 1.4 System Configuration.* Hardware and software requirements for proper installation and use of the Service are set forth in the relevant Documentation. Customer is solely responsible and fully liable for purchasing, providing, installing, and using all required equipment, networks, peripherals, third-party software and hardware, scripts, or other technologies that may interoperate and be used in conjunction with the Service, all of which are expressly excluded from all warranty, indemnity and support obligations described elsewhere in this Agreement to the extent permissible under applicable law.
- 1.5 Customer Data.* As between the parties, Customer and its affiliates, licensors, partners, or suppliers will retain all right, title and interest (including any and all intellectual property rights) in and to any data or data files of any type that are uploaded by or on behalf of Customer to the Service ("**Customer Data**"). Customer hereby grants to Tanium a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Customer Data solely to the extent necessary to provide the Service and Support. Customer will ensure that its use of the Service and Support and all Customer Data is at all times compliant with this Agreement, Customer's privacy policies, and all applicable local, state, federal and international laws, regulations, and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data. Customer is solely responsible for the accuracy, content, and legality of all Customer Data. Customer represents and warrants to Tanium that Customer has sufficient rights in the Customer Data to grant the rights granted to Tanium in this Section and that the Customer Data does not infringe or violate the intellectual property, publicity, privacy, or other rights of any third party.
- 1.6 Data Sharing.* Certain features of the Service may provide Customer with the option to share Customer Data as well as

data files generated by the Service which are based on Customer Data with third parties and to access or use similar data shared by third parties (collectively "**Shared Data**"), as further described in the Documentation (such sharing or receiving of such data, "**Data Sharing**"). Customer understands and agrees that Data Sharing is optional and if Customer participates in any Data Sharing, it does so at its own risk. Tanium has no control over and makes no representations or warranties with respect to the accuracy, completeness or adequacy of any Shared Data, and it is Customer's sole responsibility to evaluate the risks related to Shared Data.

2. **Restrictions.** Customer's Subscription License to the Service is subject to the following license conditions and restrictions:
  - 2.1 *Customer's Benefit.* Customer must not use or permit the Service or Support Materials to be used in any manner, whether directly or indirectly, that would enable Customer's personnel or any other person or entity to use the Service or Support Materials for anyone's benefit other than Customer or its Affiliates. Customer must purchase each license it intends to use. Use of and access to the Service and Support Materials is permitted only by Customer-designated personnel ("**Users**").
  - 2.2 *Limitations on Copying and Distribution.* Customer will not copy or distribute any part of the Service or Support Materials, whether directly or indirectly, except to the extent that copying is necessary to use the Service or Support Materials for the purposes set forth herein.
  - 2.3 *Limitations on Reverse Engineering and Modification.* Except to the extent such a limitation is expressly prohibited by applicable law, Customer will not reverse engineer, decompile, disassemble, modify, or create derivative works of the Service or Support Materials whether directly or indirectly.
  - 2.4 *Sublicense, Rental and Third Party Use.* Except to the extent expressly permitted by this Agreement, Customer will not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Service or Support Materials, or directly or indirectly permit any third-party to use or copy the Service or Support Materials. Customer will not operate a service bureau or other similar service for the benefit of third parties using the Service or Support Materials.
  - 2.5 *Proprietary Notices.* Customer will not remove any proprietary notices (e.g., copyright and trademark notices) from the Service or Support Materials. Customer shall reproduce the copyright and all other proprietary notices displayed on the Service or Support Materials on each permitted back-up or archival copy.
  - 2.6 *Use in Accordance with Documentation.* All use of the Service and Support Materials must be in accordance with the Documentation, Tanium's Acceptable Use Policy attached as Exhibit B ("**AUP**"), and this Agreement.
  - 2.7 *Use of the Service.* Customer is solely responsible and fully liable for its use of the Service and Support Materials, including, but not limited to, for ensuring that the use of the Service and Support Materials is in compliance with all applicable foreign, federal, state, and local laws, rules, and regulations. Customer will not disable or interfere with, or disrupt the integrity or performance of the Service, or any data or content contained therein or transmitted thereby; or access the Service (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device, or mechanism (including spiders, robots, crawlers, or any other similar data mining tools) other than software or Service features provided by Tanium expressly for such purposes.
  - 2.8 *Tanium's Intellectual Property.* Customer must not use the Service, Support Materials, or other Tanium Confidential Information whether directly or indirectly to contest the validity of any Tanium intellectual property, including the Service; any such use of Tanium's information will constitute a material, non-curable breach of this Agreement.
  - 2.9 *Competition.* Customer must not use the Service, Support Materials or Tanium Confidential Information in a manner to compete with Tanium, to assist a third-party in competing with Tanium, or for benchmarking or competitive analysis.
  - 2.10 *Credential Protection; Authentication.* Customer will require that all Users keep user ID and password information ("**Credentials**") strictly confidential and not share such information with anyone, including any other User. Customer agrees that neither Tanium nor its suppliers have any liability under this Agreement for actions taken using Customer's Credentials, including any unauthorized use or access caused by misuse or misappropriation of such Credentials. Customer will be responsible for initiating and facilitating the removal of Service access by any User who is no longer authorized to access the Service. Customer will use security assertion markup language 2.0 and multi-factor authentication when accessing the Service unless other related security measures are required in the Documentation. Customer will notify Tanium promptly upon learning of any attempt by anyone to misuse, misappropriate, copy, modify, derive, or reverse engineer any Service and Customer shall reasonably cooperate and assist Tanium in discovering, preventing, and recovering damages for any such misappropriation, copying, modification, derivation, or reverse engineering of the Service.
  - 2.11 *Prohibited Data.* Customer will not use the Service to store, maintain, process, or transmit any sensitive or special data that might impose specific data security or data protection obligations on Tanium, including, without limitation (i) "protected health information" as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (ii) "cardholder data" as defined under the Payment Card Industry Data Security Standard (PCI DSS); or (iii) "nonpublic personal information" as defined under the Gramm-Leach-Bliley Act of 1999, in each case as such Acts and standards have been or may be supplemented and amended from time to time.
3. **Affiliates and Managing Parties.** The term "**Affiliate**" means an entity that is controlled by, controls, or is under common control of a party, where "control" means the ownership, in the case of a corporation, of more than fifty percent (50%) of the voting securities in such corporation or, in the case of any other entity, the ownership of a majority of the beneficial or voting interest of such entity. Customer may allow its Affiliate(s) to use the Service and Support Materials provided that (a) the Affiliate only uses the Service and Support Materials for Customer's or Affiliate's internal business purposes and up to the authorized number of Managed OS Instances in accordance with the terms and conditions of this Agreement and (b) Customer is

responsible for and remains liable for the Affiliate's use of the Service and Support Materials in compliance with the terms and conditions of this Agreement. If Customer enters into a contract with a third party that manages Customer's information technology resources ("**Managing Party**"), Customer may allow its Managing Party to use the Service and Support Materials on Customer's Managed OS Instances, provided that (a) the Managing Party only uses the Service for Customer's internal business purposes and not for the benefit of any third party or for the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (c) Customer is responsible for and remains liable for the Managing Party's use of the Service and Support Materials in compliance with the terms and conditions of this Agreement. In addition, Customer shall ensure that its personnel comply with the terms of this Agreement.

4. **Term and Termination.** Unless otherwise set forth in the Schedule, the Subscription License will commence upon the Effective Date and will continue for the duration of the Subscription License term or until this Agreement is terminated as provided in this Section, whichever occurs first (the "**Service Period**"). The term of the Service Period will be as set forth in the Schedule. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Tanium shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon expiration of the Subscription License or any termination or expiration of this Agreement, the Subscription License granted in Section 1 (Grant of License) will automatically terminate and Tanium shall (at Customer's election) destroy, delete, or return to Customer all Customer Data in its possession or control that Tanium processes as a data processor. If Customer does not notify Tanium of its election within thirty (30) days following termination or expiry of the Service Period, then Tanium shall automatically delete all such Customer Data. Tanium shall not delete Customer Data to the extent (i) it is required by applicable law to retain some or all of Customer Data, or (ii) Customer Data was archived on back-up systems, which Customer Data Tanium shall use commercially reasonable efforts to securely isolate and protect from any further processing except to the extent required by such law. Unless otherwise stated in this Agreement or any Schedule, termination of the Agreement will not entitle Customer to a refund of any fees. Tanium reserves the right to seek all remedies available at law and in equity for Customer's material breach of this Agreement. All sales are final except as expressly provided herein. In the event of any termination authorized under this paragraph, by the GSA MAS, or any other express or implied right of termination for convenience, no partial refunds are granted by Tanium.

5. **Fees and Expenses; Payment Terms; Taxes.**

- 5.1 *Fees and Expenses.* All payment terms shall subject to the agreement between the Ordering Activity and the Tanium authorized partner ("**Reseller**").

6. **Support; Personal Data and Systems Information; Supplemental Support and Training.**

- 6.1 *Support.* The term "**Support**" means, collectively, the Support Services, Supplemental Support, Training, and any other services acquired by Customer from Tanium, all of which are provided in accordance with, and governed by, the terms and conditions of this Agreement. The type, term, and level of Support are as set forth in the applicable Schedule. With respect to the Service, the support and maintenance described below in Section 6.2 ("**Support Services**") are provided during the Service Period. Geographic limitations may apply. Unless otherwise agreed upon in writing by the parties or expressly stated in the Documentation, Support Services will be provided in English only.

- 6.2 *Support Services.* Unless otherwise set forth in a Schedule, Tanium will provide the following Support Services to Customer.

6.2.1 **General.** During the Service Period, Tanium shall provide Customer with reasonable support for the person(s) designated by customer that may contact Tanium for Support Services ("**Technical Support Contact(s)**"). Customer may contact Tanium for Support Services Monday through Friday, 7 a.m. to 7 p.m. Pacific Standard Time, excluding Tanium holidays. Tanium shall use good faith efforts to work with Customer during Customer's normal business hours in the time zone in which the Customer is located to resolve any issues raised by Customer. Customer may designate up to a maximum of two (2) Technical Support Contacts and may change its designation of Technical Support Contact(s) upon written notice to Tanium.

6.2.2 **Contacting Tanium.** Customer's Technical Support Contact(s) may contact Tanium for Support Services by submitting a request via the internet-based support platform, which requires registration to use.

6.2.3 **Customer's Obligations.** Customer is responsible for: (1) preparing and maintaining their systems (e.g., multi-factor authentication) and facilities in accordance with the Documentation and specifications of the appropriate suppliers; (2) securing all required permits, inspections, and licenses necessary to use the Service; (3) complying with all applicable laws while using the Service; and (4) determining whether the Service adheres to any applicable laws to which it subject. Customer acknowledges and agrees that Customer is solely responsible for the function, performance, and results achieved in using or accessing any Support Materials that Tanium may make available to Customer in connection with Support Services.

6.2.4 **Third-Party Support.** Notwithstanding anything else to the contrary in this Agreement, if Customer enters into an agreement with a Reseller under which the Reseller will provide support or maintenance to Customer for the Service ("**Third-Party Support**"), Customer must contact the Reseller, and not Tanium, for support and maintenance. Customer acknowledges that (i) all terms and conditions related to Third-Party Support are solely subject to the agreement between Customer and the Reseller; and (ii) Tanium has no responsibility or liability for Third-Party Support.

- 6.3 *Personal Data and Systems Information.*

- 6.3.1 **Personal Data.** Customer, rather than Tanium, determines which types of data, including Personal Data (as defined in the Data Processing Addendum), exists within its endpoint environment, and determines to what extent Personal Data is processed through its use of the Service. To the extent that Tanium processes Personal Data on behalf of Customer while providing the Service, Tanium will process such Personal Data pursuant to the Data Processing Addendum found at <http://tanium.com/dpa>, which is hereby incorporated into and made a part of this Agreement.
- 6.3.2 **Systems Information.** During the term of the Agreement, Customer may provide to Tanium and the Service may collect performance, usage, and analytics information relating to Customer's operation and use of the Service, metadata relating to Customer's networks, software, applications, and systems, device identifiers, network telemetry, endpoint telemetry, system configuration, and data generated through any of the foregoing (collectively, "**Systems Information**"). Because Customer's endpoint environment is unique in configurations and naming conventions, the Systems Information could potentially include Personal Data. Customer may redact, edit, or otherwise suppress any Systems Information, including Personal Data, prior to providing to Tanium for processing. To the extent any Systems Information includes Personal Data, Customer represents and warrants that it has made all necessary disclosures and has a lawful basis to share the Personal Data with Tanium for the Permitted Purpose.
- 6.3.3 Customer agrees that Tanium may use Systems Information: (a) to provide the Service and Support; (b) to research, develop, and improve Tanium's products and services; (c) as directed or instructed by Customer; and (d) on an aggregated and/or anonymized basis, for marketing purposes (the "**Permitted Purpose**"). To the extent Systems Information identifies Customer, such Systems Information will be held in confidence by Tanium in accordance with Section 10 (Confidentiality).
- 6.3.4 As between Customer and Tanium, this Section 6.3 states Tanium's entire obligation with respect to Personal Data.
- 6.4 **Supplemental Support and Training.** Supplemental Support may be purchased by Customer and provided by Tanium in accordance with Appendix A. Product training may be purchased by Customer and provided by Tanium with respect to the Service ("**Training**").
7. **Limited Warranty; Disclaimer; Integrations with Third-Party Software and Services.**
- 7.1 **Limited Warranty.** During the Warranty Period, Tanium warrants that (i) the Service will operate in substantial conformity with the Documentation; and (ii) it shall use commercially reasonable efforts to screen the Service prior to delivery to Customer for viruses, Trojan horses, and other malicious code. The term "**Warranty Period**" means ninety (90) days from the Effective Date. If the Service Period is less than ninety (90) days, the Warranty Period will be for the length of the Service Period. The foregoing warranties apply only to the Service provided to Customer during the Warranty Period and are solely for the benefit of Customer. Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer, and the sole and exclusive liability of Tanium, for breach of the foregoing warranties in this Section, shall be to repair or replace the non-conforming Service, or if repair or replacement would, in Tanium's opinion, be commercially unreasonable, then Tanium shall terminate the relevant licenses and refund to Customer the portion of prepaid license fees applicable to such non-conforming Service. This warranty is contingent upon the proper installation and use of the Service as described in the Documentation and this Agreement; Tanium shall not be responsible for Customer's use of the Service if not operated in a manner recommended in the Documentation. Any modification to the Service by Customer or any third party may void Tanium's warranties under this Section.
- 7.2 **Additional Warranty.** In addition, Tanium warrants that the Service, any Supplemental Support and Training will be provided in a professional and workmanlike manner consistent with relevant industry standards. If Tanium breaches the foregoing warranty, Customer's sole remedy will be to terminate the applicable Supplemental Support and/or Training and receive a refund of any prepaid unused fees for such non-conforming Supplemental Support and/or Training.
- 7.3 **Warranty Disclaimer.** EXCEPT AS PROVIDED IN SECTION 7.1 AND 7.2, THE SERVICE, SUPPORT MATERIALS, AND SUPPORT ARE PROVIDED ON AN "AS AVAILABLE, " "AS-IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICE, SUPPORT MATERIALS, AND SUPPORT, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON- INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. TANIUM DOES NOT WARRANT THAT THE SERVICE OR SUPPORT WILL MEET CUSTOMER'S REQUIREMENTS; THAT CUSTOMER'S USE OF THE SERVICE OR SUPPORT WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS; THAT THE OPERATION OF THE SERVICE OR SUPPORT WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT ERRORS OR DEFECTS IN THE SERVICE OR SUPPORT WILL BE CORRECTED. TANIUM DOES NOT PROVIDE WARRANTIES WITH RESPECT TO ANY NON-GA PRODUCTS, SCRIPTS, CONTENT, OR OTHER TECHNOLOGIES, INCLUDING THE SUPPORT MATERIALS AND ANY INFORMATION OR ADVICE PROVIDED BY TANIUM PERSONNEL IN THE COURSE OF PROVIDING SUPPORT. TANIUM HAS NO RESPONSIBILITY OR LIABILITY FOR DATA SHARING OR
- FOR ANY THIRD-PARTY PRODUCTS OR TECHNOLOGIES USED BY CUSTOMER WHETHER INDEPENDENTLY OR IN CONJUNCTION WITH THE SERVICE. If applicable law affords Customer implied warranties, guarantees or conditions despite these exclusions, those warranties will be limited to one (1) year from the Effective Date and Customer's remedies will be limited to the maximum extent allowed by Sections 7 (Limited Warranty; Disclaimer; Integrations with ThirdParty Software and Services) and 9 (Limitation of Liability)



7.4 *Integrations with Third-Party Software and Services.* Customer acknowledges that the Service may contain features designed to integrate or interoperate with third-party software or services, that Tanium reserves the right to remove or alter any such Service features, and that any such removal or alteration does not entitle Customer to any refund, credit, or other compensation. If Customer elects to use non-Tanium software or services with the Service, Customer grants Tanium permission to allow the non-Tanium software or services or its provider to access Customer Data and information about Customer's usage of the non-Tanium software or services as appropriate for the integration or interoperation of the non-Tanium software or services with the Service.

## 8. Indemnification

8.1 *Tanium Indemnities.* If a third party claims that Customer's licensed use of the Service in compliance with the terms of this Agreement infringes a United States (i) patent, (ii) copyright, or (iii) trademark, or misappropriates a trade secret of that third party, Tanium, at its sole cost and expense, will have the right to intervene to defend Customer against any such claim, and indemnify Customer from any damages, liabilities, costs and expenses awarded by a court to the third party claiming infringement or set forth in a settlement agreed to by Tanium. Nothing contained herein shall be construed in derogation of the

U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If a claim of infringement under this Section occurs, or if Tanium determines a claim is likely to occur, Tanium will have the right, in its sole discretion, to: (xx) procure for Customer the right or license to continue to use the Service; (yy) modify the Service to make it non-infringing, without loss of material functionality; or (zz) replace the Service with a functionally equivalent, non-infringing service or offering. If none of these remedies is reasonably available to Tanium, Tanium may, in its sole discretion, immediately terminate this Agreement and return the license fees paid by Customer for the infringing Service, prorated for use over the remaining unused Service Period. Notwithstanding the foregoing, Tanium shall have no obligation with respect to any claim of infringement that is based upon or arises out of (each of the following an "Excluded Claim"): (A) the use or combination of the Service with any third-party or Customer hardware, software, products, data or other materials; (B) modification or alteration of the Service by anyone other than Tanium; (C) Customer's failure to implement any workaround that would have avoided the claim; (D) Customer's use of the Service in breach of or excess of the rights granted in this Agreement; (E) any third-party components; or (F) a business method or process that is inherent to Customer's business.

The provisions of this Section state Customer's sole and exclusive remedy and the sole and exclusive obligations and liability of Tanium and its suppliers for any claim of intellectual property infringement arising out of or relating to the Service and/or this Agreement and are in lieu of any implied warranties of non-infringement, all of which are expressly disclaimed.

8.2 *Reserved.*

8.3 *Indemnification Procedures.* The party seeking indemnification under this Agreement shall promptly notify the indemnifying party in writing of such claim, permit the indemnifying party sole authority to control the defense or settlement of such claim, and provide the indemnifying party with reasonable assistance in connection therewith. The indemnified party may participate in the defense at its sole cost. The indemnifying party will not enter into any settlement agreeing to any injunctive relief, payment or admission of liability affecting the indemnified party without the indemnified party's written consent.

9. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL TANIAM OR ITS SUPPLIERS BE LIABLE TO CUSTOMER, ITS AFFILIATES OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES, WHICH THE PARTIES EXPRESSLY AGREE INCLUDE, WITHOUT LIMITATION AND REGARDLESS OF ITS LEGAL CATEGORIZATION, ANY DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOST DATA, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, AND/OR COST OF REPLACEMENT GOODS OR SERVICES, EVEN IF TANIAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE MAXIMUM AGGREGATE LIABILITY OF TANIAM AND ITS SUPPLIERS UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE) IS LIMITED TO THE FEES PAID BY CUSTOMER FOR THE SERVICE OR SUPPORT GIVING RISE TO SUCH CLAIM DURING THE THIRTY-SIX (36) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM. THE FOREGOING IS INTENDED TO BE AN AGGREGATE LIMIT, NOT PER INCIDENT. THE PARTIES ACKNOWLEDGE THAT ONLY CUSTOMERS CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO THEIR OWN NEEDS TO PROTECT THEMSELVES IF AN ERROR IN THE SERVICE OR SUPPORT CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE REASONS, CUSTOMER AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGES THAT WITHOUT CUSTOMER'S AGREEMENT TO THESE TERMS, THE FEES CHARGED FOR THE SERVICE WOULD BE HIGHER. NO CAUSE OF ACTION, REGARDLESS OF FORM, ARISING OUT OF ANY OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN SIX (6) YEARS AFTER CUSTOMER IS MADE AWARE OF THE CIRCUMSTANCES THAT RESULTED IN SUCH CAUSE OF ACTION. IN THE EVENT TANIAM MAKES A REFUND OR CREDIT UNDER THIS AGREEMENT, ANY SUCH MONIES REFUNDED OR CREDITED BY TANIAM WILL BE APPLIED TO THE MEASURE OF DAMAGES SUBSEQUENTLY AWARDED BY THE COURT, IF ANY. NEITHER PARTY WILL SEEK A DUPLICATE AWARD OF DAMAGES FOR ANY REFUNDED OR INDEMNIFIED MONIES PAID UNDER THIS AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

10. **Confidentiality.** Each party agrees to hold the other party's (and that of its affiliates disclosed in connection with this Agreement) Confidential Information in confidence using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all time exercising at least a commercially reasonable degree of care in the protection of such Confidential Information), and not to make each other's Confidential Information available in any form to any third party (other than their authorized agents) or to use each other's Confidential Information for any purpose other than

as specified in this Agreement (subject, in all cases, to the rights granted to Tanium in Section 11.2). Each party agrees to take all reasonable steps to ensure that Confidential Information of the other party is not disclosed, used, or distributed by its employees, agents, or consultants in violation of the provisions of this Agreement. In addition, Customer shall ensure that any Managing Party will hold Tanium's Confidential Information in confidence and otherwise comply with this Section. "**Confidential Information**" shall mean, with respect to a party hereto, all information or material disclosed or made available by one party or its affiliates to the other or its affiliates in connection with this Agreement which is marked confidential or proprietary or from all the relevant circumstances should reasonably be assumed to be confidential. Confidential Information includes, but is not limited to, the Service and Support Materials. Each party's Confidential Information shall remain the sole and exclusive property of that party. Neither party shall have any obligation with respect to Confidential Information disclosed or made available by one party or its affiliates to other party or its affiliates in connection with this Agreement which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party without restrictions on disclosure; (iii) is independently developed by the receiving party without reliance upon or use of the disclosing party's Confidential Information; or (iv) is approved for release by the disclosing party in writing. In the event the parties executed a non-disclosure agreement related to Customer's prospective license of the Service, the terms of this Section will supersede such non-disclosure agreement after the Effective Date. Tanium recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

## 11. Evaluation Software, Feedback and Preview Software.

*11.1 Evaluation Software.* This Section only applies to Services provided by Tanium free of charge for evaluation or lab development (collectively, "**Evaluation Service(s)**"). Subject to Section 2 (Restrictions), Tanium grants to Customer a nontransferable, non-exclusive limited license to use the Evaluation Service(s) for its internal lab development, demonstration, evaluation, training, and testing only. The term of this license is for the term set forth on the applicable License Key Notice, or if no term is described, a period of thirty (30) days following delivery of the Evaluation Service(s) ("**Evaluation Period**"). Tanium may extend the Evaluation Period in writing at its discretion. Unless otherwise agreed in writing by Tanium, Customer agrees to use the Evaluation Service(s) in a non-production environment. Customer bears the sole risk of using the Evaluation

Service(s). TANIUM PROVIDES THE EVALUATION SERVICE(S) TO CUSTOMER "AS-IS" AND GIVES NO REPRESENTATION, WARRANTY, INDEMNITY, GUARANTEE OR CONDITION OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM'S TOTAL AGGREGATE LIABILITY AND THAT OF ITS SUPPLIERS IS EXPRESSLY LIMITED TO FIVE HUNDRED DOLLARS (\$500) FOR ANY AND ALL DAMAGES REGARDLESS OF THE NATURE OF THE CLAIM OR THEORY OF LIABILITY. Because the Evaluation Service(s) are provided "AS-IS," Tanium is not obligated to provide support for them. Tanium may receive service credits from its subprocessors in association with the Evaluation Service. This Section supersedes any inconsistent term in the Agreement for purposes of the Evaluation Service(s).

*11.2 Feedback.* Customer may provide suggestions, comments, or other feedback (collectively, "**Feedback**") to Tanium with respect to its products and services, including the Service and Support. Feedback is voluntary and Tanium is not required to hold it in confidence. Tanium may use Feedback for any purpose without obligation of any kind, except that Tanium acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71. To the extent a license is required under Customer's intellectual property rights to make use of the Feedback, Customer hereby grants Tanium an irrevocable, non-exclusive, perpetual, worldwide, transferable, royalty-free license, with the right to sublicense, to use the Feedback in connection with Tanium's business, including enhancement of the Service.

*11.3 Preview Software.* If the Service released to Customer has been identified by Tanium as "Beta", "Pre-release" or "Pilot" (collectively, "**Preview Software**"), then the provisions of Section 11.1 (Evaluation Software) will apply in addition to this Section 11.3. Customer is under no obligation to use any Preview Software; doing so is in Customer's sole discretion. Because Preview Software can be at various stages of development, operation and use of the Preview Software may be unpredictable. Customer acknowledges and agrees that: (a) Preview Software has not been fully tested; (b) use or operation of Preview Software should not occur in a production environment; (c) Customer's use of Preview Software will be for purposes of evaluating and testing new functionality and providing Feedback to Tanium; and (d) Customer will inform its personnel regarding the nature of the Preview Software. In addition, Tanium has no obligation to Customer to (1) further develop or release the Preview Software or (2) provide support for the Preview Software. If Tanium releases another version of the Preview Software or upon notice from Tanium, Customer will return or destroy all prior version(s) or release(s) of the Preview Software that it received from Tanium.

**12. Governing Law/Jurisdiction.** This Agreement will be governed by and construed in accordance with the Federal laws in force in USA. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply.

**13. General.** This Agreement (including PART 1 and PART 2 where applicable), together with the Schedules and any exhibits attached hereto, the Data Processing Addendum, Documentation, appendices, and the AUP provided in Exhibit B, constitutes the entire understanding and agreement between Tanium and Customer with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications, including without limitation the terms and conditions on any Customer purchase order, payment portal, or other document with respect to the subject matter of this Agreement (even where Tanium has not explicitly objected to them), all of which are merged in this Agreement. This Agreement is provided in English and the English version will govern over any translations. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties and specifically referencing this Agreement, and this Agreement shall supersede any non-disclosure agreement



required to be signed by Tanium employees or contractors prior to accessing Customer facilities or systems. In the event any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall remain valid and enforceable according to its terms. Any failure by Tanium to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. Any notice or consent under this Agreement addressed to Tanium should be marked "Attention Chief Legal Officer" and may be sent (i) to the address identified on the Quote, which will be considered delivered three (3) days after deposit in the mail (registered mail) or one (1) day after being sent by overnight courier, or (ii) via email, to [Legal@tanium.com](mailto:Legal@tanium.com), which will be considered delivered when receipt is confirmed by Tanium. Any notice or consent under this Agreement addressed to Customer should be marked "Attention Chief Legal Officer" and may be sent (a) to the address provided when purchasing the Service, which will be considered delivered three (3) days after deposit in the mail (registered mail) or one (1) day after being sent by overnight courier, or (b) via email, to the email address provided by Customer when purchasing the Service, which will be considered delivered when receipt is confirmed by the recipient. There are no intended or implied third-party beneficiaries of this Agreement. The following provisions of PART 1 shall survive any termination or expiration of this Agreement: Sections 2 (Restrictions), 4 (Term and Termination), 5 (Fees and Expenses; Payment Terms; Taxes), 6.3 (Personal Data and Systems Information), 9 (Limitation of Liability), 10

(Confidentiality), 11.2 (Feedback), 12 (Governing Law/Jurisdiction), 13 (General), 15 (U.S. Government Rights), 16 (Audit), 17 (Force Majeure), 18 (Construction), and Customer's indemnity obligations hereunder. All provisions of PART 2 will survive any termination or expiration of this Agreement. Tanium may assign any of its rights or obligations hereunder as it deems necessary. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.**

14. **Export or Import.** Customer acknowledges that the Service, which contains encryption, is subject to the export, import, economic sanctions, and trade restriction laws, regulations and requirements of the United States and other countries including European Union regulations. Tanium will reasonably cooperate, in Tanium's discretion, in assisting Customer with respect to an application for any required export or import licenses and approvals; however, Customer agrees and acknowledges that it is Customer's ultimate responsibility to comply with all export and import laws and that Tanium has no further responsibility after the initial sale to Customer within the original country of sale, including Customer's importation of the Service into other countries. Without limiting the foregoing, Customer agrees that it will not export, re-export, re-transfer, or provide access to the Service in contravention of the foregoing, or provide the Service to any person, in any jurisdiction, or to any user that would create a licensing requirement under U.S. Export control and economic sanctions laws, regulations and requirements without first obtaining any such license. Customer will not export to, or use the Service or Support in, any country not supported by Tanium, including, but not limited to, embargoed and sanctioned countries as promulgated by the United States Government. Customer shall defend, indemnify, and hold harmless Tanium from and against any and all damages, fines, penalties, assessments, liabilities, costs, and expenses (including attorneys' fees and expenses) arising out of or relating to any claim the Service was imported, exported, accessed, or otherwise shipped or transported by Customer in violation of applicable laws, rules and regulations as described in this Section.
15. **U.S. Government Rights.** The Service is commercial computer software as described in DFARS 252.227-7014(a) (1) and FAR 2.101. The U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.
16. **Audit.** During the term of this Agreement and for one (1) year thereafter, no more than once in any twelve (12) month period, Tanium may audit Customer's use of the Service ("**Audit**"). An Audit will generally consist of Customer providing a system-generated deployment report evidencing Customer's deployment of the Service. Customer will reasonably cooperate with Tanium and any auditor retained by Tanium in the conduct of the Audit. Audits will be conducted during Customer's normal business hours and are subject to Government security requirements. Customer will immediately remit payment for any Service deployed in excess of the Service licenses purchased by Customer under this Agreement.
17. **Force Majeure.** In accordance with 52.212-4(f), Except for Customer's payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, pandemic, epidemic, riot, act of God, export control regulation, laws, judgments, or government instructions.
18. **Construction.** This Agreement has been negotiated and approved by the parties and, notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either of the parties by reason of the authorship of any of the provisions of this Agreement.
19. **Additional Terms for Tanium Cloud for US Government (TC-USG).** TC-USG is a version of the Service offered by Tanium to Eligible Customers. "**Eligible Customers**" means federal, state, local, and tribal government entities, educational institutions, and any entity that collects, processes, or stores Customer Data for which Customer determines and Tanium agrees that the use of TC-USG is appropriate to help Eligible Customer comply with regulatory and compliance requirements of the US federal government. Any Customer that purchases, accesses, or uses TC-USG ("**TC-USG Customers**") hereby represents and warrants to Tanium that it is an Eligible Customer as defined in this Section 19 and it will strictly comply with this Section 19 and other terms in this Agreement when accessing and using TC-USG. For TC-USG Customers, the following changes are made to the terms of PART 1 of this Agreement:

*19.1 The following is added to Section 2.10 (Credential Protection):*

In addition, TC-USG Customers will ensure (a) each User abides by the appropriate Rules of Behavior and (b) each User who has administrator access to TC-USG is a US Person, as defined by 22 CFR part 120.15 ("**US Person**"), is not subject to export restrictions under US export control laws, and is not an excluded or sanctioned party. Customer will ensure it notifies Tanium if it will appoint a new User with administrator access to TC-USG.

*19.2 The following is added to Section 2.11 (Prohibited Data):*

In addition, TC-USG Customers will not use the Service to store, maintain, process, or transmit any data that is (a) classified, (b) federal tax information subject to Internal Revenue Service Publication 1075, (c) criminal justice information subject to the Federal Bureau of Investigation's Criminal Justice Information Services Security Policy, or (d) that requires an authorization level higher than Federal Risk and Authorization Management Program ("FedRAMP") Moderate or Department of Defense Impact Level 2. If Customer introduces any such prohibited data onto the Service, Customer is solely responsible for all sanitization costs incurred by Tanium or its Affiliates, and any third party which Tanium uses to provide the Service.

*19.3 Information Security for TC-USG.*

For TC-USG Customers, Tanium will continuously monitor the privacy and security controls consistent with its FedRAMP System Security Plan ("**SSP**"). In providing the Service, Tanium may use public cloud infrastructure services offered by third-party provider(s) as detailed in the SSP. Each third-party provider is responsible for managing the servers on which their cloud service is run and for providing physical security measures at their data centers. Security measures may vary by provider and more information may be available on their respective websites. This section 19.3 will take precedence over Tanium's commitments about data privacy and security in this Agreement and, except as required by law, reflects Tanium's sole commitment with respect to data privacy and security for TC-USG.

## **Appendix A**

### **Tanium Supplemental Support**

#### **1. Supplemental Support.**

1.1 *General.* Tanium Supplemental Support ("**Supplemental Support**") may be obtained from Tanium at its then-current GSA Schedule list price or mutually negotiated price during the Service Period, and the length of the engagement will be specified in the Agreement or Schedule ("**ESR Support Term**"). If Customer purchases Supplemental Support, Tanium will provide a Tanium enterprise support resource ("**ESR**") who will be available to provide the relevant level of Supplemental Support during the ESR Support Term, which may consist of reasonable remote and onsite support.

*The ESR may provide the following support as agreed with Customer:*

- assist with the deployment, configuration, and optimization of the Tanium products;
- plan, coordinate and implement Tanium-related projects and communicate updates;
- provide consolidated reporting of current deployment status to Tanium's senior technical and sales leadership and designated Customer representatives;
- collate technical documentation on behalf of the customer;
- help plan, communicate, and monitor the status, health and challenges associated with installation and deployment of Tanium products;
- maintain ongoing technical relationships with Customer and provide weekly reporting to Tanium's senior technical and sales leadership and designated Customer representatives;
- track all tickets, bugs, feature requests, improvement requests and ongoing communications regarding Tanium products; and
- observe ongoing operations for potential problems and improvements; such observations will be brought to the attention of Tanium's senior technical and sales leadership and designated Customer representatives.

*The ESR will not:*

- execute an action, including, but not limited to deploying a patch, using Tanium products without the advance written review and approval by a designated Customer representative;

- use Tanium products to perform any incident response services;
- use any destructive content (e.g., file delete action) on behalf of the Customer;
- act in a capacity to directly support third-party hardware or software on which the Tanium product is running or dependent; or
- change any settings, undertake Tanium server or client tuning or conduct advanced troubleshooting without direct instruction and prior authorization from the Action Approver (or other designated Customer representative) and from the assigned primary Tanium technical account managers working with Customer ("**TAM**").

The ESR Support Term will commence on the date set forth in the Schedule, or the effective date of the Schedule if a start date is not otherwise indicated. Customer will provide the ESR access to the Tanium environment and related Customer's systems within thirty (30) days from agreed upon on-boarding date ("**On-Boarding Period**"). In the event Customer fails to provide the ESR with the required systems access noted above, Tanium may withdraw the assigned ESR until access is granted. Supplemental Support will be provided during normal business hours or as mutually agreed upon between Tanium and Customer. The ESR may be required to be out-of-the-office due to PTO, illness, holidays, training, vacations, or meetings. During this time out-of-the-office, or should the ESR's employment with Tanium end, Tanium will provide to Customer with standard Support Services, unless otherwise agreed by Tanium, or when a replacement ESR is available, through the ESR Support Term.

1.2 *Customer Responsibilities.* Customer and its personnel shall cooperate fully with Tanium and its personnel in all respects, including, without limitation, providing information as to Customer requirements, providing access to the equipment/hardware on which the components of the Tanium products are or will be installed, and providing access to all necessary information regarding Customer's systems. Customer shall be responsible for making, at its own expense, any changes or additions to Customer's current systems, software, and hardware that may be required to support operation of the Tanium products.

1.3 *Action Approver.* Customer will assign an action reviewer/approver to act as the final Customer approver for all Tanium actions submitted by the ESR ("**Action Approver**"). The Action Approver will have the authority to approve all actions issued in the Tanium console. Any other requested changes to the Customer's environment will require a change review process to be agreed by the parties.

1.4 *Remote Support.* Supplemental Support may be provided remotely via telephone or electronic communications. Customer agrees that Tanium resources may access Customer's systems during the relevant ESR Support Term, using a defined standard virtual private network (VPN). If a network connection between Tanium and Customer's systems is required for Tanium to perform the Supplemental Support, Customer will provide such access as follows:

- Customer is responsible for ensuring that (i) its network and systems comply with specifications provided by Tanium; (ii) all components of Customer's Tanium environment are accessible through the VPN; and (iii) the VPN is installed in a timely manner for Tanium to perform the Supplement Support or other Support Services.
- Customer is responsible for acquiring and maintaining any equipment and performing any activities necessary to setup and maintain network connectivity at and to Customer's Tanium environment.
- Customer will provide and maintain user accounts for, and access to, the VPN for the Tanium resources, including, but not limited to, Tanium's onsite and remote resources.
- Tanium is not responsible for network connection issues, problems or conditions arising from or related to network connections, such as bandwidth issues, excessive latency, network outages, and/or any other conditions that are caused by an internet service provider, or the network connection. If Customer's VPN client software and/or VPN infrastructure fails to allow Tanium access to perform its obligations, Customer agrees to pay for any increased costs resulting from such failure.

## Appendix B

### **ACCEPTABLE USE POLICY FOR TANIUM CLOUD FOR US GOVERNMENT AND TANIUM CLOUD/TAAS**

This Acceptable Use Policy (TaaS) (this "Policy") describes prohibited uses of Tanium-as-a-Service ("Service"). The examples described in this Policy are not exhaustive. We may modify this Policy at any time by posting a revised version on our website. By using the Service, you agree to the latest version of this Policy. If you violate the Policy or authorize or help others to do so, we may suspend or terminate your use of the Service.

#### **NO ILLEGAL, HARMFUL, OR OFFENSIVE USE OR CONTENT**

You may not use, or encourage, promote, facilitate or instruct others to use, the Service for any illegal, harmful, fraudulent, infringing or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, fraudulent, infringing or offensive. Prohibited activities or content include:

- **Illegal, Harmful or Fraudulent Activities.** Any activities that are illegal, that violate the rights of others, or that may be harmful to others, our operations or reputation, including disseminating, promoting, or facilitating child pornography, offering or disseminating fraudulent goods, services, schemes or promotions, make-money-fast schemes, Ponzi and pyramid schemes, phishing, or pharming, or engaging in other deceptive practices.
- **Infringing Content.** Content that infringes or misappropriates the intellectual property or proprietary rights of others.
- **Offensive Content.** Content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable.
- **Harmful Content.** Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots.
- **Unauthorized Access of the Service.** Performing or disclosing, in each case, network discovery, port and service identification, vulnerability scanning, password cracking or remote access testing of the Service.

#### **NO SECURITY VIOLATIONS**

You may not use the Service to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a "System"). Prohibited activities include:

- **Unauthorized Access.** Accessing or using any System without permission, including attempting to probe, scan, or test the vulnerability of a System or to breach any security or authentication measures used by a System.
- **Interception.** Monitoring of data or traffic on a System without permission.
- **Falsification of Origin.** Forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route. The legitimate use of aliases and anonymous remailers is not prohibited by this provision.

#### **NO NETWORK ABUSE**

You may not make network connections to any users, hosts, or networks unless you have permission to communicate with them. Prohibited activities include:

- **Monitoring or Crawling.** Monitoring or crawling of a System that impairs or disrupts the System being monitored or crawled.
- **Denial of Service (DoS).** Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.
- **Intentional Interference.** Interfering with the proper functioning of any System, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques.
- **Operation of Certain Network Services.** Operating network services like open proxies, open mail relays, or open recursive domain name servers.
- **Avoiding System Restrictions.** Using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions.

## **NO E-MAIL OR OTHER MESSAGE ABUSE**

You will not distribute, publish, send, or facilitate the sending of unsolicited mass e-mail or other messages, promotions, advertising, or solicitations (like "spam"), including commercial advertising and informational announcements. You will not alter or obscure mail headers or assume a sender's identity without the sender's explicit permission. You will not collect replies to messages sent from another internet service provider if those messages violate this Policy or the acceptable use policy (TaaS) of that provider.

## **OUR MONITORING AND ENFORCEMENT**

We reserve the right, but do not assume the obligation, to investigate any violation of this Policy or misuse of the Service. We may:

- investigate violations of this Policy or misuse of the Service; or
- remove, disable access to, or modify any content or resource that violates this Policy or any other agreement we have with you for use of the Service.
- We may report any activity that we suspect violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Our reporting may include disclosing your information. We also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this Policy.

### Reporting of Violations of this Policy

If you become aware of any violation of this Policy, you must immediately notify us and provide us with assistance, as requested, to stop or remedy the violation. To report any violation of this Policy, please email [legal@tanium.com](mailto:legal@tanium.com).

*[End of Agreement]*

**TENABLE PUBLIC SECTOR LLC  
7021 COLUMBIA GATEWAY DR  
COLUMBIA, MD 21046**

**EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)**

**Scope.** This Rider and the attached Tenable Public Sector LLC (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods,

Tenable Confidential and Proprietary	Signature and Cover Page	Tenable Master Agreement
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epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.



**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



**TENABLE****TENABLE SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS**

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## ATTACHMENT A - TENABLE MASTER AGREEMENT

This Attachment A - Tenable Master Agreement consists of the following:

The main body of the Master Agreement which encompasses all of the general terms and conditions under which Tenable transacts business;

Schedule A (*Software*), which applies to the purchase of Tenable on-premises Software solutions (i.e., Tenable.io On-Prem, Security Center, Nessus Agents, Nessus Professional, etc.);

\*Please note that Hosted Solutions do come with an on premises component

Schedule B (*Hosted Services*), which applies to Tenable's SaaS solutions (i.e., Tenable.io); and

Schedule C (*Professional Services*), which applies to all training, installation and consulting services.

**TENABLE MASTER AGREEMENT**

This Master Agreement (this "Agreement") is made by and between Tenable (as defined below), and the Ordering Activity under GSA Schedule Contracts ("Customer" or "Ordering Activity"). Hereinafter, each of Tenable and Customer may be referred to collectively as the "Parties" or individually as a "Party".

**Definitions.**

"Affiliate" means any entity that controls, is controlled by, or is under common control with a Party. "Control" shall mean: (1) ownership (either directly or indirectly) of greater than fifty percent (50%) of the voting equity or other controlling equity of another entity; or (2) power of one entity to direct the management or policies of another entity, by contract or otherwise.

"Documentation" means the then-current official user manuals and/or documentation for the Products available at docs.tenable.com.

"Hosted Services" are a type of service offered through the Tenable.io (SaaS) platform and include Scans and access to and use of the hosted environment (the "Hosted Environment").

"Product(s)" means any of the products that Tenable offers, including Software, Hosted Services, Support Services and Professional Services.

"Professional Services" means services purchased, including consulting services which are relevant to the implementation and configurations of Tenable Products as well as on-site or virtual training courses. Generally, Professional Services are defined either in a separate SOW or a Services Brief. Professional Services do not include the Hosted Services or Support Services.

"Scan(s)" are a function performed by the Software and/or the Hosted Services on Scan Targets, which are conducted in order to provide data to Customer regarding its network security. "PCI Scans" are a specific type of Scan designed to assess compliance with the Payment Card Industry Data Security Standard. "Scan Data" is the resulting information created by the Scan. "Scan Target(s)" are the targets or subjects of a Scan.

"Services Brief" means the document which outlines Tenable's basic, pre-packaged, non-customized, installation, or training Professional Services offered under a Tenable SKU and which do not require a separate SOW. For the avoidance of doubt, Customer may purchase commercial off the shelf SKU-based Professional Services without executing a separate Statement of Work. A "SOW" or "Statement of Work" shall further describe Professional Services, the terms of which may be customized and which shall require execution by the Parties.

"Software" means each software product made available by Tenable under this Agreement for download. Software includes patches, updates, improvements, additions, enhancements and other modifications or revised versions of the same that may be provided to Customer by Tenable from time to time.

"Tenable" means Tenable Public Sector LLC, if Customer is an agency or instrumentality of the United States Government, a commercial entity operating predominately as a federal systems integrator for eventual sale or resale or for the benefit of the United States Government, or an agency or instrumentality of a State or local government within the United States (Tenable Public Sector LLC is a Delaware limited liability company having offices at 7021 Columbia Gateway Drive, Suite 500, Columbia, MD 21046)

**Delivery.**

Delivery and Installation. Delivery of Tenable Products ("Delivery") shall be deemed to occur on the date of availability for electronic download or electronic access. Tenable has no duty to provide installation services for Tenable Products unless installation services are purchased separately.

**Term.**

Agreement Term. This Agreement shall commence upon the Effective Date and continue until terminated in accordance with the terms set forth herein.

License Term. The "License Term" is the term of the license or subscription for Products as set forth in the applicable purchase order.

**Products.**

Product-Specific Terms. Pursuant to this Agreement, Customer may receive the right to use various Products. Terms

related to Customer's use of Software are described in **Schedule A (Software)**. Terms related to Customer's use of Hosted Services are described in **Schedule B (Hosted Services)**. Terms related to the provision of Professional Services are described in **Schedule C (Professional Services)**. For each Product, Customer will have the right to use the corresponding Documentation.

**Licensing Model.** Product licenses shall be in accordance with the terms of the applicable licensing model as set forth in the Documentation and the purchase order, which may include limitations on Scan Targets, License Term, the number of users, seats, licenses and/or types of modules licensed. Product licenses shall commence upon Delivery and shall be either perpetual or subscription in nature. If Customer exceeds the license restrictions, Tenable shall promptly invoice Customer for an upgraded license to allow for all actual or additional usage.

**Restrictions on Use.** Customer shall not directly or indirectly: (i) decompile, disassemble, reverse engineer, or otherwise attempt to derive, obtain or modify the source code of the Products; (ii) reproduce, modify, translate or create derivative works of all or any part of the Products; (iii) remove, alter or obscure any proprietary notice, labels, or marks on the Products; (iv) without Tenable's prior written consent use the Products in a service bureau, application service provider or similar capacity; or (v) use the Products to gather information from Nessus Home scanners. Customer may not use the Products to manage or gather information from Scan Targets not owned or hosted by Customer.

**Intellectual Property in Products.** This Agreement does not transfer to Customer any title to or any ownership right or interest in the Products. Any rights in the Products not expressly granted in this Agreement are reserved by Tenable. If Customer provides Tenable with any comments, suggestions, or other feedback regarding the Product, Customer hereby assigns to Tenable all right, title and interest in and to such feedback. Tenable acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

**Customer System Requirements.** In order to use the Products, Customer must meet or exceed the specifications found in the Tenable General Requirements document.

**Product Features.** Tenable reserves the right to withdraw features from future versions of the Products provided that: (i) the core functionality of the affected Product remains the same; or (ii) Customer is offered access to a product or service providing materially similar functionality as the functionality removed from the affected Product. The preceding remedies under this Section 4(f) are the sole remedies available if Tenable withdraws features from the Products.

**Telemetry.** Customer agrees to provide certain necessary Scan information, which may include the number of Scan Targets managed with the Product for billing purposes, behavioral attributes such as whether or not certain features in the Product are utilized, or other relevant information ("**Technical Data**"). Tenable may use Technical Data for reasonable business purposes, including product support, license validation and research and development. Tenable agrees to only disclose Technical Data which has been properly anonymized.

#### **Support.**

**Support Services.** Tenable shall provide Customer with support services (the "**Support Services**") in accordance with Tenable's then current Technical Support Plan and consistent with Tenable's Product Lifecycle Policy, each of which is available at [http://static.tenable.com/prod\\_docs/tenable\\_slas.html](http://static.tenable.com/prod_docs/tenable_slas.html) (or a successor location). The Support Services include bug fixes, updates (including new vulnerability plug-ins), or enhancements that Tenable makes generally available to users of the Products. The Support Services also include the provision of new minor (Example: 1.1.x to 1.2.x, etc.) and major version releases of the Products (Example: 1.x to 2.x, etc.).

**Support Fees.** Standard Support Services for Products licensed for a finite License Term will be provided at no additional charge beyond the license fee for the duration of the License Term. Support Services for Products licensed on a perpetual basis must be purchased separately. In all cases, premium support may be purchased at an additional charge. If during the course of a perpetual license Customer terminates or fails to renew the Support Services, Customer may, at any time during the term of this Agreement, request that Tenable reinstate the Support Services provided that Customer pays for the lapsed Support Services in an amount equal to the total fees Customer would have paid for the Support Services between the time Customer's Support Services lapsed and the then-current date.

#### **Confidentiality.**

**Definition.** "**Confidential Information**" means information learned or disclosed by a Party under this Agreement that should reasonably be assumed to be confidential or proprietary, including the Products. Confidential Information will remain the property of the disclosing Party, and the receiving Party will not be deemed by virtue of this Agreement or any access to the Confidential Information to have acquired any right, title or interest in or to the Confidential Information.

**Obligations.** Each Party agrees to only use the Confidential Information in connection with this Agreement or a purchase hereunder. The receiving Party agrees to hold the disclosing Party's Confidential Information confidential and to use at least the same level of protection against unauthorized disclosure or use as the receiving Party normally uses to protect its own information of a similar character, but in no event, less than a reasonable degree of care. Each Party may share Confidential Information with its Affiliates or authorized contractors in the performance of its duties under this Agreement; provided, however, each Party shall be responsible to ensure that such Affiliate or authorized contractors are bound by obligations of confidentiality at least as stringent as those set forth in this Agreement.

**Exclusions.** Confidential Information shall not include information that: (i) is already known to the receiving Party free of any confidentiality obligation; (ii) is or becomes publicly known through no wrongful act of the receiving Party; (iii) is rightfully received by the receiving Party from a third party without any restriction or confidentiality; or (iv) is independently developed by the receiving Party without reference to the Confidential Information. Furthermore, if Customer intentionally or unintentionally requests or performs scans on third party Scan Targets, Customer agrees that Tenable may provide all relevant information to the owner of the Scan Targets of such unlawful or impermissible scanning as well as to relevant legal authorities, and such disclosure shall not be considered a breach of confidentiality.

**Information Not to be Disclosed.** The Parties agree not to disclose to each other any sensitive, non-public, personally identifiable information (such as social security numbers, personal credit card information or health care data, etc.) which may be the subject of any data privacy regulations as well as any Personal Data of an EU Data Subject as such terms are defined under the European Union General Data Protection Regulation (together, hereinafter, "**PII**"). Tenable does not require the transmission or processing of any such PII in order to perform its duties under this Agreement or sell any Products hereunder. If Customer inadvertently or unintentionally discloses any PII to Tenable, Customer shall identify to Tenable that it has disclosed PII and Tenable shall promptly return and/or destroy such PII.

**Legal Disclosures; Remedies.** The receiving Party may disclose Confidential Information if required to do so by law provided the receiving Party shall promptly notify the disclosing Party so that the disclosing Party may seek any appropriate protective order and/or take any other action to prevent or limit such disclosure. If required hereunder, the receiving Party shall furnish only that portion of the Confidential Information disclosure of which is legally required. The receiving Party will notify the disclosing Party promptly

of any unauthorized use or disclosure of the disclosing Party's Confidential Information. Tenable recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

**Representations and Warranties; Disclaimer.**

Warranty of Authority. The Parties hereby represent and warrant that they have the full power and authority to enter into this Agreement.

Products. Product warranties and associated warranty periods are set forth in the relevant Schedules attached hereto.

Antivirus Warranty. Tenable represents it has taken commercially reasonable efforts to ensure that the Products, at the time of Delivery, are free from any known and undisclosed virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause the Products to become inoperable or incapable of being used in the manner for which it was designed or in accordance with the Documentation.

Warranty Disclaimer. The express warranties for products and services are set forth in the applicable Schedules attached hereto. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT AND TO THE GREATEST EXTENT PERMITTED BY LAW, TENABLE OFFERS ITS PRODUCTS "AS-IS" AND MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY, INTEGRATION, PERFORMANCE AND ACCURACY, AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE MADE TO CUSTOMER FOR CUSTOMER'S BENEFIT ONLY. CUSTOMER'S USE OF THE PRODUCTS IS AT CUSTOMER'S OWN RISK. CUSTOMER UNDERSTANDS THAT ASSESSING NETWORK SECURITY IS A COMPLEX PROCEDURE, AND TENABLE DOES NOT GUARANTEE THAT THE RESULTS OF THE PRODUCTS WILL BE ERROR-FREE OR PROVIDE A COMPLETE AND ACCURATE PICTURE OF CUSTOMER'S SECURITY FLAWS, AND CUSTOMER AGREES NOT TO RELY SOLELY ON SUCH PRODUCTS IN DEVELOPING ITS SECURITY STRATEGY. CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS MAY RESULT IN LOSS OF SERVICE OR HAVE OTHER IMPACTS TO NETWORKS, ASSETS OR COMPUTERS (INCLUDING MODIFICATION OF SCAN TARGETS), AND CUSTOMER IS SOLELY RESPONSIBLE FOR ANY DAMAGES RELATING TO SUCH LOSS OR IMPACT.

**Reserved.**

**Indemnification.**

Indemnification Obligations.

(i) By Tenable. Tenable shall (at its sole cost and expense): (i) defend and/or settle on behalf of Customer (including Customer's officers, directors, employees, representatives and agents); and (ii) indemnify Customer for, any third party claims brought against Customer based upon a claim that Customer's use of the Products in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights in a jurisdiction which is signatory to the Berne Convention.

In Case of Infringement. If Customer's use of the Products is, or in Tenable's opinion is likely to be, the subject of an infringement claim, Tenable may, in its sole discretion and expense: (i) modify or replace the infringing Products as necessary to avoid infringement, provided that the replacement Products are substantially similar in functionality; (ii) procure the right for Customer to continue using the infringing Products; or (iii) terminate this Agreement and, upon Customer's return or certified destruction of the infringing Product, provide Customer a pro-rata refund calculated as follows: (x) for infringing Products licensed on a subscription basis, the refund shall consist of any prepaid but unused fees for the remainder of the applicable License Term; or (y) for infringing Software licensed on a perpetual basis, the refund shall consist of a straight line depreciation of the license fee based on a three (3) year useful life. This Section 9 sets forth Tenable's sole and exclusive liability and Customer's sole and exclusive remedy with respect to any claim of intellectual property infringement.

Exclusions. Tenable shall have no liability with respect to a third party intellectual property infringement claim arising out of: (i) modifications of the Product made to conform with Customer's specifications; (ii) modifications of the Product made by anyone other than Tenable or a Tenable authorized third party; (iii) Customer's use of the Product in combination with other products or services not provided by Tenable; (iv) Customer's failure to use any updated versions of the Product made available by Tenable; or (v) Customer's use of the Product in a manner not permitted by this Agreement or otherwise not in accordance with the Documentation.

Requirements. Tenable shall only be responsible for the indemnification obligations set forth in this Section 9 if the Customer: (i) provides Tenable prompt written notice of such action or claim; (ii) gives Tenable the right to control and direct the investigation, defense, and/or settlement of such action or claim in accordance with and to the extent permitted under 28 U.S.C. § 516; (iii) reasonably cooperates with Tenable in the defense of such a claim (at Tenable's expense); and (iv) is not in breach of this Agreement. Nothing herein shall prevent Customer from engaging in defense of any such claim with its own legal representation, provided that this does not materially prejudice Tenable's defense. Tenable may not settle any claim on behalf of Customer without obtaining Customer's prior written consent; provided, however, Tenable shall not be required to obtain consent to settle a claim which settlement consists solely of: (x) discontinued use of infringing Products and/or (y) the payment of money for which Tenable has a duty to indemnify.

**Legal Compliance.**

Generally. The Products are intended solely for lawful purposes and use. Each party agrees to perform their respective obligations in a manner that complies with all applicable national, federal, state and local laws, statutes, ordinances, regulations and codes ("Applicable Laws") including, without limitation, the Computer Fraud and Abuse Act (CFAA), 18 USC Sec. 1030.

Exporter of Record. Applicable Laws include U.S. export laws (including the International Traffic in Arms Regulation (ITAR), 22 CFR 120-130, and the Export Administration Regulation (EAR), 15 CFR Parts 730 *et seq.*). Customer agrees that it will be the exporter of record any time it causes the Products to be accessed outside the United States or by a national of any country other than the United States. The parties further agree to comply with sanctions administered by the Department of the Treasury's Office of Foreign Assets Control and shall not engage in prohibited trade to persons or entities on the Specially Designated Nationals list.

**Governing Law.**

This Agreement shall be governed in all respects by the Federal laws of the United States. The Parties agree that: (i) no aspect or provision of the Uniform Computer Information Transactions Act shall apply to this Agreement; and (ii) this Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods.

**Other Legal Clauses.**

Third Parties. Customer may permit a third party ("Customer's Agent") to use the Products to perform security services for and on behalf of Customer but solely for Customer's benefit and solely for Customer's internal business purposes. Customer shall be fully responsible for Customer's Agent's use of the Products including liability for any breaches of the Agreement or use beyond the licensed quantities set forth in the Ordering Document. If Customer elects to utilize a Customer's Agent to perform Scans on its behalf,

then only Customer's Agent (and not Customer) will be permitted to contact Tenable Support Services. Tenable shall have the right to withdraw its consent to the use of any Customer's Agent in its reasonable discretion.

**Notices.** Any legal notices or other communication pursuant to this Agreement must be in writing, in English, and will be deemed to have been duly given when delivered if delivered personally or sent by recognized overnight express courier. All notices to Tenable must be sent to the address described in this Agreement to the attention of the Legal Department (unless otherwise specified by Tenable). All notices Tenable sends to Customer shall be at the physical address referenced in this Agreement (or otherwise provided to Tenable). Tenable may provide notices with regard to Products via the email address Customer provided during Product registration and Customer hereby consents to receive such communications from Tenable in an electronic form.

**Assignment.** Neither Party may assign or otherwise transfer this Agreement without the other Party's prior written consent, which will not be unreasonably withheld.

**Reserved.**

**General.**

This Agreement, together with the underlying GSA Schedule Contract, Schedule pricelist and applicable purchase order, constitutes the entire agreement between the Parties, and supersedes all other prior or contemporaneous communications between the Parties (whether written or oral) relating to the subject matter of this Agreement. No Customer document or purchase order shall modify or supersede this Agreement, unless expressly agreed to in writing by both parties. The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. If any provision of this Agreement, for any reason, is declared to be unenforceable, the Parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the Parties. Section headings are for convenience only and shall not be considered in the interpretation of this Agreement. Customer agrees that Tenable may use Customer's name or logo in a customer list. Customer may not use Tenable's name or logo without prior written consent and in accordance with Tenable's guidelines. No failure or delay by a Party in exercising any right, power or remedy will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving Party. If a Party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy the Party may have under this Agreement. The Parties are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the Parties. This Agreement is not intended nor will it be interpreted to confer any benefit, right or privilege in any person or entity not a party to this Agreement. Any party who is not a party to this Agreement has no right under any law to enforce any term of this Agreement. Any provision of this Agreement that imposes or contemplates continuing obligations on a party and any section which by its nature is intended to survive will survive the expiration or termination of this Agreement, including Sections 3, 4, 9 and 11.

**Government Entities.** *This Section 15 shall only apply to Government Customers, as defined below.*

If Customer is an agency or instrumentality of a sovereign government (a "Government Customer"), all Government Customer end users acquire the rights to use and/or access the Products and/or Services with only those rights set forth herein (consistent with 48 C.F.R. 12.212). The terms and conditions of this Agreement govern Government Customer's use and disclosure of the Products and supersede any conflicting terms and conditions that may be applicable through the Government Customer's procurement regulations. If this Agreement fails to meet the Government Customer's needs or is inconsistent in any way with federal law, the government must return the Product, unused, to Tenable. If Customer is prohibited by law, regulation, or relevant attorney general opinion from agreeing to any clause of this Agreement (collectively, "Restrictions"), the Agreement shall be modified to the extent required under such Restrictions. Each of the components that constitute the Product is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212.

**SCHEDULE A: SOFTWARE**

This Schedule for Tenable Software (this "Schedule") is subject to and made part of the Agreement.

General. This Schedule governs Customer's license of Software.

License; Right to Use. Subject to the terms of the Agreement, Tenable grants Customer for the duration of the License Term a non-exclusive, non-transferable, non-sublicensable license to use the Software (in object code form only) solely for Customer's own internal business purposes. Customer's right to install such Software is limited to use with the computers or machines for which the Software is registered for use. Customer is permitted to make one copy of the Software for backup or archival purposes.

Warranty. Tenable warrants that the Software shall materially conform to the Documentation for a period of sixty (60) days after Delivery. Customer's sole and exclusive remedy for breach of this warranty shall be for Tenable to, at its sole option: (i) use commercially reasonable efforts to modify or correct the Software such that in all material respects it conforms to the functionality described in the Documentation; or (ii) if Tenable is unable to restore such functionality within a reasonable period of time, Customer shall be entitled to a refund for the non-confirming Software.

Open Source and Third Party Software. Any code or other intellectual property included as part of the Software that was licensed to Tenable by third parties that is not marked as copyrighted by Tenable is subject to other license terms that are specified in the Documentation available on Tenable's website at <https://docs.tenable.com/licensedclarations/> (or a successor location). Customer agrees to be bound by such other license terms.

Audit Rights. Subject to applicable Government security requirements, Tenable may, by itself or through a third party independent auditor, audit Customer's usage of the Software to confirm compliance with this Agreement or the applicable Ordering Document. Tenable shall: (i) provide Customer with reasonable advance notice of the audit; (ii) not request such audit more than once per year; and (iii) not unreasonably interfere with Customer's business activities when conducting the audit.

**SCHEDULE B: HOSTED SERVICES**

This Schedule for Tenable Hosted Services (this "Schedule") is subject to and made part of the Agreement.

General. This Schedule governs Customer's purchase and use of the Hosted Services.



**License: Right to Use.** Subject to the terms of the Agreement, Tenable grants Customer for the duration of the License Term a non-exclusive, non-transferable, non-sublicensable right to access the Hosted Environment and use those modules of the Hosted Services set forth on a valid Ordering Document solely for Customer's own internal business purposes.

**Warranty.** Tenable warrants that the Hosted Services will materially comply with the functionality described in the Documentation. Customer's sole and exclusive remedy for breach of this warranty shall be for Tenable to use commercially reasonable efforts to modify the Hosted Services to provide in all material respects the functionality described in the Documentation. If Tenable is unable to restore such functionality within sixty (60) days, Customer shall be entitled to terminate the Agreement and receive a pro-rata refund of any prepaid but unused fees for the nonconforming Hosted Services. Tenable shall have no obligation with respect to a warranty claim hereunder unless Customer notifies Tenable of such claim within thirty (30) days of the date the underlying condition first arose. This warranty shall only apply if the applicable Hosted Service has been utilized in accordance with the Agreement and the Documentation.

**Acknowledgements.** Customer authorizes Tenable to perform the Scans, including accessing the Scan Targets in the context of the Scans. Customer understands and acknowledges that the Scans may originate or appear to originate from a Tenable URL which could cause Customer (or the owner of the Scan Targets) to believe they are under attack. Customer agrees not to pursue any claims against Tenable as a result of any access to Scan Targets when such access was made in connection with an authorized Scan unless such a claim is based on the gross negligence or willful misconduct of Tenable.

**Usage Requirements.** Customer must provide current and accurate information in all submissions made in connection with the Hosted Services, including registration information and the location of the Scan Targets to be Scanned. Tenable may, in its reasonable discretion, temporarily suspend access of certain users of the Hosted Services. Customer agrees to safeguard and maintain the confidentiality of all user names and passwords. Customer further agrees to use best efforts to ensure that no unauthorized parties have access to the Hosted Services through Customer's account and/or log-in credentials. Customer will promptly notify Tenable of any unauthorized access of which Customer is aware or reasonably suspects. Customer is responsible for compliance with this Agreement and all use of the Hosted Services through Customer's account.

**PCI Scans.** Tenable makes no guarantee that a successful completion of a PCI Scan will make Customer compliant with the Payment Card Industry Data Security Standard.

**Data Retention Policy.** Tenable will maintain Customer Scan data stored in the Hosted Environment for a period of not less than one year from the Scan date. Customer acknowledges that Tenable is in no way responsible for any of Customer's data retention compliance requirements. Tenable's data retention policy with respect to PCI Scans will match then-current requirements set forth by the PCI Security Standards Council.

**Service Level Agreement.** Tenable commits to make access to the Hosted Environment available in accordance with Tenable's then current service level agreement, available at [http://static.tenable.com/prod\\_docs/Service\\_Level\\_Commitment.pdf](http://static.tenable.com/prod_docs/Service_Level_Commitment.pdf) (or a successor location).

#### **SCHEDULE C: PROFESSIONAL SERVICES**

This Schedule for Tenable Professional Services is subject to and made part of the Agreement.

**General.** The Parties may agree, from time to time, on the purchase and sale of Tenable Professional Services. Professional Services shall be as further described in a separate SOW or Services Brief. No SOW shall be binding upon the Parties until it has been executed by both Parties. Except as otherwise agreed to by the Parties in writing, all Services Briefs or signed SOWs will be governed by this Agreement. In the event of inconsistency between the Agreement and a signed SOW, the signed SOW shall govern.

**Type of Services.** Tenable offers a range of Professional Services; provided, however, unless otherwise agreed upon in writing, Tenable does not offer creation of custom intellectual property. Tenable is not obligated to provide any Professional Services except as mutually agreed in a Services Brief or SOW.

**Deliverables.** "Deliverable(s)" means the reports, analysis, codes, scripts slides, documents, examples and other written materials or work results provided as part of the Professional Services.

**Intellectual Property Rights.**

**Grant of License in Deliverables.** Tenable grants Customer a non-exclusive, non-transferable, irrevocable (except in case of breach of the Agreement or SOW) perpetual right to use, copy and create derivative works from the Deliverables (without the right to sublicense) for Customer's internal business operations, as contemplated by the applicable SOW or Services Brief.

**Reservation of Rights.** Except for the rights expressly granted herein to Customer, Tenable expressly reserve all other rights in and to the Professional Services and Deliverables. Notwithstanding anything to the contrary in this Schedule, nothing shall prevent Tenable from providing similar Professional Services to other customers and nothing in this Schedule shall be construed to provide any intellectual property rights whatsoever in the Products (or any modifications or enhancements thereto) that Tenable develops or makes generally available for sale to its customers.

**Pre-Existing Materials.** Any pre-existing materials, proprietary item or intellectual property rights of either Party which is disclosed or used in performing the Professional Services shall remain fully vested in such Party. Nothing in this Schedule shall transfer any rights whatsoever in Tenable's Products. Customer hereby grants to Tenable the intellectual property rights (if any) required for Tenable to perform the Professional Services.

**Warranty.** Tenable warrants that all Professional Services shall be performed in a professional manner and in accordance with industry standards. Tenable further warrants for a period of ten (10) days from the service completion date that the Professional Services shall materially conform to with the applicable SOW or Services Brief. If Customer provides written notice of a non-conformity during this warranty period, Tenable shall promptly confirm the non-conformity and upon confirmation, Tenable's entire liability and Customer's exclusive remedy shall be for Tenable to use commercially reasonable efforts to re-perform the Professional Services within a reasonable amount of time. If Tenable is unable to reperform the Professional Services, then Tenable may elect to refund amounts paid by Customer for the non-conforming Professional Services.

**Scheduling: Cancellation.** Professional Services must be scheduled within three (3) months of the date of the Ordering Document under which such Professional Services were purchased and completed within six (6) months of the of the Ordering Document. Tenable shall have no obligation to perform the Professional Services if Customer or Customer's designated attendees do not attend a scheduled training session or cancel a Professional Services engagement without providing proper notice. Customer must provide Tenable at least ten (10) business days' notice to reschedule any Professional Services.

**Customer Responsibilities.** For Professional Services occurring on Customer's site, Tenable agrees to comply with applicable and reasonable security procedures provided Customer provides Tenable with such written procedures in advance. Some of the Professional Services may require Customer to have specialized knowledge or meet particular software or hardware requirements (for example,

appropriate computers or appliances, stable Internet connection or up-to-date web browsers or operating system, etc.). If technical issues arise during the Professional Services, Tenable will use commercially reasonable efforts to resolve such issues, but will have no liability based on Customer's failure to meet technical requirements.

**Changes.** Either party may request that a change be made to the Professional Services. Tenable reserves the right to charge a fee for any material changes to the Professional Services. No changes shall be binding unless executed by both Parties.

**Non-Solicitation.** During the term that Professional Services are being provided and for a period of one (1) year after their completion, Customers will not, either directly or indirectly, solicit for employment any person employed by Tenable or any of its Affiliates that have provided Customer Professional Services under this Agreement. For the avoidance of doubt, this restriction shall not prevent Customer from hiring based on a response to Customer's advertising in good faith to the general public a position or vacancy to which an employee or worker of Tenable responds, provided that no such advertisement shall be intended to specifically target Tenable personnel.

## Tenable.sc & Tenable.io SKUs

SKU		Minimum Quantity UoM: Assets/IPs	Maximum Quantity UoM: Assets/IPs	TSC-GS Annual Subscription
TSC-GS	Tier 1	500	1,000	Qty * \$26.00
	Tier 2	1,001	5,000	\$26,000 + [(Qty-1,000) * \$13.00]
	Tier 3	5,001	10,000	\$78,000 + [(Qty-5,000) * \$7.00]
	Tier 4	10,001	20,000	\$113,000 + [(Qty-10,000) * \$4.00]
	Tier 5	20,001	50,000	\$153,000 + [(Qty-20,000) * \$3.25]
	Tier 6	50,001	100,000	\$250,500 + [(Qty-50,000) * \$2.75]
	Tier 7	100,001		\$388,000 + [(Qty-100,000) * \$2.50]

SKU		Minimum Quantity UoM: Assets/IPs	Maximum Quantity UoM: Assets/IPs	TIOVM-GS Annual Subscription
TIOVM-GS	Tier 1	65	250	Qty * \$35.00
	Tier 2	251	1,000	Qty * \$35.00
	Tier 3	1,001	5,000	\$35,000 + [(Qty-1,000) * \$17.00]
	Tier 4	5,001	10,000	\$103,000 + [(Qty-5,000) * \$10.00]
	Tier 5	10,001	20,000	\$153,000 + [(Qty-10,000) * \$5.50]
	Tier 6	20,001	50,000	\$208,000 + [(Qty-20,000) * \$3.75]
	Tier 7	50,001	100,000	\$320,500 + [(Qty-50,000) * \$3.25]
	Tier 8	100,001		\$483,000 + [(Qty-100,000) * \$3.00]

SKU		Minimum Quantity UoM: Assets/IPs	Maximum Quantity UoM: Assets/IPs	TSCCV-GS Annual Subscription
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TSCCV-GS	Tier 1	500	1,000	Qty * \$35.00
	Tier 2	1,001	5,000	\$35,000 + [(Qty-1,000) * \$17.00]
	Tier 3	5,001	10,000	\$103,000 + [(Qty-5,000) * \$10.00]
	Tier 4	10,001	20,000	\$153,000 + [(Qty-10,000) * \$5.50]
	Tier 5	20,001	50,000	\$208,000 + [(Qty-20,000) * \$3.75]
	Tier 6	50,001	100,000	\$320,500 + [(Qty-50,000) * \$3.25]
	Tier 7	100,001		\$483,000 + [(Qty-100,000) * \$3.00]

SKU		Minimum Quantity UoM: Assets/IPs	Maximum Quantity UoM: Assets/IPs	TSC-P-GS Perpetual License	TSC-M-GS Maintenance Subscription
TSC-P-GS & TSC-M-GS	Tier 1	500	1,000	Qty * \$39.00	Qty * \$11.70
	Tier 2	1,001	5,000	\$39,000 + [(Qty-1,000) * \$19.50]	\$11,700 + [(Qty-1,000) * \$5.85]
	Tier 3	5,001	10,000	\$117,000 + [(Qty-5,000) * \$10.50]	\$35,100 + [(Qty-5,000) * \$3.15]
	Tier 4	10,001	20,000	\$169,500 + [(Qty-10,000) * \$6.00]	\$50,850 + [(Qty-10,000) * \$1.80]
	Tier 5	20,001	50,000	\$229,500 + [(Qty-20,000) * \$4.88]	\$68,850 + [(Qty-20,000) * \$1.46]
	Tier 6	50,001	100,000	\$375,900 + [(Qty-50,000) * \$4.13]	\$112,650 + [(Qty-50,000) * \$1.24]
	Tier 7	100,001		\$582,400 + [(Qty-100,000) * \$3.75]	\$174,650 + [(Qty-100,000) * \$1.13]



SKU		Minimum Quantity UoM: Assets/IPs	Maximum Quantity UoM: Assets/IPs	TSCCV-P-GS Perpetual License	TSCCV-M-GS Maintenance Subscription
TSCCV-P-GS & TSCCV-M-GS	Tier 1	500	1,000	Qty * \$52.50	Qty * \$15.75
	Tier 2	1,001	5,000	\$52,500 + [(Qty-1,000) * \$25.50]	\$15,750 + [(Qty-1,000) * \$7.65]
	Tier 3	5,001	10,000	\$154,500 + [(Qty-5,000) * \$15.00]	\$46,350 + [(Qty-5,000) * \$4.50]
	Tier 4	10,001	20,000	\$229,500 + [(Qty-10,000) * \$8.27]	\$68,850 + [(Qty-10,000) * \$2.48]
	Tier 5	20,001	50,000	\$312,200 + [(Qty-20,000) * \$5.63]	\$93,650 + [(Qty-20,000) * \$1.69]
	Tier 6	50,001	100,000	\$481,100 + [(Qty-50,000) * \$4.87]	\$144,350 + [(Qty-50,000) * \$1.46]
	Tier 7	100,001		\$724,600 + [(Qty-100,000) * \$4.50]	\$217,350 + [(Qty-100,000) * \$1.35]

SKU		Minimum Quantity UoM: Assets/IPs	Maximum Quantity UoM: Assets/IPs	TSC-P Perpetual License	TSC-M Maintenance Subscription
TSC-DIR-P-GS & TSC-DIR-M-GS	Tier 1	500	1,000	Qty * \$15.75	Qty * \$4.73
	Tier 2	1,001	5,000	\$15,750 + [(Qty-1,000) * \$7.65]	\$4,732 + [(Qty-1,000) * \$2.30]
	Tier 3	5,001	10,000	\$46,350 + [(Qty-5,000) * \$4.50]	\$13,929 + [(Qty-5,000) * \$1.35]
	Tier 4	10,001	20,000	\$68,850 + [(Qty-10,000) * \$2.48]	\$20,678 + [(Qty-10,000) * \$0.74]
	Tier 5	20,001	50,000	\$93,660 + [(Qty-20,000) * \$1.69]	\$28,077 + [(Qty-20,000) * \$0.51]
	Tier 6	50,001	100,000	\$144,330 + [(Qty-50,000) * \$1.46]	\$43,375 + [(Qty-50,000) * \$0.44]
	Tier 7	100,001		\$217,380 + [(Qty-100,000) * \$1.35]	\$65,375 + [(Qty-100,000) * \$0.41]

## Agent SKUs

SKU		Minimum Quantity UoM: Assets/IPs	Maximum Quantity UoM: Assets/IPs	AGT-OPP Annual Subscription
AGT-OPP-GS	Tier 1	500	1,000	Qty * \$9.00
	Tier 2	1,001	5,000	\$9,000 + [(Qty-1,000) * \$5.00]
	Tier 3	5,001	10,000	\$29,000 + [(Qty-5,000) * \$4.00]
	Tier 4	10,001	20,000	\$49,000 + [(Qty-10,000) * \$3.50]
	Tier 5	20,001	50,000	\$84,000 + [(Qty-20,000) * \$3.00]
	Tier 6	50,001	100,000	\$174,000 + [(Qty-50,000) * \$2.00]
	Tier 7	100,001		\$274,000 + [(Qty-100,000) * \$1.50]

SKU		Minimum Quantity UoM: Assets/IPs	Maximum Quantity UoM: Assets/IPs	AGT-CSP Annual Subscription
AGT-CSP-GS	Tier 1	500	1,000	Qty * \$9.00
	Tier 2	1,001	5,000	\$9,000 + [(Qty-1,000) * \$5.00]
	Tier 3	5,001	10,000	\$29,000 + [(Qty-5,000) * \$4.00]
	Tier 4	10,001	20,000	\$49,000 + [(Qty-10,000) * \$3.50]
	Tier 5	20,001	50,000	\$84,000 + [(Qty-20,000) * \$3.00]
	Tier 6	50,001	100,000	\$174,000 + [(Qty-50,000) * \$2.00]
	Tier 7	100,001		\$274,000 + [(Qty-100,000) * \$1.50]

**TIBCO SOFTWARE FEDERAL, INC.**  
**3141 FAIRVIEW PARK DRIVE, SUITE 600**  
**FALLS CHURCH, VA 22042**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **TIBCO Software Federal, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## TIBCO SOFTWARE FEDERAL, INC.

## TIBCO SOFTWARE FEDERAL, INC. LICENSE, WARRANTY AND SUPPORT TERMS

## END USER LICENSE AGREEMENT FOR U.S. FEDERAL GOVERNMENT BUSINESS ("AGREEMENT")

**PLEASE READ CAREFULLY: THIS AGREEMENT IS PROVIDED PURSUANT TO SECTION 12.212 OF THE FEDERAL ACQUISITION REGULATION (FAR) AND IS APPLICABLE TO TIBCO SOFTWARE LICENSES, EQUIPMENT, CLOUD OR HOSTED SERVICES (INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS THE "PRODUCTS") ACQUIRED BY OR ON BEHALF OF UNITED STATES FEDERAL GOVERNMENT DEPARTMENTS, AGENCIES, ADMINISTRATIONS, OR OTHER INSTRUMENTALITIES ("GOVERNMENT" or "GOVERNMENT END USERS"), OR BY CONTRACTORS ON BEHALF OF, FOR TRANSFER OR RESALE TO, OR FOR THE BENEFIT OF GOVERNMENT END USERS (COLLECTIVELY, WITH GOVERNMENT END USERS, "GOVERNMENT CUSTOMER"). THIS AGREEMENT SHALL ALSO APPLY TO ANY MAINTENANCE OR CONSULTING SERVICES ("SERVICES") ACQUIRED FROM TIBCO SOFTWARE FEDERAL, INC. ("TSFI") RELATING TO THE PRODUCTS. NOTWITHSTANDING THE FOREGOING, IF PRODUCTS AND/OR SERVICES ARE BEING ACQUIRED FROM TSFI PURSUANT TO A NEGOTIATED AGREEMENT, THAT NEGOTIATED AGREEMENT SHALL CONTROL.**

1. The following shall govern your use of the Products and Services, except to the extent all or any portion are (a) subject to a separate written, duly executed agreement, or (b) are contrary to applicable Federal law. In the event any provision of this Agreement is contrary to or unenforceable under applicable Federal law, the Federal law shall control. For Government End Users, this Agreement supersedes and replaces any shrink wrap, click wrap, or click through terms ("Automated Terms") that may be presented with Products or Services and any such Automated Terms shall not apply.

2. Definitions. Capitalized terms used but not defined herein shall have the meanings set forth in Appendix A. "Order Form" means any purchase order or similar document, written agreement, or a web store or website order or registration requesting Products or Services. "Purchase Date" means the date the Order Form is accepted by us and in the case of a web store or web site transaction, the date of your download or access of a Product. If proprietary source code is included as part of the standard delivery of a Product and is not subject to open source license terms, use of such source code is controlled by the terms of this Agreement. "Updates" means Product bug fixes, enhancements, and updates, if and when made generally available by us as part of Maintenance. "We" or "Us" refers to TSFI, a subsidiary corporation of TIBCO Software Inc. ("TIBCO"). "You" or "Your" refers to the Government Customer acquiring Products or Services pursuant to this Agreement.

3. Alpha, Beta, Developer Evaluation and Evaluation Licenses. If the Products are provided or accessed at no charge for demonstration or evaluation purposes or for alpha or beta testing, then, subject to the license grant in Section 4 below and to the terms and conditions of this Agreement, (a) use of the Products shall be solely for such purposes, (b) the Products shall not be used or deployed in a production or development environment, and (c) such use shall automatically terminate upon the earlier of (i) thirty (30) days from the date TSFI grants the right to install or access the Product, (ii) TSFI's notice of termination of such no charge use, or (iii) access to the Cloud or the Hosted Services has ended. If the Products are provided or accessed for Developer Evaluation, (a) use of the Products solely shall be for development evaluation purposes, (b) such use shall not be in a Production environment and (c) such use shall automatically terminate upon the earlier of (i) ninety (90) days from the date TSFI grants the right to receive, install or access the Product, (ii) TSFI's notice of termination of such no charge use, or (iii) access to the Cloud or the Hosted Services has ended.

4. License Grant. The Products are the property of TIBCO Software Inc. ("TIBCO") or its licensors and are protected by copyright and other laws. TSFI is a subsidiary of TIBCO. While TIBCO continues to own or have license rights to the Products, TSFI is authorized to and hereby grants you a limited, non-transferable (except as permitted herein), non-exclusive license, subject to the terms and conditions of this Agreement, to use the Number of Units set forth in the Order Form solely for your internal business use.

5. License Term. The term of each license for a Product shall be either perpetual or limited as designated on an Order Form. If a Product is licensed on a limited term basis, then, unless otherwise set forth in an Order Form, the term shall commence on the Purchase Date and have the following duration:

Alpha, Beta and Evaluation - thirty (30) days  
Developer Evaluation – ninety (90) days  
Hosted Services - one (1) year  
Cloud - one (1) year  
Software purchases on a term limited basis - one (1) year

If you originally registered to download or access a Product for Alpha, Beta or Evaluation purposes, upon re-registration you may be permitted one (1) additional term. On expiration of a limited term, you must immediately cease using and return or destroy all copies of the Products and related Confidential Information.

6. Delivery. Products are delivered electronically, and delivery deemed complete when duly made available to you.

7. Equipment Purchase.

A. Purchase. When we issue you a quotation and accept your Purchase Order for the purchase of Equipment, we agree, subject to the terms and conditions of this Agreement, to sell you the Equipment described therein. We transfer all title and risk to the hardware component of the Equipment when we or our agent ships the Equipment. For a feature, conversion or upgrade involving the removal of parts in connection with the Equipment, which parts become our property, or for the replacement of Equipment or components thereof pursuant to the Equipment Maintenance Program Guide, the return of the Equipment or parts forms part of your consideration to us and we reserve all rights under applicable law regarding said Equipment or parts.

B. Equipment Delivery. For delivery of the TIBCO Messaging Appliance™, title is deemed to transfer upon delivery by our agent to our designated freight carrier, FCA Ontario, Canada (Incoterms 2000). For delivery of all other Equipment, title is deemed to transfer upon delivery by us to our designated freight carrier, FCA TIBCO's premises (Incoterms 2000). All freight, insurance and other shipping expenses shall be paid to the freight carrier by us. Any shipping or handling charges to be paid by you shall be as identified on the accepted Purchase Order. Delivery is subject to the availability of Equipment.

8. Hosted Services. We shall use commercially reasonable efforts to make the Hosted Services you have purchased available 24 hours a day, 7 days a week, except for: (a) planned downtime under our direct control (of which we shall give at least 8 hours notice via the Hosted Services and which we shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific Standard Time Friday to 3:00 a.m. Pacific Standard Time Monday), (b) to the extent we are notified by third party service providers of planned downtime (of which we shall provide such notice to you via the Hosted services as soon we can reasonably do so), or (c) any unavailability caused by circumstances beyond our reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, internet service or third party hosting provider failures or delays ("Force Majeure"). Hosted Services are provided in accordance with applicable laws and government regulations.

9. Cloud. Provisioning of the Cloud will be confirmed electronically and delivery deemed complete when such confirmation is made available to you. Provisioning of the Cloud requires an account be established for you in TIBCOCommunity. You agree to and accept the Terms of Use for TIBCOCommunity ([http://www.tibcocommunity.com/themes/tibcotucon/resources/html/terms\\_of\\_use.html](http://www.tibcocommunity.com/themes/tibcotucon/resources/html/terms_of_use.html)) if you use the credentials to access the TIBCOCommunity site EXCEPT that any provision of the Terms of Use for TIBCOCommunity that is contrary to, or unenforceable against a Government End User under, applicable Federal law shall be of no effect for Government End Users; for Government End Users, Federal law shall apply regardless of any choice of law or venue language in the TIBCOCommunity Terms of Use. Certain Software Products may be provided for installation by you and are provided solely to enable the functionality of the Cloud, and may not be used for any other purpose. You are solely responsible for procuring your own account with the applicable TIBCO- approved third party service provider ("Provider") for the Cloud and for the technical operation of the content of your account.

#### 10. Hosted Services and Cloud Restrictions.

A. In connection with your use of Hosted Services or a Cloud, you shall, in addition to the Restrictions below (i) be responsible for your users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and lawfulness of and the means by which you acquire and disclose your data, (iii) not store or transmit infringing, libelous, or otherwise unlawful or tortious material or malicious code, nor store or transmit material in violation of third-party privacy rights, (iv) not sell, resell, rent or lease the Hosted Services or Cloud, (v) use reasonable efforts to prevent unauthorized access to or use of the Hosted Services or Cloud, and notify us promptly of any such unauthorized access or use, (vi) not interfere with or disrupt the integrity or performance of any Provider services or third-party data contained there, (vii) not attempt to gain unauthorized access to the Hosted Services, Cloud or their related systems or networks, and (viii) use the Hosted Services or Cloud only in accordance with any applicable Documentation and all applicable laws and government regulations. Hosted Services or the Cloud may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls or number of users, third party terms of use, etc., specified in the applicable Documentation, web store or web site. In the event that you receive any notice claiming that our content in connection with the Hosted Services, Cloud or any Provider services violates a third party's rights including, without limitation, notices pursuant to the Digital Millennium Copyright Act, you will promptly forward such notice to us, with a courtesy copy to TIBCO's General Counsel.

B. You will not use Hosted Services or the Cloud to promote any illegal activities or post any materials in violation of any law. In addition, in using and accessing Hosted Services or the Cloud, you shall not use any third party software in connection with a Provider's or TIBCO service in any manner that requires, pursuant to the license applicable to such software, that any Provider or TIBCO property or services be: (i) disclosed or distributed in source code form; (ii) made available free of charge to recipients; or (c) modifiable without restriction by recipients. No software or content provided by you or your users in connection with your use of Hosted Services or the Cloud may contain any malicious or hidden mechanism or code for the purpose of damage or corrupting the Hosted Services, Cloud or the Provider service.

C. You are solely responsible for adequate security, protection and backup of your data and content. Except as required by applicable law, we are not responsible for Provider services, unauthorized access to your data or content, or the deletion, destruction, damage, loss or failure to store any of your content or other data that you submit or use in Hosted Services or the Cloud.

#### 11. Restrictions.

To the extent consistent with the provisions of FAR 52.227-19 (Commercial Computer Software License), the following restrictions shall apply to Government End Users. Where a restriction is inconsistent with the provisions of FAR 52.227-19, the FAR provisions shall control and the restriction shall not apply to Government End Users. For other customers, the restrictions shall apply.

A. You shall not (a) make more copies than the Number of Units (except for a reasonable number of copies for archival and disaster recovery purposes) or use any unlicensed versions of the Software; (b) use any Software not listed in an Order Form, even if such unlicensed software is made available to you as part of the general delivery mechanism for the Products; (c) provide access to the Products to anyone other than employees, contractors, or consultants who agree in writing to be bound by terms at least as protective of TIBCO as those in this Agreement; (d) sublicense, transfer, assign, distribute to any third party, pledge, lease, rent, or commercially share the Products or any of your rights under this Agreement (for the purposes of the foregoing a change in control of your company is deemed to be an assignment); (e) use the Products for purposes of providing a service bureau, including, without limitation, providing third-party hosting, or third-party application integration or application service provider-type services, or any similar services; (f) use the Products in connection with ultrahazardous activities, or any activity for which failure of the Products might result in death or serious bodily injury to you or a third party; or (g) directly or indirectly, in whole or in part, modify, translate, reverse engineer, decrypt, decompile, disassemble, make error corrections to, create derivative works based on, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Products. You may engage in such conduct as is necessary to ensure the interoperability of the Software as required by law, provided that prior to commencing any decompilation or reverse engineering of any Software, you agree to



observe strict obligations of confidentiality and provide us reasonable advance written notice and the opportunity to assist with or conduct such activity on your behalf and at your expense.

B. Any additional license parameters applicable to particular Products are set forth in Appendix B.

12. **Proprietary Notices.** The Products, Documentation and Materials are proprietary to TIBCO and its licensors and protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. TIBCO and its licensors shall retain ownership in the Products, Documentation and Materials; all derivatives thereof (in whole or part); and any intellectual property or other rights embodied therein. All proprietary notices incorporated in or affixed to any Products, Documentation or Materials shall be duplicated by you on all copies of the Products, Documentation, or Material, as applicable, and shall not be altered, removed or obliterated.

13. **Extraordinary Corporate Event.** For Government End Users, the rights contained at FAR 52.227-19 shall apply in lieu of the following provision. For customers other than Government End Users, to the extent you or your successors or assigns enter into an Extraordinary Corporate Event after the Purchase Date, this Agreement shall not apply to those additional users, divisions or entities which were added to your organization as a result of the Extraordinary Corporate Event until those additional users, divisions or entities are added to this Agreement by way of a written amendment signed by our respective duly authorized officers.

14. **Maintenance.**

A. If you acquired Maintenance from a TIBCO authorized third party, Section 14(B) does not apply. THE TERMS OF ANY MAINTENANCE SERVICES OR RELATED WARRANTY SHALL BE AS AGREED BY AND BETWEEN YOU AND THE TIBCO AUTHORIZED THIRD PARTY. WE PROVIDE NO WARRANTY TO YOU WITH RESPECT TO MAINTENANCE SERVICES PROVIDED BY ANY THIRD PARTY.

B. Maintenance, if ordered (or if included in Cloud or Hosted Services), is provided under the policies set forth in the Maintenance Program Guide attached as Appendix C for Products other than Equipment, and at Appendix D for Equipment.

C. Any Updates provided by us or by our authorized resellers or distributors (if applicable) are subject to the terms and conditions of this Agreement. To receive Maintenance, all Products must be properly licensed and Maintenance fees paid. We are under no obligation to provide Maintenance in the event that Maintenance fees have not been paid when properly due and owing.

15. **Consulting Services.**

A. You may procure installation, configuration, training or other consulting or support services ("Consulting Services") either through a Purchase Order issued against a Consulting Services quotation, or through a work order executed by authorized representative of both parties ("Work Order"). Consulting Services available under this Agreement are limited to those defined as Commercial Items in FAR 2.101, Commercial Item definition at (5) and (6).

B. We hereby grant you a nonexclusive license to use the Materials (and a reasonable number of copies thereof) solely for your internal operations in conjunction with your use of the Products. Materials obtained during your attendance at or from your purchase of virtual training courses, unless otherwise agreed in an Order Form, are limited to the one (1) copy received by each attendee and may not be duplicated.

C. In the event that you are purchasing a license to specific training course content as set forth in an Order Form, the content of each such training course shall constitute a Product for the purpose of this Agreement. Subject to your payment of fees due, you are granted a limited, non-transferable and non-exclusive license to use, modify, translate, create derivative works from, reproduce and distribute the Product solely for your internal business use; provided, however, that the copyright notices and any other legends of ownership are reproduced on each complete or partial copy of such Product. We retain all right, title and interest in the Product, excluding your Confidential Information. All complete or partial copies of the Product in any form shall be subject to the same terms as the original copy. The term of each license and level of annual Maintenance for the Product shall be as set forth in the Order Form.

16. **Limited Warranty.**

The following Limited Warranty provisions shall apply to Government End Users to the extent permitted by applicable Federal law, including FAR

12.404(b)(2); to the extent that these limitations are not permitted or are unenforceable under applicable Federal law, they shall be of no force or effect for Government End Users. For all other customers, the following Limited Warranty provisions shall apply.

A. If you obtained Software directly from us, we warrant for a period of thirty (30) days from the Purchase Date that (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software will substantially conform to its Documentation. This limited warranty extends to you personally and is not transferable. Your sole and exclusive remedy and the entire liability of TIBCO and its licensors under this limited warranty will be, at our option, to repair or replace (with respect to the affected Software product), or refund the Software license fee. In the event of a refund, this Agreement shall terminate solely with respect to the affected Software product, and you shall immediately cease all use of and return or destroy all copies of such Software.

B. THIS WARRANTY DOES NOT APPLY TO ANY SOFTWARE WHICH (I) IS LICENSED FOR ALPHA, BETA, EVALUATION, TESTING OR DEMONSTRATION PURPOSES FOR WHICH WE DID NOT RECEIVE A LICENSE FEE; (II) HAS BEEN ALTERED OR MODIFIED (UNLESS BY US); (III) HAS NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH INSTRUCTIONS SUPPLIED BY US; (IV) HAS BEEN SUBJECTED TO ABNORMAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE, OR ACCIDENT; OR (V) IS USED IN VIOLATION OF ANY OTHER TERM OF THIS AGREEMENT.

C. EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS". ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. CERTAIN THIRD PARTY SOFTWARE MAY BE PROVIDED TO CUSTOMER ALONG WITH CERTAIN PRODUCTS

THIS THIRD PARTY SOFTWARE IS PROVIDED "AS IS", IS SUBJECT TO THE TERMS OF THE THIRD PARTY LICENSE, AND MAY ONLY BE USED WITH THE PRODUCTS WITH WHICH IT IS PROVIDED TO YOU. SUCH THIRD PARTY SOFTWARE IS PROVIDED SOLELY AS AN ACCOMMODATION TO YOU AND YOU ARE UNDER NO OBLIGATION TO USE SUCH THIRD PARTY SOFTWARE. NO WARRANTY IS MADE REGARDING THE RESULTS OF ANY PRODUCTS OR SERVICES, THAT THE PRODUCTS WILL OPERATE WITHOUT ERRORS, PROBLEMS OR INTERRUPTIONS, THAT ERRORS OR BUGS WILL BE CORRECTED, OR THAT THE PRODUCT FUNCTIONALITY OR SERVICES WILL MEET YOUR REQUIREMENTS. NO TIBCO DEALER, DISTRIBUTOR, AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS OR ADDITIONS TO THIS WARRANTY ON TSFI'S OR TIBCO'S BEHALF.

17. Indemnity. For Government End Users, claims that Products infringe any patent, copyright or trade secret shall be subject to the provisions of FAR 52.227-2 and 52.227-3.

For customers other than Government End Users, if you obtained the Software from us directly, then we agree at our own expense to defend or, at our option, to settle, any claim or action brought against you to the extent it is based on a claim that the unmodified Software infringes any patent issued by the United States, Canada, Australia, Japan, or any member of the European Union, or any copyright, or any trade secret of a third party. We will indemnify and hold you harmless from and against any damages, costs and fees reasonably incurred (including reasonable attorneys' fees) that are attributable to such claim or action and which are assessed against you in a final judgment provided that you promptly notify us in writing of such claim, we have the exclusive right to control such defense and/or settlement, and you provide reasonable assistance (at our expense) in the defense thereof. In no event shall you settle any claim, action or proceeding without our prior written approval. In the event of any such claim, litigation or threat thereof, we, at our sole option and expense, shall (a) procure for you the right to continue to use the Software, or (b) replace or modify the Software with functionally equivalent software. If such license or modification is not commercially reasonable (in our sole reasonable opinion), we may cancel this Agreement with respect to the affected Software product upon sixty days prior written notice to you and refund to you the unamortized portion of the associated license fees paid by you to us based on a five-year straight-line depreciation. This Section states our entire liability with respect to the infringement of any intellectual property rights, and you hereby expressly waive any other liabilities or obligations we have with respect thereto. The foregoing indemnity shall not apply to the extent that (x) any claim is based on or attributable to modifications made by you to the Software, or portions thereof, (y) such claim would have been avoided by use of the then-current release version of the Software, or (z) your continued allegedly infringing activity after being provided with modifications that would have avoided the alleged infringement.

18. Limitation of Liability.

FOR GOVERNMENT END USERS, THE FOLLOWING LIMITATIONS OF LIABILITY SHALL APPLY ONLY TO THE EXTENT PERMITTED UNDER APPLICABLE FEDERAL LAW. TO THE EXTENT THAT THESE PROVISIONS ARE INCONSISTENT WITH APPLICABLE FEDERAL LAW, THEY SHALL BE OF NO FORCE OR EFFECT WITH REGARD TO GOVERNMENT END USERS.

FOR CUSTOMERS WHO ARE NOT GOVERNMENT END USERS, THE FOLLOWING SHALL APPLY:

A. EXCEPT AS PROVIDED UNDER THE INDEMNITY ABOVE; OR IN CONNECTION WITH THE MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, TRADE SECRETS; DAMAGES FOR BODILY INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; OR INTENTIONAL OR GROSS NEGLIGENCE (THE "EXCLUDED MATTERS"), IN NO EVENT WILL EITHER PARTY OR TIBCO'S LICENSORS BE LIABLE FOR ANY LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA, LOST REVENUE, LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, DAMAGE TO REPUTATION, BUSINESS INTERRUPTION, DOWNTIME COSTS, OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR SIMILAR TYPE OF DAMAGES ARISING OUT OF THIS AGREEMENT, THE USE OR THE INABILITY TO USE THE PRODUCTS, OR THE PROVISION OF ANY MAINTENANCE, CONSULTING SERVICES, EVEN IF A PARTY HAS BEEN ADVISED OR WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH COSTS, EXPENSES OR DAMAGES.

B. EXCEPT FOR THE EXCLUDED MATTERS, IN NO EVENT SHALL A PARTY'S LIABILITY TO THE OTHER, WHETHER IN CONTRACT, TORT (INCLUDING ACTIVE OR PASSIVE NEGLIGENCE), BREACH OF WARRANTY, CLAIMS BY THIRD PARTIES OR OTHERWISE, EXCEED THE GREATER OF FIFTY THOUSAND DOLLARS (\$50,000 USD) OR THE PRICE PAID BY YOU UNDER THE APPLICABLE ORDER FORM. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to EXPRESS remedies provided in the Agreement.

C. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE ABOVE-STATED REMEDY OR LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. TO THE EXTENT ALLOWED BY LOCAL LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE.

19. Confidentiality.

For Government End Users, confidentiality obligations shall be pursuant to the Freedom of Information Act and other applicable Federal law, and Sections 19A through 19E, below, shall not apply. TIBCO software Products delivered under this Agreement constitute



commercial computer software products as defined in the FAR and are delivered with no greater than the rights identified in FAR 52.227-19; data delivered under this Agreement constitutes Limited Rights data, and was developed at private expense, embodies trade secrets, or are commercial or financial and confidential or privileged. Pursuant to FAR 52.227-14(g) (Alternate II, DEC 2007), these data may be reproduced by the Government with the express limitation that they will not, without written permission of TSFI, be used for purposes of manufacture nor disclosed outside the Government.

For customers other than Government End Users, the following provisions shall apply:

A. "Confidential Information" means any information disclosed by either party, whether or not marked, including, without limitation, the terms of this Agreement; the Products; Materials; individual contact information provided by either party; Product or related performance test results derived by you, including but not limited to benchmark test results; and your Protected Data (as defined in Section B below) and Output. Each party agrees to protect Confidential Information in the same manner as it protects its own Confidential Information (but using no less than a reasonable degree of protection) and shall only disclose Confidential Information to those with a need to know that information and who have agreed in writing to be bound by terms at least as protective as those contained in this Agreement. Information will not be deemed Confidential Information if (i) available to the public other than by a breach of a confidentiality obligation, (ii) rightfully received from a third party not in breach of a confidentiality obligation, (iii) independently developed by one party without use of the Confidential Information of the other; (iv) known to the recipient at the time of disclosure (other than under a separate confidentiality obligation); or (v) produced in compliance with applicable law or court order, provided the other party is given reasonable advance notice of the obligation to produce Confidential Information. Each party agrees to indemnify the other for any damages (including reasonable expenses) the other may sustain resulting from the unauthorized use and/or disclosure of the other's Confidential Information. The parties further agree that money damages would not be a sufficient remedy for a breach of confidentiality. The parties shall be entitled to seek injunctive or other equitable relief without the necessity of posting a bond even if otherwise normally required. Such injunctive or equitable relief shall not be the exclusive remedy for any breach of confidentiality, but shall be in addition to all other rights and remedies available at law or in equity.

B. To the extent we are exposed to individual personal data owned or otherwise held by you during the provision of Hosted Services, Cloud, or Services, which is subject to various data protection laws and/or regulations ("Protected Data"), we agree to treat such Protected Data in accordance with the Customer Privacy and Security Statement set forth at [http://www.tibco.com/customer\\_privacy\\_security\\_statement.jsp](http://www.tibco.com/customer_privacy_security_statement.jsp) (the "Statement"). The policies and procedures set forth in the Statement as well as those set forth in the Data Protection Policy Statement at [http://www.tibco.com/resources/data\\_protection\\_statement.pdf](http://www.tibco.com/resources/data_protection_statement.pdf) are in place to meet our obligations for the protection, integrity and confidentiality of any Protected Data which exceed our standard obligations to safeguard Confidential Information.

C. Confidential Information shall remain the sole property of the disclosing party, and each party acknowledges and agrees that it does not acquire any rights therein. Use by a recipient of Confidential Information for the purposes contemplated under this Agreement, including, but not limited to, any configuration or use by you of Products or Materials shall not affect or diminish the disclosing party's rights, title and interest in and to Confidential Information.

D. We may use any individual contact information provided by you or your users for support, product information and other business to business communications in connection with this Agreement. In the event you or your users wish to opt-out from receiving such communications, you or your users should do so on the web store or website page where you originally submitted provided your information or at <http://forms2.tibco.com/unsubscribe/u/5042/768537d8eeb3af5338448782d1fa356e>. Please note that communications may still be transmitted after the opt-out request has been submitted but before it has been processed.

E. You acknowledge and agree that any feedback, suggestions, comments, improvements, modifications and other information (including any ideas, concepts, "know-how" or techniques contained therein) that you provide to us about our Products or their performance (collectively, "Feedback") shall not be deemed as your Confidential Information and may be used, disclosed, disseminated and/or published by us for any purpose, including developing, manufacturing and marketing products incorporating Feedback, without obligation of any kind to you, and you waive any rights whatsoever in or to all Feedback.

20. Export. Products, Documentation, Materials and related technical data, are subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations and may be subject to export or import regulations of other countries. You agree that you will not nor permit your users to export or re-export the Licensor Software, Documentation and Materials in any form in violation of applicable export or import laws.

21. Government Use. The Products and Services are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use by the Government is restricted according to the terms of this Agreement. NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS AGREEMENT, AND AS REQUIRED BY FAR 12.302(b), THE FOLLOWING PROVISIONS FOUND AT FAR 52.212-4 SHALL APPLY:

- (1) Assignments; (2) Disputes;
- (3) Payment (except as provided in subpart 32.11); (4) Invoice;
- (5) Other compliances; and
- (6) Compliance with laws unique to Government contracts.

22. Entire Agreement. For Government End Users, to the extent permitted by applicable Federal law and regulation, this Agreement constitutes the entire agreement between the parties with respect to the use of the Products and Services, and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter hereof. All orders of Products or Services by you to us shall be deemed to occur, with or without reference, under the terms of this Agreement, unless expressly superseded by a signed written agreement between the parties.

For other customers, this Agreement, and any terms which are incorporated by written reference (including written reference to information contained in a URL, Documentation or reference policy) constitutes the entire agreement between the parties with respect to

the use of the Products and Services, and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter hereof. All orders of Products or Services by you to us shall be deemed to occur, with or without reference, under the terms of this Agreement, unless expressly superseded by a signed written agreement between the parties. Except for additional terms you have agreed to in connection with our web stores or web sites,

none of the terms of the Order Form (other than the product names, Number of Units, level of Maintenance, description of Consulting Services, and fees due in connection therewith) shall apply for any reason or purpose whatsoever, regardless of any statement on any Order Form to the contrary.

Neither the license to use granted in this Agreement nor the obligation to pay license fees are dependent upon the performance by any party of any Consulting Services or the supply of any other software program or product.

### 23. Termination.

Between TSFI and Government End Users, termination shall be pursuant to FAR 52.212-4(l) (Termination for the Government's convenience) and 52.212(m) (Termination for cause); no other termination rights shall apply, including paragraphs 23(A) through (F). Nothing in the foregoing, however, shall be understood to grant the Government the right to use Products or Services acquired on a term basis beyond the term set forth in the applicable Purchase Order.

For customers other than Government End Users:

A. This Agreement and all Order Forms shall automatically terminate if: (i) either party files for bankruptcy, or otherwise goes into receivership, becomes insolvent or makes an assignment for the benefit of creditors; or (ii) a writ of attachment or execution is levied on the Equipment (where we are lessor) and is not released or satisfied within ten (10) days thereafter, or (iii) where we are lessor or in a Purchase where payment in full to us has not been made, if a receiver is appointed in any proceeding or action to which you are a party with authority to take possession or control of the Equipment. In all cases, the Equipment shall be promptly returned to us and not be treated as your asset.

B. Maintenance or Consulting Services may be terminated: (i) by either party upon a default of the other, such default remaining uncured for fifteen (15) days from written notice from the non-defaulting party; (ii) upon the filing for bankruptcy or insolvency of the other party, (iii) by either party upon prior written notice at least sixty (60) days prior to the end of any annual Maintenance term; or (iv) by you for Consulting Services, upon ten (10) days prior written notice or (e) by us for Consulting Services upon thirty (30) days prior written notice. Termination of Maintenance or Consulting Services shall not terminate this Agreement.

C. A Cloud will terminate if or when your or our agreement for services with a Provider is terminated or otherwise expires for any reason. In the event of a termination of your Provider services, by Provider, in connection with a Cloud, without cause (where you are not in breach), to the extent you have pre-paid us fees for the Cloud, you may submit written notice requesting a refund, such notice to include evidence of Provider's termination without cause (e.g. a copy of Provider's notice of termination). Following receipt of such written notice, we will refund the pre-paid unearned pro-rata portion, from the date we received your notice, for the remaining Cloud term, or in the case of multiple Cloud purchases, each remaining term. In the event of a termination, for any reason, of TIBCO Provider service accounts upon which we rely to provide Hosted Services or the Cloud, to the extent you have pre-paid us fees for Hosted Services or Cloud to us, we will refund, as of the date of notice of termination from Provider to us, for the unearned pro-rata portion of the prepaid fees.

D. You may terminate this Agreement in its entirety at any time, in regard to Software, by destroying all copies of the Software. We may terminate this Agreement at any time, in regard to Software provided to you for evaluation or alpha/beta purposes. In the case of an evaluation of Equipment, where we exercise our right to terminate the Lease for a reason other than your breach of the Agreement, and you have pre-paid fees for the month in which our termination occurs, we will refund the unearned monthly pro-rated fee to you within thirty (30) days following our receipt of the returned Equipment.

E. If a license, Cloud, or Hosted Services under this Agreement terminates or expires, or upon termination of this Agreement in its entirety for any reason, you shall (i) cease using the Products, Documentation, and related Confidential Information, and (ii) return or notify us in writing within thirty (30) days after termination that you have destroyed such Software, Documentation, related Confidential Information, and all copies thereof, whether or not modified or merged into other materials.

F. Termination of this Agreement, any license, Cloud, or Hosted Services, or any Order Form shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve you of your obligation to pay all fees that have accrued or are otherwise owed by you under this Agreement. Except as set forth in sections entitled "Termination", "Limited Warranty" or "Indemnity", all fees paid under or in connection with this Agreement are non-refundable and no right of set-off exists. The parties' rights and obligations under this section and sections entitled "Limited Warranty", "Indemnity", "Limitation of Liability", "Proprietary Notices", "Confidentiality", "General", "Governing Law" and your warranties in connection with Hosted Services and the Cloud, shall survive the expiration or earlier termination of this Agreement.

24. Open Source Software. If you use any third party software not supplied by us, including any open source software, in conjunction with any Product, you must ensure that such use does not require any of the following, pursuant to the terms of such software: (i) disclosure or distribution of any Product in source code form; or (ii) licensing of any Product for the purpose of making derivative works; or (iii) redistribution of any Product at no charge. For the avoidance of doubt, you may not combine Product with any software licensed under any version of or derivative of the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Product or any modifications to the Product to become subject to the terms of the GPL.

25. Special Product Provisions. Software products TIBCO BusinessEvents®, TIBCO Collaborative Information Manager™, TIBCO ActiveMatrix® Service Performance Manager and TIBCO® ActiveFulfillment (and each of the foregoing, when included in any Bundle or

Embedded/ Bundled Products) are subject to a restricted license and contain third party proprietary code that you may only use in conjunction with the Software and may be subject to additional terms as set forth in Appendix B.

## 26. General.

A. As between TSFI and the Government, interest in connection with this Agreement shall be pursuant to the provisions of FAR 52.212-4(i)(6).

B. As between TSFI and other customers: All payments of fees due shall be made in U.S. dollars, net 30 from Purchase Date or, for any other amounts coming due hereafter, net 30 from our invoice. Fees do not include sales, use, withholding, value-added or similar taxes, and you agree to pay all sales, use, value-added, goods and services, consumption, withholding, excise and any other similar taxes or government charges, exclusive of our income tax. You agree to pay all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts. Except as set forth in the sections entitled "Limited Warranty", "Indemnity" and "Termination" all fees paid under or in connection with this Agreement are non-refundable and no right of set-off exists. A service charge of one and one-half percent (1 ½%) per month will be applied to all invoices that are not paid on time. No delay in the performance of any obligation by either party, excepting all obligations to make payment, shall constitute a breach of this Agreement to the extent caused by Force Majeure.

C. You hereby grant us and our independent auditors the right to audit your compliance with this Agreement and report any results to our licensors. You agree to provide reasonable assistance to ensure a complete and accurate audit by us and our independent auditors. If any portion of this Agreement is found to be void or unenforceable, the remaining provisions shall remain in full force and effect. All notices related to this Agreement shall be in writing. Notices will be effective if dispatched by facsimile; or electronic mail; by hand; reliable overnight delivery service or first-class, pre-paid mail if sent to the contract address for the intended recipient set forth in the Order Form. A copy of any notice of default, breach or termination shall also be sent to that party's General Counsel.

27. Governing Law. For Government End Users, this Agreement shall be governed by applicable Federal law, including but not limited to the Contract Disputes Act of 1978 as amended, with venue in the Federal courts of competent jurisdiction. For other customers, to the extent permitted by law, this Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are excluded from application hereto.

## Addenda:

Appendix A	Definitions
Appendix B	Product Parameters
Appendix C	Product Maintenance
Appendix D	Equipment Maintenance

## TSFI EULA Appendix A -- Definitions

"Academic Bundle" means a Bundle which is licensed to an accredited education institution solely for educational use, teaching and individual student or faculty non-funded research purposes in Non-Production. Use in Production, or for the purpose of funded research or for any classes offered electronically via the internet or otherwise (i.e.: "on-line" classes) is prohibited. For the purposes of an Academic Bundle, Licensee may provide access to the Licensor Software products by students who are Named Users, subject to such Named Users agreeing to be bound by terms at least as protective of Licensor as the terms of this Agreement.

"Affiliates" means entities, regardless of corporate status, controlled by, controlling or under common control with Licensor or Licensee, respectively, or officers, directors, shareholders, employees or agents of any of the foregoing.

"Broker" means the component within the applicable Site Copy which schedules work for Engines in a GridServer® or FabricServer® environment. GridServer environment means at least one TIBCO DataSynapse GridServer® Broker and a pool of servers with the TIBCO DataSynapse GridServer® Engine executing grid services. FabricServer environment means at least one TIBCO DataSynapse FabricServer® Broker and a pool of servers with the TIBCO DataSynapse FabricServer® Engine managing enterprise applications.

"Bundle" means a collection of Licensor Software, listed in Licensor's quotation or price book, to be sold together under a collective name such as "XXX Bundle" which consists of X, Y and Z. The Licensor Software which comprises a Bundle must be used in accordance with any specific license restrictions imposed in this Agreement and solely in conjunction with the components of the Bundle; provided that a Bundle component may be accessed by or communicate with other Licensor Software separately licensed by Licensee. In no event may the Licensor Software which comprises a Bundle be used on a standalone basis. A "Bundle" is sold at a discount to the cost of licensing the individual components due to the restrictions imposed on the use of the Bundle by this section and any specific license restrictions imposed by this Agreement. If the terms of this Agreement with regard to a Bundle are breached, such breach must be cured within ten (10) days of Licensor notifying Licensee in writing of the breach. In addition to the foregoing, where Bundle is used as the Unit type, Licensee's use is limited to the Number of Units and Unit type for each component which comprises the Bundle, as set forth in the bill of material for such Bundle.

"CICS Region" means a subdivided mainframe address space managed by CICS for resource allocation, resource sharing, and transaction execution, of which the resource definitions include the TIBCO EMS Client for z/OS.

"Cloud" means an internet based computing service offered by a Licensor approved third party, which permits users to make use of a hosted hardware and software environment, which includes, among other components, Licensor Software set forth in an Order Form.

"Concurrent Users" means the number of Authorized Users that are simultaneously logged in to the Licensor Software at any single point in time.

"Connection" means any network link or session established with Licensor software, directly or indirectly to any other entity, including but not limited to software, firmware or hardware. For TIBCO Rendezvous® and TIBCO SmartSockets®, "Connection" means any network protocol link established with such Licensor Software (directly or indirectly) to any other entity, including but not limited to software, firmware or hardware.

For TIBCO ActiveSpaces®, "Connection" means any session established directly or indirectly to a TIBCO ActiveSpaces® Metaspace cluster instance.

For TIBCO DataSynapse Federator™, "Connection" means a web service session established to a TIBCO DataSynapse GridServer® Manager Instance or a TIBCO DataSynapse FabricServer® Manager Instance; for TIBCO DataSynapse™ Analytics or TIBCO® Cloud Analytics, a database session established to a TIBCO DataSynapse GridServer® Broker reporting database or TIBCO Silver®™ Fabric Manager reporting database; and for TIBCO® Data Quality Service Engine Named Application, any link or session established directly or indirectly (through any other middleware application) which calls to a named third party software application.

"Consumer Price Index" means (unless otherwise set forth in this Agreement or an Order Form) the United States Department of Labor - Consumer Price Index for All Urban Consumers (CPI-U).

"Connected Processor" means any processor that produces information consumed by the relevant Licensor Software product (excluding processors on devices such as routers, switches, proxies, HTTP or application servers configured to substantially pass-through information or messages to Licensor Software).

"CPU" means a chip that contains a collection of one or more cores on which the program is running. Regardless of the number of cores, each chip counts as one (1) CPU. This definition pertains solely to the TIBCO LogLogic Product Line and does not affect, nor is it affected by, the Processor Unit Type or Processor counting policy.

"Developer" means a Named User of a Licensor Software product other than for use only in Non-Production.

"Development License" for TIBCO Spotfire® Developer or TIBCO Spotfire DecisionSite® Developer means use by a Developer in accordance with the Documentation in Non-Production for the purposes of configuring analyses created with TIBCO Spotfire products and/or extending the TIBCO Spotfire product platform. The Development License includes the right to use resulting developments in conjunction with Licensee's right to use Licensor Software for Production purposes.

"Documentation" means text material that accompanies an item of Licensor Software on delivery, describing how to make use of that software. "Engines" means for GridServer products a single thread that processes tasks or services in a first in, first out (FIFO) queue, and for

FabricServer products a single agent that manages the deployment and performance of an application. Typically, only a single engine runs on

a single cpu/core so that the number of engines in the grid is the same as the number of cpu's/cores in a GridServer or FabricServer environment.

"Enablement License" means for use in connection with and for up to the Number of Units licensed of the TIBCO DataSynapse™ Licensor Software which contains the word "Edition" in the product name, and if a) an Application Enablement License, a license to deploy JavaEE applications, built on the applicable third party application server, or b) for an Enterprise Enablement License, a license to deploy or integrate with the applicable third party application, or in connection with Command Lind, to deploy custom or external applications. Enablement Licenses do not include Engines required for running third party applications or any integration software to mesh or permit the Licensor Software to function with such third party applications.

"Enterprise" means (unless otherwise set forth in an Order Form) an unlimited Number of Units of the Licensor Software, where the Number of Units is identified as Enterprise in the Order Form, to be deployed by Licensee until the Enterprise Term Expiration Date set forth in the Order Form, (the "Enterprise Term"), at which time, the Number of Units then deployed in Production and Non-Production use by Licensee becomes fixed and Licensee may not thereafter deploy additional Units. During the Enterprise Term, Licensee's right to deploy shall not extend to any Extraordinary Corporate Event. Licensee hereby agrees to provide Licensor, within sixty (60) days after the end of the Enterprise Term, written notice of the Number of Units deployed at the end of the Enterprise Term by Unit and License Type. In the event Licensee elects to renew Maintenance (subject to any termination provisions in this Agreement), then during the Enterprise Term and each annual renewal thereafter, Licensor agrees the annual Maintenance fee for the Licensor Software licensed on an Enterprise basis shall not increase by more than the percentage rate change in the Consumer Price Index for the twelve month period immediately preceding each anniversary date of Maintenance.

"Equipment" means a hardware appliance, obtained from or through Licensor, in which Licensor has caused the Licensor Software to be embedded, and which is listed on an Order Form under License Type "Lease" or "Purchase". Equipment shall have the same meaning as Licensor Software where Licensor Software is or has been used elsewhere in this Agreement. Licensor Software embedded in the Equipment is licensed solely to enable the Equipment to function in accordance with its Documentation.

"Extraordinary Corporate Event" means a corporate transaction which results in Licensee divesting business operations and related assets to another or new entity, or acquiring, being acquired by, merged, or otherwise combined with another entity or into another entity's legal or corporate structure (including an acquisition of all or substantially all of the assets of another entity) which, prior to the corporate transaction, was not part of the Licensee or its legal or corporate structure.

"Fixed Partitioning" means a mechanism for allocating processing resources on a multi-Physical Processor machine, such that the Licensor Software is limited to running on a fixed isolated subset of the Physical Processor(s), e.g. physical partitioning and fixed (hard) processor affinity.

"GB RAM" means total number of Gigabyte's of Random Access Memory (RAM) on one or more servers where the Licensor Software is installed or otherwise accessed by Licensee. For the foregoing, server(s) means a physical or virtual computer with measurable amounts of RAM.

"Hosted Services" means online, internet based computing services provided by Licensor.

"Instance" means the smallest functionally-complete copy of Licensor Software. For the avoidance of doubt, the various components of one single Instance may be deployed on a single Server or separately spanning multiple Servers.

For TIBCO Rendezvous®, "Instance" means a TIBCO Rendezvous® daemon, where each daemon is an operating system process with a unique process id.

"License Type" means the environment(s) in which the Licensor Software may be used (including without limitation, Production and/or Non- Production, Cloud or Hosted Services).

"Licensor Software" " means the most current, generally available, object code version (or, in the case of Cloud, a machine and or disk image)

of the Licensor's product on all supported Platforms then currently available, including Documentation and any subsequent Updates (as defined in the Maintenance Program Guide located at <http://www.tibco.com/services/support/default.jsp> ) provided under Maintenance. Licensor Software does not include multiple Platforms if the software product is licensed on a Platform specific basis as designated in the Licensor Software product name or listed in an Order Form or purchase order. Licensor Software includes TIBCO Spotfire® Web-Based Training products and excludes TIBCO® Data Quality Postal Directory(ies) as set forth in an Order Form. Where the terms "TIBCO Software", "Spotfire Software", "TIBCO Spotfire Software", or "Software" (in connection with a Licensor click-wrap End User License Agreement, or Licensor acquired company license agreements ) are being or have been used, they shall have the same meaning as Licensor Software.

"Managed Endpoints" means the number of Processors running instances of TIBCO ActiveMatrix BusinessWorks™ or other third party service implementations (e.g. Java or .NET components) that are being managed by TIBCO ActiveMatrix® Policy Manager.

"Materials" means any tangible or intangible information, design, specification, instruction or data (and any modifications, adaptations, derivative works or enhancements) provided by Licensor during the performance of Consulting Services which incorporates, reinforces or is used to apply Licensor's configuration or implementation methodologies, processes and know-how to Licensee's use of the Licensor Software, excluding Output.

"Module" means Licensor Software that is licensed to add functionality or capabilities in conjunction with an underlying Licensor Software product and may only be used in conjunction with the relevant underlying Licensor Software product. So long as Licensee holds a valid license in the underlying Licensor Software product, Licensee may use a reasonable number of copies of the Module to support the same business as the underlying Licensor Software product, but subject to any applicable site, Project or other business limitations or restrictions applicable to the underlying Licensor Software product. Licensee's right to utilize Modules shall terminate automatically upon termination of the license in the underlying Licensor Software product.

"MSU" means Millions of Service Units per hour, based on the then current MSU rating established by IBM for IBM and IBM compatible hardware which is used for software pricing (not necessarily a direct indication of relative processor capacity) as set forth in IBM's generally available Large System Performance Reference.

"Named User" means an identifiable individual, not necessarily named at the time of a license grant, designated by Licensee to access the Licensor Software, regardless of whether or not the individual is actively using the Licensor Software at any given time. An individual shall only be designated as a Named User on the earlier of a) he or she is authorized by Licensee to access the Licensor Software or b) once he or she has accessed the Licensor Software. In the case of TIBCO Formvine®, identifiable individuals will be counted as Named Users in accordance with the TIBCO Formvine® Licensor Software product Documentation. In the case of TIBCO® Nimbus Control, Named Users account types are further defined in the TIBCO® Nimbus Control Licensor Software product Documentation in the section entitled "Summary of User Rights".

"Non-Production" means a non-operational environment into which the Licensor Software may be installed, which is not processing live data, which is not running any operations of the Licensee and which has not been deployed to permit any users to access live data. Non-Production environments include development, hot standby, high-availability, and test environments.

"Number of Units" means the cumulative number of copies of Licensor Software licensed for use by type of Unit, as set forth in this Agreement, an Order Form or in a purchase order, and including, if applicable, the current number of copies as reported by Licensee upon expiration of a Project or Enterprise Term.

"Orders" mean the total number of unique transactions submitted, stored in and counted by the applicable Licensor Software product during a period. Unless otherwise agreed, this period shall equal one (1) year from the Effective Date. The number of Orders shall reset to zero on each anniversary of the Effective Date. In no event shall the total number of Orders during a one (1) year period exceed the Number of Units set forth in the Order Form, unless Licensee purchases additional Units.

"Order Form" means any written order for Licensor Software or services, including, without limitation, a purchase order, Work Order, Statement of Work, Order Form or other form of ordering document delivered to Licensor, which is subject to, and incorporates by reference, the terms and conditions of this Agreement, and to which no other terms shall apply.



"Output" means Confidential Information of Licensee that has been input in the Materials for Licensee's use of the Licensor Software.  
"Physical Processor" means the smallest physical electronic circuit which is capable of reading and executing computer programs and providing results as output e.g. a CPU (socket), core, or thread.

"Platform" means for each discrete Licensor Software product, the operating system, hardware and/or environments (whether virtual or physical), upon which each product is supported, as set forth in its Documentation, or as specifically identified in the Licensor Software product name.

"Postal Directory" means a copy of the applicable product installed on a single Server.

"Processor" means a licensing Unit type for the Licensor Software, based on the count of Virtual and/or Physical Processors as described in the TIBCO Processor Licensing Policy.

"Processor Bundle" means the Number of Units as determined by the number of Processors on which the Licensor Software licensed as a Bundle is licensed to run.

"Processor Source Locked" means the number of Processors the Licensor Software is installed on multiplied by the number of instances of a source system or database regardless of how many Processors are used by the source system or databases.

"Product Lines" means sets of products and services determined by Licensor from time to time that are (a) attributed to a particular Licensor product family, or (b) made available under separate purchase or license models, in the case of either (a) or (b), as set forth in a Licensor product family's then current list price. Licensor does not permit aggregation of products, services, purchase or license models and cumulative fees paid across separate Product Lines to trigger preferred pricing or discounts.

"Production" means an operational environment into which the licensed Licensor Software has been installed, which is processing live data and which has been deployed so that the intended users of the environment are able to access the live data.

"Project" means (unless otherwise set forth in an Order Form) an unlimited Number of Units of the Licensor Software, where the Number of Units is identified as Project in the Order Form, to be deployed by Licensee until the Project Term Expiration Date set forth in the Order Form, (the "Project Term"), at which time, the Number of Units then deployed in Production and Non-Production use by Licensee becomes fixed and Licensee may not thereafter deploy additional Units. During the Project Term, Licensee's right to deploy an unlimited Number of Units does not extend beyond the scope of the Project set forth in the Order Form, or to any Extraordinary Corporate Event. Licensee hereby agrees to provide Licensor, within sixty (60) days after the end of the Project Term, with written notice of the Number of Units deployed at the end of the Project Term by Unit and License Type. In the event Licensee elects to renew Maintenance (subject to any termination provisions in this Agreement), then during the Project Term and each annual renewal thereafter, Licensor agrees the annual Maintenance fee for the Licensor Software licensed on a Project basis shall not increase by more than the percentage rate change in the Consumer Price Index for the twelve month period immediately preceding each anniversary date of Maintenance.

"Purchase" means when used in connection with "Equipment", the purchase of the hardware appliance, where Licensor transfers title of the hardware appliance to Licensee. The Licensor Software is licensed under the terms of this Agreement and not sold. Licensor (or a third party) owns the Licensor Software.

"Read-only User" means an identifiable individual, not necessarily named at the time of license grant and regardless of whether the individual is actively using the Licensor Software at any given time, designated by Licensee to access the Licensor Software for the sole purpose of searching for and viewing data.

"Record" means a unique data item stored in and counted by the applicable Licensor Software product. The total number of Records shall in no event exceed the Number of Units set forth in the Order Form, unless Licensee purchases additional Units.

"Server" means a single computer performing common services for multiple other machines.

"Server Instance" means a computer with one (1) CPU, unless otherwise agreed in writing, performing common services for multiple other machines.

"Site Copy" means the number of copies of the Licensor Software licensed for use at the physical location of the Licensee entity signing an Order Form or as otherwise specifically designated as the site location in an Order Form.

"Spare" means a unit of Equipment identified by use of the word "Spare" in its product name, which is kept in storage at the same location as Equipment in productive use. In the event Equipment in productive use becomes inoperable, Licensee may set up and configure a Spare for productive use, until the original Equipment becomes operational again, but in no event for a period greater than three (3) months, without first obtaining Licensor's written consent.

"Third Party Software" means third-party software identified by its company and/or product name, the provision of which by Licensor is made solely as an accommodation and in lieu of Licensee purchasing a license to Third Party Software directly from the third party vendor.

"TIBCO Processing Unit" or "TPU" means a Unit for measuring computing power as designated in the applicable TPU Conversion Table located and incorporated by reference at <http://www.tibco.com/software/cloud-instance-type-tpu-conversion-table.jsp> and as are set forth in an Order Form.

"TIBCO Processor Licensing Policy" means the document published by TIBCO from time to time which explains how to count Virtual and/or Physical Processors in order to determine the number of Processors.

"Trading Partner" means an entity or individual with whom the Licensee engages in accordance with this Agreement in electronic commerce by means of Licensor Software and, in the case of TIBCO® KPSA, TIBCO® KxDR and TIBCO Kabira® Licensor Software products, an individual with whom Licensee engages to provide services, which may include, electronic commerce and or general service activation and provisioning of wireline and wireless packages for the exchange of data and content.

"Unit" means a license restriction describing the manner in which a copy (or multiple copies) of the Licensor Software may be deployed (including, without limitation, Processor, Named User, Connected Processor, and Processor Source Locked) and is the mechanism used to determine the Number of Units licensed under this Agreement, an Order Form or a purchase order.

"User" means an employee of Licensee who is authorized by Licensee to use the Licensor Software in accordance with this Agreement. The number of Licensee computers on which the Licensor Software is installed shall not exceed (but may be less than) the number of licensed Users.

"Virtualized Environment" means an operating system environment where multiple Virtual Machines can run on a single physical machine or cluster, sharing the physical machine resources. In a Virtualized Environment, a Virtual Processor can run on only one Physical Processor at a time.

"Virtual Machine" means a software implementation of a machine that executes programs like a physical machine. An essential characteristic of a Virtual Machine is that the software running inside of the Virtual Machine is limited to the resources and abstractions provided by the Virtual Machine. The processing capacity of a Virtual Machine is measured in Virtual Processors.

"Virtual Processor" means a simulation of a Physical Processor that is serially time-multiplexed across one or more Physical Processors. Special Provisions Regarding Processor Licensing:

Certain Licensor Software is licensed by the Unit type "Processor." The following describes how to calculate the number of Processor Units which should be licensed in a Virtualized Environment and in all other environments.

#### Calculation

The number of Processor Units of Licensor Software required to be licensed shall be calculated as follows:

1. In a Virtualized Environment, the number of Virtual Processors shall be calculated by following the steps below:

1. For each Virtual Machine running the Licensor Software, the number of Virtual Processors shall be counted in increments of whole numbers. For clarification, the lowest unit of measurement for Virtual Processors is one; any fraction shall be rounded upward to the next whole number.

2. If the number of Virtual Processors of a Virtual Machine can increase or decrease, then for the purpose of counting Virtual Processors, the number of Virtual Processors shall be the maximum whole number of Virtual Processors that could ever be assigned to the Virtual Machine running the Licensor Software.

3. Add the total number of Virtual Processors across all Virtual Machines within the entire Virtualized Environment that runs the Licensor Software.

2. In all other environments (e.g. running on physical machine(s) or if a Virtual Processor can run on more than one Physical Processor at a time), the number of Physical Processors shall be calculated by following the steps below:

1. For each Licensor Software, the relevant partition boundary shall be set:

(a) where the allocation is defined by Fixed Partitioning, to include all Physical Processors that could ever execute the Licensor Software. (b) where the allocation is not defined by Fixed Partitioning, to include all Physical Processors on the physical machine.

2. Count the total number of Physical Processors for the relevant partition boundary for each physical machine, and aggregate the counts across all physical machines within the entire environment that runs the Licensor Software.

3. For all environments, if multi-threading is enabled for the underlying physical cores, then the total count of Physical Processors or Virtual Processors, as the case may be, shall be multiplied by 0.5.

1. If the multi-threading function is disabled, then a multi-threaded core shall be treated as a single-threaded core, in which case, (a) when calculating the number of Processors in a Virtualized Environment, the 0.5 multiplier shall be inapplicable; and (b) when calculating the number of Processors in all other environments, the number of cores instead of threads shall be the number of Processors Units required to be licensed and the 0.5 multiplier shall be inapplicable.

4. Any fraction shall be rounded upward to the next whole number.

The above calculation yields the total number of Processor Units required to be licensed for the Licensor Software.

#### Appendix B – License Parameters

Effective April 1, 2012 – To the extent that TIBCO products contain Java SE, use of the Java SE Commercial Features for any commercial or production purpose requires a separate license from Oracle. "Commercial Features" means those features identified



Table 1-1 (Commercial Features in Java SE Product Editions) of the Java SE documentation accessible at <http://www.oracle.com/technetwork/java/javase/documentation/index.html>.

Effective January 20, 2012 – TIBCO Formvine®

The module of the Licensor Software called TIBCO Formvine® Project Tools allows Licensor to create and manage TIBCO Formvine® projects, and to view, edit and export the data gathered through a Formvine® project's online form. Only the number of Named Users listed in an accepted Order Form which includes the Licensor Product named TIBCO Formvine® Project Tools shall be entitled to use the "Project Tools" as defined in the Documentation.

The module of the Licensor Software called TIBCO Formvine® Integration Add-on allows software other than TIBCO Formvine® Project Tools to exchange information with the TIBCO Formvine® Server by way of the server's application programming interfaces ("Formvine® APIs"). Only to the extent that an accepted Order Form includes the Licensor Product named TIBCO Formvine® Integration Add-on, shall Licensee have rights to use software other than the licensed TIBCO Formvine® Project Tools in conjunction with the Formvine® APIs.

Effective December 1, 2011 – The following definition of Processor is being retired and will only apply to contracts entered into on or before November 30, 2011:

"Processor" means a central processing unit ("CPU") on which the Licensor Software is licensed to run. For purposes of counting Processors on multicore chips, the number of Processors is the number of CPUs times the number of cores multiplied by .75.

Effective July 1, 2010 - TIBCO Foresight™ HIPAA Validator® Desktop; TIBCO Foresight™ Community Manager®; TIBCO Foresight™ Instream®; TIBCO Foresight™ Transaction Insight®; TIBCO BusinessConnect™ EDI Protocol HIPAA Edition powered by Instream® ("Editorial Content Products")

The Editorial Content Products contain CPT Editorial Content, which is licensed from the American Medical Association ("AMA"). The AMA holds the copyright to CPT Editorial Content and the registered trademark "CPT". Provision of updated CPT Editorial Content in the Editorial Content Products is dependent on continuing contractual relationship between Licensor and the AMA. The following terms apply to end users of the Editorial Content Products:

(1) The license granted to Editorial Content Products is a nontransferable, nonexclusive license, for the sole purpose of internal use by Licensee and Licensee must ensure that anyone with authorized access to the Editorial Content Products will comply with the provisions of Licensee's license agreement with Licensor. Licensee is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party any copy or portion of the Editorial Content Products.

(2) Notices of proprietary rights, including trademark and copyright notices in the Editorial Content Products, may not be removed from any permitted back up or archival copies made.

(3) CPT Editorial Content as contained in the Editorial Content Products is provided "as is" without any liability to the AMA, including without limitation, no liability for consequential or special damages, or lost profits for sequence, accuracy, or completeness of data, or any guarantee or warranty that the CPT Editorial Content will meet Licensee's requirements. The AMA's sole responsibility is to make available to Licensor replacement copies of the CPT Editorial Content if the data is not intact. The AMA disclaims any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in CPT Editorial Content.

(4) U.S. Government Rights. The Editorial Content Products include CPT Editorial Content, which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois, 60654. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited right restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

Effective July 1, 2010 – The following Licensor Software products are each licensed for the sole purpose set forth below:

TIBCO® KPSA – Mobile for provisioning and activating telecommunication services and mobile access networks (such as GSM, EDGE, UMTS, GPRS, and HSPDA) each for Licensee's mobile telecommunication subscribers. TIBCO® KPSA – Broadband – for provisioning and activating telecommunication services and broadband access networks (such as DSL, optical fiber, and WiMAX) each for Licensee's broadband subscribers. TIBCO® KPSA Load Balancer – Mobile – for distributing traffic across TIBCO KPSA – Mobile nodes. TIBCO® KPSA Load Balancer – Broadband – for distributing traffic across TIBCO KPSA – Broadband nodes. TIBCO® KxDR – Mobile – for mediation of service usage detail records ("xDRs"), including but not limited to call and transmission detail records, that are generated by mobile network elements and service platforms serving Licensor's mobile subscribers. TIBCO® KxDR – Broadband – for mediation of service usage detail records ("xDRs"), including but not limited to call and transmission detail records, that are generated by broadband network elements and service platforms serving Licensor's broadband subscribers. TIBCO® KPSA – Order Management – for managing the end-to-end lifecycle of Licensee's customer requests for the delivery of telecommunication products as captured from order entry systems (excluding the provisioning and activation of telecommunication services and mobile or broadband access networks).

Effective May 27, 2010 - Licensor Software products TIBCO BusinessEvents™, TIBCO Collaborative Information Manager™, TIBCO ActiveMatrix® Service Performance Manager, TIBCO® ActiveFulfillment, TIBCO LogLogic® Enterprise Virtual Appliance, TIBCO

LogLogic® Compliance Manager, TIBCO LogLogic® Security Event Manager Appliances, TIBCO LogLogic® Log Management Enterprise Appliances (including but not limited to TIBCO LogLogic LX Appliances and TIBCO LogLogic® ST Appliances) and TIBCO LogLogic® Log Management Mid-Market Appliances(TIBCO LogLogic® MX Appliances), (and each of the foregoing when included in a Bundle or as Embedded/Bundled products) are subject to a restricted license and contain third party proprietary code that Licensee or Partner can only use in conjunction with the Licensor Software.

Effective May 1, 2010 – TIBCO DataSynapse™ Analytics is an Embedded/Bundled product, which includes, in part, TIBCO Spotfire® Web Player and TIBCO Spotfire® Professional as bundled Licensor Software. In addition to Embedded/Bundled Products restrictions, Licensee's use of these bundled products in connection with TIBCO Spotfire® Analytics is limited to 25 Named Users of TIBCO Spotfire Web Player, 5 Named Users of TIBCO Spotfire Professional.

Effective February 18, 2010 – All TIBCO iProcess Spotfire® Add-on Web User is licensed solely to increase the number of TIBCO Spotfire® Web Player Named Users included in and for use in connection with the TIBCO iProcess Spotfire® Add-on Bundle. TIBCO iProcess Spotfire Add-on Web User may be used solely in connection with the TIBCO iProcess Spotfire Add-on Bundle.

Effective May 12, 2009 – All TIBCO Spotfire® Application Data Services products shall be used exclusively with TIBCO Spotfire® Analytics Server or TIBCO Spotfire® Server and shall only be accessed via ODBC or JDBC.

Effective June 1, 2007 – TIBCO iProcess™ Decisions Studio and TIBCO iProcess™ Decisions must be used with TIBCO iProcess™.

Effective April 1, 2001 – "Embedded/Bundled Products" – Some Licensor Software embeds or bundles other Licensor Software. Use of such embedded or bundled Licensor Software is solely to enable the functionality of the Licensor Software licensed under this Agreement, and may not be used or accessed by any other Licensor Software, or for any other purpose.

Effective December 24, 2000 – TIBCO BusinessPartner / Effective October 17, 2006 – TIBCO BusinessConnect Remote - Licensee may sublicense to third parties ("Partners") up to the total Number of Units of TIBCO BusinessPartner or TIBCO BusinessConnect Remote, provided that for every such sublicense, the Number of Units Licensee is licensed to use shall be reduced by the same number, and provided further that prior to delivery of TIBCO BusinessPartner or TIBCO BusinessConnect Remote to a Partner, such Partner agrees in writing (a) to be bound by terms and conditions at least as protective of Licensor as the terms of this Agreement, (b) that TIBCO BusinessPartner or TIBCO BusinessConnect Remote be used solely to communicate with Licensee's implementation of TIBCO BusinessConnect, and (c) for such Partner to direct all technical support and Maintenance questions directly to Licensee. Licensee agrees to keep records of the Partners to which it distributes TIBCO BusinessPartner or TIBCO BusinessConnect Remote, and to provide Licensor the names thereof (with an address and contact name) within sixty (60) days of the end of each calendar quarter.

TFSI EULA Appendix C – Maintenance Program Guide

1 Overview

TIBCO is dedicated to the success of our customers by providing timely responses to problems with TIBCO software products. TIBCO's highly skilled support engineers are well versed in TIBCO's software products. TIBCO's support services group is a global organization that uses a "follow-the-sun" model to ensure that support is available whenever it is needed. Support centers are located around the world to support all the TIBCO product lines.

In the event you have contracted for Maintenance Services at the Bronze Level, the supported time zone assigned for Service Hours will be based on the TIBCO software delivery address for your company.

All Equipment Maintenance is subject to the terms of the Equipment Maintenance Program (Appendix D).

2 Maintenance Service Levels

2.1 TIBCO Maintenance Service Levels

MAINTENANCE LEVEL	Updates Only	Bronze (includes Updates)	Silver (includes Updates)
Service Hours:	N/A	9am-5pm, Monday-Friday Service hours are based on PST, EST, CST, CET, MST, GMT, GMT+5:30, GMT+8:00, GMT+9:00, DST, AEST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., California, U.K., A.P.A.C. and Japan.	24 Hours/Day, 7 Days/Week
Initial Response:	N/A	Severity 1 & 2: 4 Business Hours	Severity 1 & 2: 4 Hours

Target Resolution:	N/A	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release
TIBCO DirectConnectSM Manager (DCM) Support	N/A	N/A	N/A
Authorized Contacts:	N/A	Unlimited	Unlimited

2.2 Spotfire, DataSynapse, and Foresight Maintenance Service Levels

MAINTENANCE LEVEL	Bronze term (includes Updates)	Silver (includes Updates)
Service Hours:	9am-5pm, Monday-Friday Service Hours are based on CET, UTT/GMT, GMT+5:30, GMT+8:00, GMT+9:00, and EST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., Sweden and Japan.	24 Hours/Day, 7 Days/Week
Initial Response:	Severity 1 & 2: 4 Business Hours	Severity 1 & 2: 4 hours
Target Resolution:	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release
Number of Contacts:	Unlimited	Unlimited

3 Maintenance

For the purpose of any license or maintenance agreement under which Maintenance is provided, as used below, "Licensor Software," shall include "TIBCO Software," "Spotfire Software" or "Software" as defined in any such agreement. "Customer," as used below, shall have the same meaning as defined for the customer company entity licensed to use the Licensor Software in any such agreement.

3.1 Severity Level Definitions

"Severity 1" is an emergency production situation where the Licensor Software is totally inoperable or fails catastrophically and there is no workaround;

"Severity 2" is a detrimental situation (and there is no workaround) where (a) performance degrades substantially under reasonable loads causing a severe impact on use, (b) the Licensor Software is usable but materially incomplete; or (c) one or more mainline functions or commands is inoperable;

"Severity 3" is where the Licensor Software is usable, but does not provide a function in the most convenient manner; and

"Severity 4" is a minor problem or documentation error, which is reasonably correctable by a documentation change or by a future maintenance release from TIBCO.

3.2 Scope

TIBCO will use commercially reasonable efforts to resolve matters according to the problem Severity ("Maintenance") level determined by TIBCO. All communications will be in English. Customer will use commercially reasonable efforts to provide: (a) a detailed problem description; (b) a method for repeatedly reproducing the problem; and (c) reasonably continuous access to a Customer authorized contact. During the Maintenance term, Customer authorized contacts as applicable for the Maintenance level selected in Customer's order, and which are registered at TIBCO's support website: <https://support.tibco.com/esupport/>, may notify TIBCO's Technical Assistance Center of an error, defect, or malfunction in the Licensor Software. Maintenance includes the right to use Updates (as defined below) as replacements for existing copies, whether provided under Maintenance, Warranty or which are provided for any other reason by TIBCO, or TIBCO's their respective authorized resellers or distributors (if applicable); Updates are subject to Customer's license agreement limitations and restrictions. "Updates" means Licensor Software bug fixes, enhancements, and upgrades, if and when made generally available by TIBCO under Maintenance to Customers for a specific Licensor Software product. Subject to the quantity of Licensor Software licensed and payment of any applicable Maintenance fees, Customer's right to use Updates extends to any supported Platform then currently available for each discrete Licensor Software product under Maintenance. Updates may include new or additional Platforms that are deemed (at TIBCO's sole discretion) to have no more than a minimum different in price, features and functionality from previously available Platforms. TIBCO will notify Customer in writing in the event that Maintenance is materially affected by TIBCO licensor(s). TIBCO will provide Maintenance for a release version of the Licensor Software products for at least (a) six months after a new release version is generally available, but in no event for more than (b)(i) two years from the general availability of a Licensor Software release version or (b)(ii) one year from the general availability of a subsequent release version, whichever of (b)(i) or (b)(ii) is later, after which Maintenance shall be discontinued for that release version.

3.3 Limits

Customer must purchase the same service level of Maintenance for all quantities of Licensor Software products that it has licensed from TIBCO or any other third party. Unless otherwise stated in an Order Form, each license grant is incremental to all prior license grants

and consequently each grant is subject to additional Maintenance, if purchased. For the avoidance of doubt, Maintenance fees are based on cumulative license fees paid. Maintenance does not include support for any non-TIBCO software, custom configuration, product modification, new products and functionality for which TIBCO is charging an additional license fee, services at a Customer site, any work product provided under Consulting Services or for Licensor Software products with non-matching service levels. TIBCO reserves the right to make fixes only to the most current version of the relevant Licensor Software, and may elect, at its discretion, to make fixes generally available for minor release versions or the latest service pack for a supported version.

#### 3.4 Perpetual Term Licenses

The initial Maintenance term shall be for one year commencing on the effective date of the applicable Customer order, unless otherwise stated in the relevant Order Form. In the event Customer elects to renew Maintenance (subject to any rights of termination as set forth in a contract with TIBCO), Maintenance will be renewed for successive one (1) year terms and the annual Maintenance fee for the first renewal term shall not increase by more than the percentage rate change in the Consumer Price Index for the 12 month period immediately preceding the anniversary date of Maintenance. Maintenance fees for subsequently acquired Licensor Software will be prorated to expire with the then-current annual Maintenance term.

#### 3.5 Limited Term Licenses

The initial Maintenance term shall be for one (1) year commencing on the effective date of the applicable Order Form. During the license term, and in the event the Customer elects to renew Maintenance (subject to any rights of termination as set forth in a contract with TIBCO), Maintenance may be renewed for successive one year terms, and the annual Maintenance fee for the first renewal term shall be equal to the annual Maintenance fee for the initial term.

#### 3.6 Reinstatement of Maintenance

Reinstatement of Maintenance is subject to payment of Maintenance fees for any period during which Maintenance had lapsed.

#### 3.7 Non-Continuous Coverage

In the event Customer elects not to maintain continuous Maintenance, TIBCO may, at its discretion, refuse to provide any Maintenance to Customer until payment for the period of discontinuity is made current.

#### 3.8 Discontinued Support for Prior Release Version

When a prior version goes out of Maintenance, it means that fixes will no longer be generally available for that version. Support will continue to accept problem reports for that prior version, and when feasible, will attempt to provide Customer with reasonable assistance to troubleshoot and resolve the problem. Engineering will only evaluate reported issues in the supported versions of the Licensor Software product.

When a Customer:

encounters a known defect, which is already corrected in the most current or a supported version of the Licensor Software, the Customer will need to upgrade to the most current or supported version of the Licensor Software to obtain the fix; or

discovers an unknown defect, engineering will make the fix in the most current version of the Licensor Software and the Customer will need to upgrade to that version to obtain the fix.

Additionally, with typically 12 months prior notice, TIBCO may announce the end of support (i.e. stop accepting SRs) on significantly older versions by publishing a Late Breaking News (LBN) article on the TIBCO Support Web site (<https://support.tibco.com/esupport/>). Even in such a case, access to the knowledge base of the older versions is always available to a Customer currently under Maintenance. A Customer may submit a service request via the TIBCO Support Web to request a product version be included under the TIBCO Extended Support Program.

#### 3.9 Product End-of-Life

Notwithstanding 3.2 above, Customers are provided advance written notice (up to twelve months) when Licensor Software is to be retired. This information is published as "Retirement Notices" under the Late Breaking News (LBN) section of the TIBCO Support Web.

#### 3.10 TIBCO Extended Support Program

TIBCO is pleased to offer customers extended Maintenance on certain Licensor software product versions. The scope and terms of extended Maintenance:

##### Include

The ability to submit service requests for eligible product versions.

TIBCO assistance providing workarounds and existing fixes for issues reported; staging of issues by TIBCO will be on the latest version of eligible product(s).

Maintenance service level initial response and target resolution times are according to customers' existing Maintenance service level.

##### Exclude

Enhancements, service packs, or defect corrections

Support for new platforms (database versions, operating system versions, TIBCO infrastructure products, etc.)

Back porting of any fixes (including, but not limited to, bug or security fixes) from later product versions

Partners participating in the TIBCO Partner Network or any other TIBCO Partner program.

Extended Maintenance is subject to eligibility requirements. Please contact your TIBCO Sales Account Executive or the TIBCO Maintenance Renewal team at [renewals@tibco.com](mailto:renewals@tibco.com) for more information and to obtain the then current list of product versions currently supported under extended Maintenance.

TIBCO reserves the right, at its discretion, without notice of any kind, to change products and product versions included in any extended Maintenance product version list. Changes to the extended Maintenance product version list will have no impact during any Maintenance term for which TIBCO Extended Support Program Maintenance fees have already been paid.

### 3.11 Virtualized Environments Support

Although TIBCO does not include all virtualization environments in our product test plans, and subject to there being no more than minimal differences in price, features, functionality and quantity, we will provide Maintenance for Licensor Software in any Virtualized Environment if the following criteria are met:

The operating system running in the Virtualized Environment is supported by TIBCO for Licensor Software version in question, and  
The Virtualized Environment being used is officially certified and approved by the operating system vendor in question, and  
The Virtualized Environment presents a true image of the native operating system.

TIBCO does not make any claims for the performance of Licensor Software running in a Virtualized Environment nor can we make any recommendations for optimal configuration of the Virtualized Environment in question.

Should it become necessary to engage the Virtualized Environment vendor, it will be the responsibility of the Customer to open a service request with their vendor. TIBCO Support will provide reasonable assistance to the Customer or vendor as it relates to the use and understanding of Licensor Software in the case at hand.

## 4 TIBCO Support Web

It is recommended that the Customer establish and maintain an internal support organization to provide front line support services to their users and that all authorized contacts be trained on the TIBCO software products in classes provided by TIBCO Education, as reasonably required by TIBCO to enable the customer to support licensed TIBCO software products.

Step 1: Identify the assigned contacts within your company. Review your maintenance agreement to see how many contacts are authorized.

Step 2: Register assigned contacts and one management-level individual (for verification and escalation) by sending [an email to support@tibco.com](mailto:support@tibco.com). Be sure to include the name, email address, physical address and phone number of each contact.

All contacts will be registered with our call tracking system and given access to TIBCO Support Web.

Step 3: Have all assigned contacts view the Support Overview Presentation as well as review the "Support Policies" section within TIBCO Support Web.

Additional information about Getting Started can be found at <http://www.tibco.com/services/support/getting-started/default.jsp>.

### 4.1 Opening a Service Request

There are two ways to report a problem:

TIBCO Support Web (preferred method). Cases reported online are automatically entered into TIBCO's Call Tracking system and assigned a Service Request (SR) number. TIBCO requires that all Severity 1 cases be followed up with a phone call to our Technical Assistance Center (TAC) to ensure immediate attention to your issue.

Phone. Each TIBCO customer is assigned a regional Technical Assistance Center (TAC) that they can contact to request support via phone. The support line phone number for each regional TAC in the America's, EMEA and APAC is published on the TIBCO Support Web. A service request will be created in TIBCO's call tracking system and an SR number is provided.

### 4.2 Processing a Service Request

Once a service request is submitted, the TAC specialist will review, access and assign the appropriate severity level. All severity 3 and 4 calls will be assigned to the appropriate product and workgroup where our technical support engineers will start working on the call on a First in – First out (FIFO) basis. TAC will notify support managers of any SRs that are assigned to Severity 1 or 2, so that they are handled in an escalated manner. The TIBCO Support Engineer will communicate with the customer until the issue is resolved. Depending on the nature of a Service Request, a Service Request can be resolved by a Support Engineer or logged by a Support Engineer as bugs/enhancements with product engineering.

TIBCO support level and responsibilities:

#### - First level (Technical Assistance Center):

Review Service Requests reported by Web, Email or phone from a customer authorized contact  
Validate customer maintenance status, product entitlement and check for any special handling required.  
Identify type of request, problem definition, configuration, products, product versions and platforms.  
Determine severity of the problem and execute any escalation procedures necessary.  
Direct problems for resolution to workgroups

#### - Second level (Product Support):

Confirm problem and configuration used by the customer  
Evaluate against known problems or issues  
Stage the problem

Reproduce problems and provide workarounds  
Escalate to engineering where required to develop patches and fixes  
Keep the SR updated at all times within the Call Tracking system  
Keep the customer Authorized Contact updated on the progress

- Third level (Engineering):

Develop fixes as needed  
Test and verify functionality and performance  
Update the source code control system as needed  
Ensure patches and fixes are incorporated into a future product release

#### 4.3 Escalations

Special procedures apply to Service Request escalations. An escalated issue is generally one of the following:

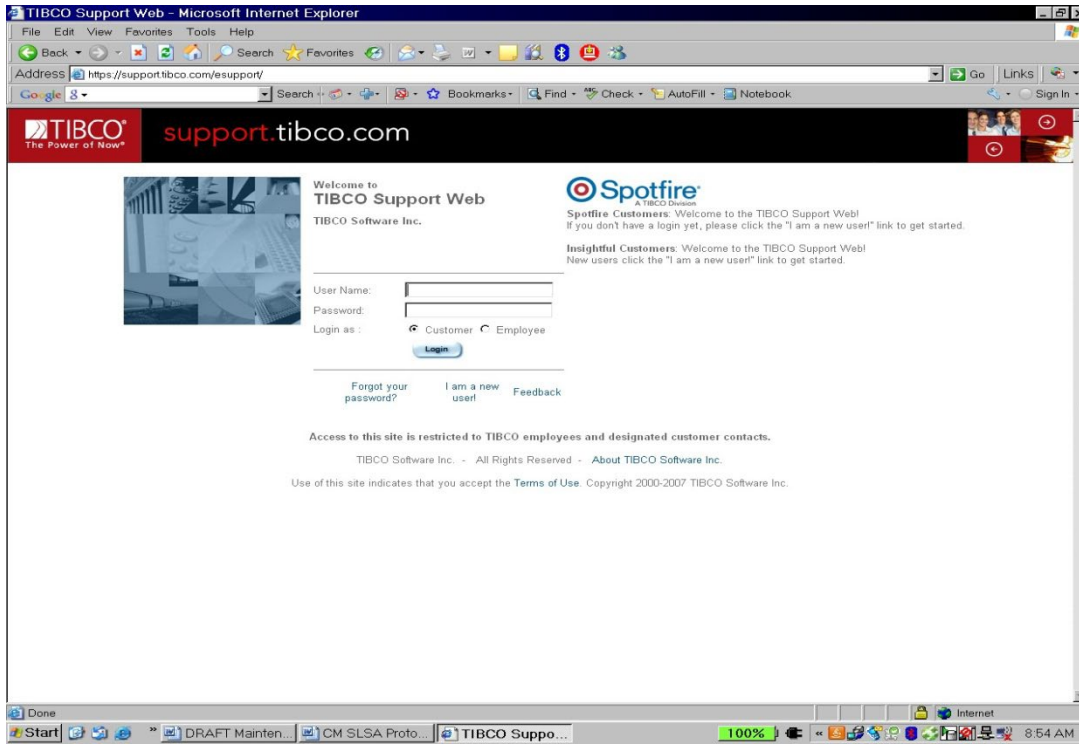
No response to a problem reported, within the designated time given by the call response coordinator or technical engineer  
Response times out of severity guidelines  
Customer dissatisfaction with Service Request resolution you've been given

North and South America +1.650.846.5789  
EMEA (Europe, Middle East, and Africa) +44(0).870.909.3889  
Asia and Australia +61.2.4379.9322 or 1.800.184.237 (within Australia only)

The above telephone numbers provide access to a TIBCO Support Manager. This phone number is to be used if or when a customer is dissatisfied with the progress of problem resolution, or wants the problem reported brought to the attention of TIBCO's management. If voicemail is reached, the customer should leave a message containing the company name, a contact telephone number, and estimated severity level for the issue. The voice mail will trigger an immediate page to a Support Manager, who will contact customer at the number left in the message.



#### 4.4 TIBCO Support Web Login



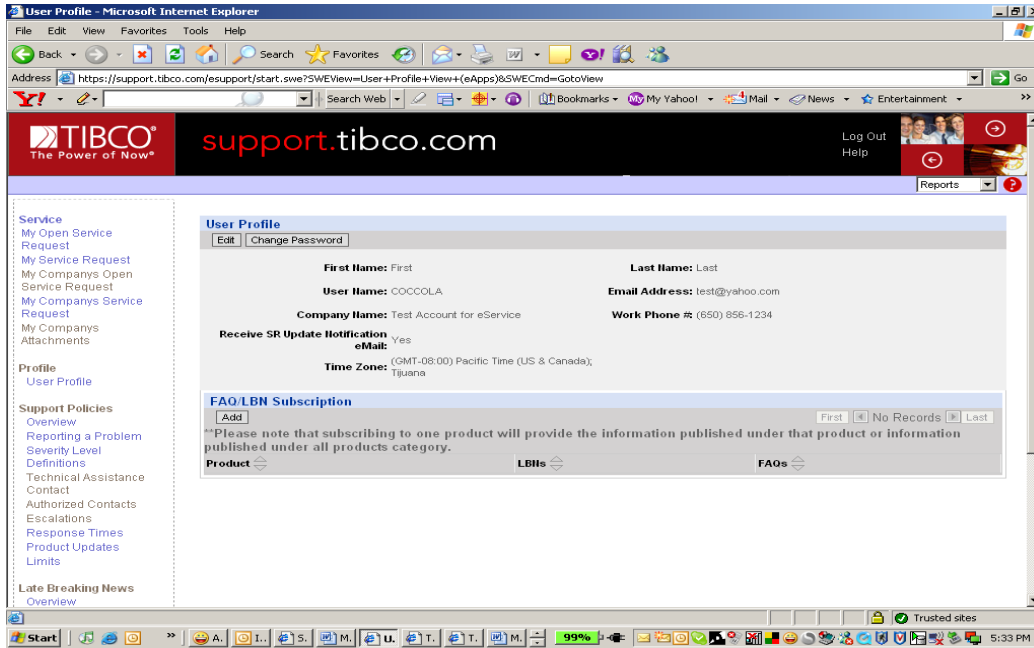
#### 4.5 Creating, Updating and Tracking a Service Request



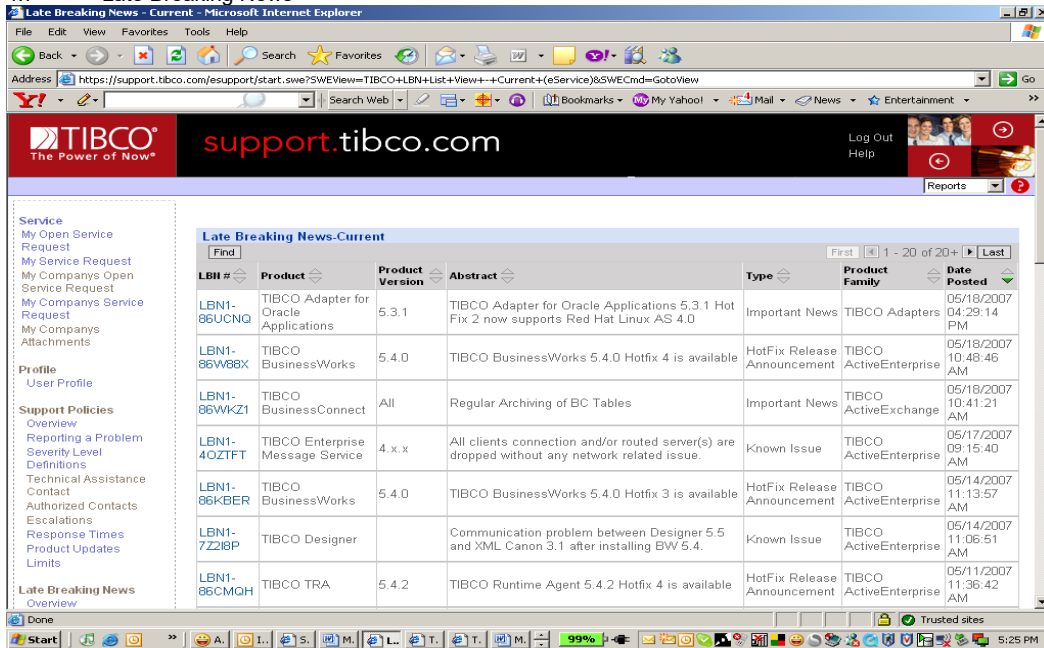
#### 4.6 User Profile



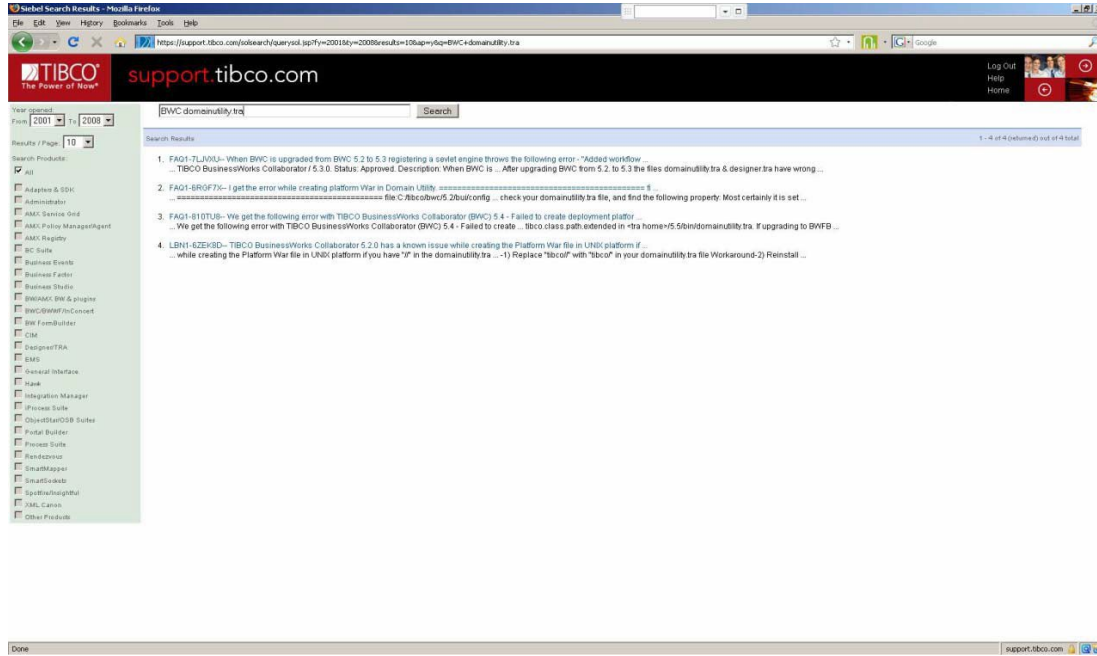
Authorized contacts are able to change their login password, update their phone numbers, select their time zone and subscribe to Product FAQ's and LBN in this section.



4.7 Late Breaking News

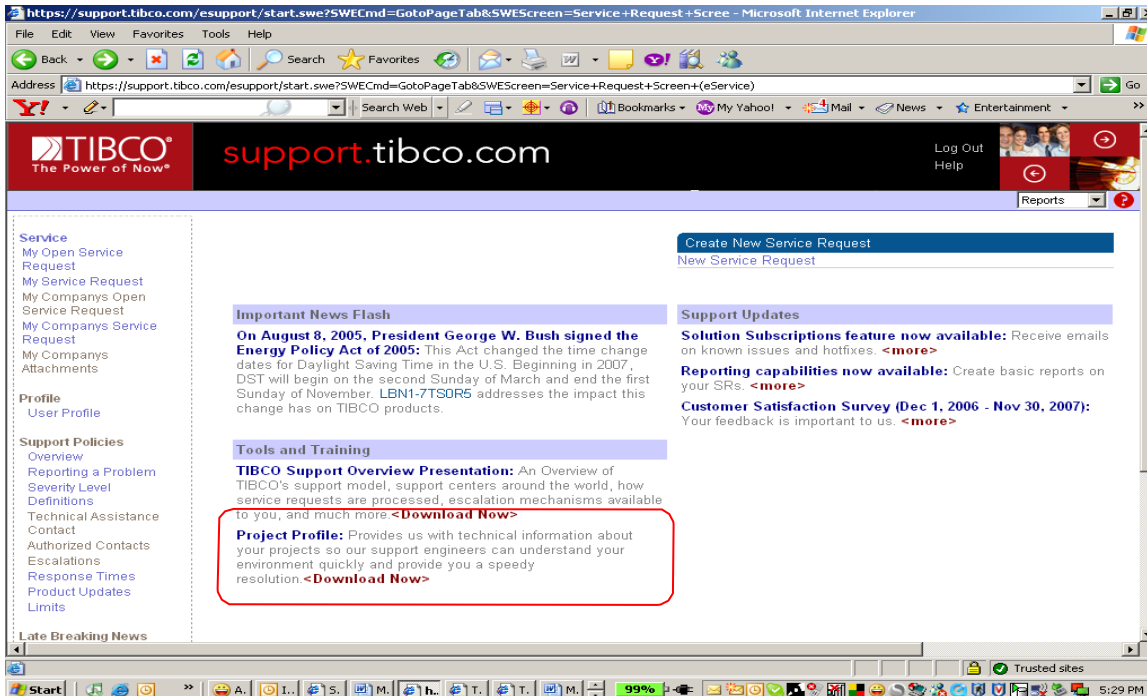


## 4.8 Product FAQs



## 4.9 Customer Project Profile

Each customer is encouraged to submit and maintain a detailed project profile that gives details about their TIBCO software implementation.



## 4.10 Additional Features

**Solution Subscription feature:** By updating your User Profile, you now have the ability to receive notifications on any FAQ and/or LBN material we publish. This means that you can get the latest information about a known issue or the availability of hot fixes as soon as it is announced on any product of your choice. Please note that when you subscribe to a product, you will receive information published for that product as well as information published under the 'All Products' category.

**Reporting Capabilities:** Generate basic reports on your service requests and download them in .csv or Excel format. This feature and its help function can be found in the upper right hand corner of the Support Web.

Customer Satisfaction Survey: It is our goal to continuously improve the services we provide and a key part of this process is to hear how we are doing from our customers. The valuable input we receive will help us spotlight areas where we need to focus more attention. Customer Satisfaction Surveys are being conducted using the telephone by our global TAC team. They will contact customers who have recently completed a service request and will collect feedback on satisfaction measured on a 5-point scale (5-very satisfied; 1- Very Dissatisfied). Results will be shared with our support team as well as be made available on the Support Web for our customers to view. Authorized contacts can access the TIBCO Support Overview presentation, which provides useful information about TIBCO's support model, support centers around the world, how service requests are processed, escalation mechanisms available, and much more.

## 5 TIBCO Spotfire Customer Support

Spotfire and S-Plus customers can submit technical support requests via the TIBCO Support Web portal. The Support Web site allows customers to create, track, and update your product Service Requests (SRs), Enhancement Requests, Knowledge base, Late Breaking News items and more. Customers with accounts on the TIBCO Support Web may login and submit Service Requests today.

## 6 TIBCO Foresight Customer Support

TIBCO Foresight customers can submit technical support requests via email to [fssupport@tibco.com](mailto:fssupport@tibco.com). Customers may also contact our support group directly by phone at 1.800.669.5006 (U.S. and Canada) or +1 614.791.1600 (Outside U.S. and Canada). The TIBCO Foresight support staff will then assign a tracking number if the email or phone call cannot be answered immediately. This tracking number allows the customer the ability to reference any and all enhancements and fixes targeted for the product.

## 7 Product Download Site

The electronic software delivery service found at <http://download.tibco.com/tibco/> provides confirmed internet delivery and tracking of software and documentation packages to authorized customers. Use of this system requires a secure username and password. This service provides authorized users with a customized portal to access their TIBCO product entitlements. Customers can view products they have purchased (excluding products purchased from a TIBCO web store site), as well as products they have obtained for evaluation purposes (excluding products downloaded or obtained for evaluation from another TIBCO web site). Customers with a current maintenance contract will automatically be entitled to download new releases, product updates and service pack releases, during their active maintenance period. Additional information is available on the TIBCO Support Web at "Product Updates" under the "Support Policies" section. Any software downloaded from this site may only be used in accordance with the terms and conditions of your license agreement with TIBCO Software Inc.

## 8 tibbr® Support

tibbr® Support Customers are entitled to Maintenance Service for tibbr® at the Silver Maintenance Level unless otherwise stated in an Ordering Document, as well as access to the tibbr® Support Program, as described below, irrespective of the service level of Maintenance for any other Licensor Software products which Customer might have licensed and provided that all tibbr® Product Line Licensor Software products licensed by Customer are subject to tibbr® Support.

### 8.1 tibbr® Support Program

This Program is intended to support Customers through the adoption of tibbr® within their organization. As part of this Program, Customers will be supported in their ongoing usage of tibbr® with responses to questions regarding technical issues, usage best practices and how to best implement the product.

The tibbr® Support Program is provided by TIBCO upon Customer's request, subject to availability of resources and on a reasonable effort basis. TIBCO will make reasonable endeavours to meet Customer's requests for assistance but provides no assurance that this service will be delivered on specific dates. TIBCO reserves the right to modify, reduce or increase the tasks included in the Program. Service Requests can be opened either through the TIBCO Support Web or by phone.

## TSFI EULA Appendix D – Equipment Maintenance Program Guide

### 1. Overview

This Equipment Maintenance Program Guide ("Equipment MPG") sets forth the terms and conditions by which TIBCO shall provide, and its customers shall receive, Maintenance for Equipment.

Maintenance services are optional and are available at the Bronze and Silver levels. Software Maintenance is determined by the level of Equipment Maintenance purchased, i.e. Maintenance levels for Equipment Software must be equal to the Maintenance levels for the corresponding Equipment, e.g.

Silver level Equipment Maintenance will include Silver level Software Maintenance for the Equipment Software.

Maintenance for Equipment Software is subject to the Maintenance Program Guide located at Appendix C ("MPG"). In the event of a conflict between the MPG and this Equipment MPG, where such conflict pertains to Equipment, this Equipment MPG shall prevail.

Solely as used in this Equipment MPG, "Agreement" means this Equipment MPG, the MPG and any agreement currently in effect between Customer and TIBCO related to the Equipment.

### 2. Equipment Maintenance Service Levels

MAINTENANCE LEVEL	Bronze (includes Updates)	Silver (includes Updates)
Service Hours:	9 a.m. -5 p.m., Monday-Friday ("Business Hours") Service hours are based on PST, EST, CST, CET, MST, GMT, GMT+5:30, GMT+8:00, GMT+9:00, DST, AEST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., California, U.K., A.P.A.C. and Japan.	24 Hours/Day, 7 Days/Week
Initial Response:	Severity 1 & 2: 4 Business Hours Severity 3: Next Major Release	Severity 1 & 2: 4 Hours Severity 3: Next Major Release
Target Resolution:	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release	Severity 1: 48 Hours Severity 2: 5 Days Severity 3: Next Major Release
Authorized Contacts:	Unlimited	Unlimited

**3. Equipment Maintenance Terms and Conditions**

3.1. Equipment Maintenance - Scope. This Section 3 applies to Maintenance of Equipment, specifically excluding Maintenance for the TIBCO Messaging Appliance™ ("TMA"), and is subject to Section 5 (Maintenance Exclusions) and Section 6 (Customer Responsibilities) set forth below. TMA Maintenance terms are set forth in Section 4 below.

3.2. Equipment/Component Repair or Replacement Protection. During the Maintenance term, for all Equipment Maintenance levels, and subject to Customer's compliance with the Agreement, TIBCO shall, at its sole option, either repair or replace the covered Equipment or component thereof that TIBCO can confirm is causing an error.

3.3. Contacting Support; Troubleshooting. Upon discovering an error, Customer must promptly first place a call to the designated support number. TIBCO will provide basic telephone technical assistance for installation, product configuration, setup and problem resolution for the Equipment. Prior to scheduling Equipment replacement or repair, TIBCO may ask Customer to provide relevant information, start diagnostic tools and perform other supporting activities outlined in Section 6 below.

**3.4. On-site Equipment Repair Process.**

3.4.1. On-site repair support is available solely for TIBCO LogLogic® Security Event Manager ("SEM") and TIBCO LogLogic® Security Event Viewer ("SEV") Customers in the United States and Europe.

3.4.2. If TIBCO determines that the Equipment or component thereof may be repaired at Customer's location, TIBCO will endeavor to dispatch a TIBCO (or TIBCO-contracted) technician to the Customer's location by the next business day; provided, however, that Customer must immediately notify TIBCO in writing in advance if the Equipment is located in an area with restricted access which may require a technician with special qualifications. In such instance, TIBCO will use commercially reasonable efforts to locate and contract, if necessary and at Customer's expense, a technician with such special qualifications; provided that Customer understands and agrees that any reasonable delay or failure in procuring such technician shall not constitute a breach of the Agreement.

3.5. Equipment Replacement – Processes and Procedures. Except as otherwise provided in Section 3.4 above, TIBCO will take all commercially reasonable steps to replace the Equipment or component thereof, as applicable; provided that Customers follow the return material authorization ("RMA") procedure described in this Section 3.5. In the event that TIBCO recommends replacement of a component, TIBCO will provide Customer with instructions for the removal of the component and the installation of the replacement component.

3.5.1. Customer must obtain an RMA from TIBCO prior to returning any Equipment to TIBCO.

Customer may request an RMA by telephone (1-800-957-LOGS) or by email at [support@loglogic.com](mailto:support@loglogic.com). Customer must provide the following information related to every Equipment or component thereof to be returned:

Model number, and serial number, eth0 MAC address or Tag ID of the Equipment, and, if returning an Equipment component, a description of such component;  
Sender's name, telephone, email address and fax number;  
Reason for return, i.e. a description of the error; and  
Ship-to address, including contact name, email address and phone number of the individual to receive the TIBCO replacement Equipment.

3.5.2. If the RMA is received, authorized and processed by TIBCO before 2 PM Pacific Standard Time (USA) or 2PM UK (GMT) Time, TIBCO will ship replacement Equipment: (1) on the same business day where the Equipment or component to be replaced does not require customization; and (2) within forty-eight (48) business hours where the replacement Equipment requires customization. Non-customized shipped replacement Equipment or components will be factory-default/off-the-shelf. Any shipped repaired or replaced Equipment or components may be refurbished or include refurbished components.

3.5.3. TIBCO will ship replacement Equipment for next local business day standard delivery to Customer's location free of freight charges. Unless otherwise specified or agreed upon, factory default/off-the-shelf Equipment will be shipped with the latest Software.

3.5.4. TIBCO will provide Customer with a shipping account number or prepaid shipping label to use for purposes of returning defective Equipment or components. While Customer is not obligated to return defective Equipment or components before TIBCO will ship replacements, Customer is nonetheless required to ensure that the returned Equipment is received by, or is in transit to, TIBCO or its designee within ten (10) business days of Customer's receipt of the replacement Equipment.

3.5.5. TIBCO strongly recommends that Customer keep all original packing material received with the Equipment for use in any Equipment return. If Customer no longer has the original packaging, Customer may request that TIBCO send them replacement packaging at Customer's cost. Customer shall also be wholly responsible for any damage or loss of the Equipment in transit; TIBCO recommends that Customer procure sufficient insurance before shipping Equipment to TIBCO.

3.5.6. Customer acknowledges that Customer-returned Equipment shall become the property of TIBCO upon delivery to TIBCO.

3.6. Keep Your Hard Drive Option: For an annual additional fee, Customers may purchase an option to "Keep Your Hard Drive," entitling Customer to retain the defective hard drive(s). Subject to compliance with instructions provided by TIBCO, Customer may extract and retain or destroy the original hard drives from the Equipment. In no instance may Customer transfer, connect or otherwise use any drive(s) from returned Equipment in the replacement Equipment; doing so will result in Customer's breach of the Agreement, and will void TIBCO's warranty obligations.

3.7. Extended Support: Extended support for Equipment is available, subject to Section 3.10 of the MPG (TIBCO Extended Support Program).

#### 4. TMA Maintenance Terms and Conditions

4.1. TMA Maintenance – Scope. This Section 4 applies solely to the TMA, and is subject to Section 5 (Maintenance Exclusions) and Section 6 (Customer Responsibilities) set forth below.

4.2. TMA Replacement Protection. During the Maintenance term, and subject to Customer's compliance with the terms and conditions of the Agreement, under Silver Equipment level Maintenance, TIBCO will provide a permanent replacement of the TMA. Certain features, such as interface standards, product footprint and mobility, firmware and software compatibility may not be available.

4.3. Contacting Support; Troubleshooting. When experiencing a problem, Customer must first place a call to the designated support number. TIBCO will provide basic telephone technical assistance for installation, product configuration, setup and problem resolution for the TMA. Prior to scheduling advance replacement of the TMA, TIBCO may ask Customer to provide relevant information, start diagnostic tools and perform other supporting activities outlined in this Section 4 and in Section 6 below. Customer will be required to provide a credit card number or purchase order number.

4.4. TMA Replacement – Processes and Procedures. If the problem cannot be resolved remotely, TIBCO will replace the failed TMA provided that Customers follow the procedure described below.

4.4.1. Prior to returning the failed TMA, Customer must:

- a) perform all steps for self-test and trouble-shooting specified in the operating manual for the TMA;
- b) provide to TIBCO, in writing, the model number, serial number, current failure symptoms, pertinent failure history and ship-to address (if applicable).

4.4.2. Promptly following completion of Customer's obligations under Section 4.4.1, TIBCO or its authorized third party will ship the replacement TMA to Customer's location free of freight charges. The replacement TMA will be shipped in a suitable container and include instructions for returning the failed TMA. Packaging instructions and a prepaid shipping label for the return of the failed TMA will be included in replacement TMA shipping container. At TIBCO's discretion, TIBCO or TIBCO's authorized third party provider may elect to collect failed TMA at your location.

4.4.3. The replacement TMA will be a new or a refurbished TMA.

4.4.4. To return the failed TMA, Customer must:

a) unless Customer will deliver the failed TMA to TIBCO in person, package the failed TMA carefully in the original shipping container, or a shipping container that prevents the TMA from being damaged while in transit to TIBCO or TIBCO's authorized third party provider.

b) ship the failed TMA to TIBCO or TIBCO's third party provider (as directed by TIBCO) within three (3) business days of receipt of the replacement TMA and obtain a prepaid insurance receipt to be retained by Customer as proof of shipment to TIBCO.

4.4.5. If TIBCO or TIBCO's third party provider does not receive the failed TMA within fifteen (15) days of Customer's receipt of the replacement TMA, TIBCO reserves the right to institute any available legal action related to the failure to return the TMA.

4.4.6. The returned TMA shall become the property of TIBCO or TIBCO's third party provider upon receipt.

#### 4.5. Support Limitations:

4.5.1. At TIBCO's sole discretion, Maintenance will be provided using remote diagnosis and or other service delivery methods. Other service delivery methods, in lieu of shipping replacement Equipment, may include the overnight shipment of parts specified as Customer replaceable by TIBCO. TIBCO will determine the appropriate delivery method required.

4.6. The following services are specifically excluded from TMA Maintenance:

Diagnosis or Maintenance at the Customer site.

Set-up and installation of the replacement TMA or replacement parts at the Customer site.

#### 5. Maintenance Exclusions

5.1. Third Parties. Customer acknowledges and agrees that TIBCO may subcontract Maintenance services for the Equipment, in TIBCO's sole discretion, to a third-party authorized provider; TIBCO will remain responsible for ensuring that the Equipment Maintenance obligations under this Agreement are fulfilled.

5.2. Equipment Maintenance specifically excludes:

Recovery of the operating system, other software, parameters and data.

Troubleshooting for interconnectivity or compatibility problems.

Services required due to failure of Customer to incorporate any system or software fix, repair, patch, or modification provided to the Customer by TIBCO.

Services required due to failure of the Customer to take avoidance action previously advised by TIBCO.

User preventative maintenance.

Damage caused by failure of Customer to follow manufacturer's recommended maintenance or operating specifications, or caused by Customer's misuse, negligence or abuse.

Damage caused by environmental causes at Customer's location, such as poor ventilation, improper storage, power failures or surges.

Damage due events outside of TIBCO's control, including fire, flood, act of god, war or nuclear incident or terrorism.

Data, business interruptions, obsolescence, cosmetic damage, rust, change in color, texture or finish, wear and tear, gradual deterioration or any damage that does not affect the Equipment functionality.

Fraud or theft.

Alteration or modification of the Equipment in any way, not specifically directed in writing by TIBCO; repairs or alterations made by an unauthorized technician or user; damages caused by combination of Software with third party hardware or software.

Transit or relocation of Equipment by Customer, including any damages occurring while in transit or related to such relocation, and services accompanying or related to transit or relocation of the Equipment.

#### 6. Customer Responsibilities

Customer will be required, upon TIBCO's request, to support resolving any problem reported under Maintenance remotely by:

Providing all information necessary for TIBCO to deliver timely and professional remote support and/or to enable TIBCO to determine the level of support eligibility.

Starting self tests and/or other diagnostic tools and programs.

Performing other reasonable activities to help TIBCO identify or resolve the problem.

Customer must acknowledge receipt of replacement Equipment by signing freight carrier air bill at time of delivery.

Customer is responsible for installing all replacement Equipment (or components thereof) in a timely manner.

Customer is solely responsible for backing up all copies of its Licensed Software and data.

Customer shall restore software and data on the Equipment after the repair or replacement.

Customer is responsible for the installation of any software not provided by TIBCO with the Equipment and insure all software installed on the Equipment is appropriately licensed and compatible with the Equipment.

Where Customer is not a Government End User, Customer acknowledges that in the event that diagnosis by TIBCO reveals that the error is not caused by the Equipment that TIBCO may charge Customer the then-current GSA Schedule rate for such diagnosis.

In the event of that the Equipment or TMA is retired, Customer may need to upgrade its Equipment or TMA in order to ensure performance of the applicable Software.

#### 7. Equipment End of Life and End of Sale:

As part of the normal product lifecycle, TIBCO will announce the date of which an Equipment will become End of Life ("EOL") which such announcement will also include a date for the End of Sale ("EOS") of such Equipment. For clarity, this Section 7 applies to EOL of



Equipment only, specifically excluding TMA. An EOL means that TIBCO will no longer provide Maintenance for such Equipment. EOS means that such Equipment will not be available for purchase.

TIBCO shall EOL an Equipment three (3) years following the EOS date, at which point all Maintenance services for such Equipment shall terminate.

TIBCO Software Inc.  
Terms of Use for United States Federal Government Users

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#### 2. RESERVED.

#### 3. User Registration and Access

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a. is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, embarrassing, disruptive, infringing, obscene, objectionable, fraudulent, invasive of another's privacy (including stalking), tortious, contains explicit or graphic descriptions or accounts of sexual acts (including but not limited to sexual language of a violent or threatening nature directed at another individual or group of individuals) or otherwise violates these Terms, the Privacy Statement, or the legal rights of others;

b. you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);



c. victimizes, harasses, degrades or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability;

d. infringes on any patent, trademark, trade secret, copyright, right of publicity or other proprietary right of any party;

e. constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (also known as "spamming"), chain letters, any other form of unauthorized solicitation or any form of lottery, gambling, survey or illegal or unauthorized schemes;

f. contains software viruses or any other computer code, files or programs that are designed or intended to disrupt, damage or limit the functioning of any software, hardware or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party;

g. interferes with or disrupts our services or servers or networks connected to the Site;

h. intentionally or unintentionally violates any applicable local, state, national or international law, including, but not limited to, United States export laws and the export and import laws of other countries, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;

i. collects or stores personal data about other users; or

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No waiver by either party of any terms of this Agreement, or any breach by the other party of any of the provisions of this Agreement, shall be construed as a waiver of that or any other provision on any other occasion.

#### 13. Limitation of Liability

TIBCO SHALL NOT BE LIABLE TO YOU OR ANY OTHER PERSON UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR ANY DAMAGES OF ANY KIND RELATING TO THE USE OF, OR INABILITY TO USE, THE SITE, ITS CONTENT, MATERIALS OR LINKS, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INDIRECT, RELIANCE, CONSEQUENTIAL OR PUNITIVE DAMAGES. THIS LIMITATION WILL APPLY EVEN IF TIBCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND EVEN IF ANY WARRANTY OR REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE TOTAL LIABILITY OF TIBCO WILL BE LIMITED TO THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING OR USING THE SITE. ANY CLAIMS RELATING TO MATERIALS DOWNLOADED PURSUANT TO A SEPARATE LICENSE ARE GOVERNED SOLELY BY THAT LICENSE.

#### 14. Warranties You Make

By posting Files and/or Content to the Site, you warrant and represent that you own or otherwise control all rights in and to such Files or Content, including the copyright, and that you have the rights necessary to grant the licenses and sublicenses described in these Terms. By posting and/or downloading Files and/or Content to or from the Site, or otherwise accessing the Site, you warrant and represent that you are not located in any U.S. embargoed country, under control of, or a national or resident of, any such country or on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List.

#### 15. RESERVED

#### 16. Compliance with Laws

You agree to comply with all applicable laws regarding the transmission of technical data and software exported from the United States and the export and import laws of the country in which you reside. We may, in our sole discretion, report actual or perceived violations of law to law enforcement or other appropriate authorities. If we become aware, through a complaint or otherwise, of any potential or suspected violation of these Terms or the Privacy Statement, we may (but are not obligated to) conduct an investigation to determine the nature and extent of the suspected violation and the appropriate enforcement action, during which investigation we may suspend services to any customer being investigated and/or remove any material from our servers. You agree to cooperate fully with any such investigation. You acknowledge that violations of these Terms or the Privacy Statement could subject you to criminal or civil penalties.

#### 17. Special Admonitions for International Use

The Site can be accessed from many countries, and may contain references to TIBCO products, programs and services that have not been announced in such countries. These references do not imply that TIBCO intends to announce or make such products, programs or services available in any particular country.

#### 18. Applicable Law

The Site is controlled by TIBCO from its offices within the State of California, United States of America. For United States Government customers, the laws applicable to the interpretation of these Terms shall be applicable United States Federal law.

#### 19. Disputes

Disputes between United States Government customers and TIBCO related to these terms shall be brought in a United States Federal court or adjudicative body of competent jurisdiction.

#### 20. Privacy Statement

We consider the privacy of our users to be paramount, and we have developed a privacy policy to protect and inform our users. Our current Privacy Statement available at <http://www.tibco.com/privacy.jsp> is incorporated herein by reference and made part of these Terms.

#### 21. Disclosure

You acknowledge, consent and agree that TIBCO may access, preserve, and disclose your account information and content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these Terms; (c) respond to claims that any Content violates the rights of third-parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or personal safety of TIBCO, its customers and the public.

#### 22. Notices

The Power of Now, TIBCO and TIBCO Software are the trademarks or registered trademarks of TIBCO Software Inc. in the United States and other countries. A complete list of TIBCO trademarks is located at <http://www.tibco.com>. All such trademarks, trade names and service marks are proprietary to TIBCO, and may not be used in connection with any product or service that is not ours, in any manner that is likely to cause confusion among customers or in any manner that disparages or discredits TIBCO, without our written permission. All other trademarks, product names and company names and logos are the property of their respective owners.

Pursuant to Section 512(c)(2) of the Copyright Revision Act, notifications of claimed copyright infringement should be sent to TIBCO's Designated Agent. If you believe that your work has been copied and is or has been accessible on the Site in a way that constitutes copyright infringement, you may contact our designated agent as provided below:

Legal name and address of TIBCO:

TIBCO Software Inc.  
ATTN: TIBCO Software Federal, Inc.  
c/o Office of General Counsel  
3303 Hillview Avenue  
Palo Alto, CA 94304

Please feel free to contact TIBCO to resolve a complaint regarding any aspect of service relating to the Site by writing to TIBCO at the address below, sending e-mail to [tibcommunity@tibco.com](mailto:tibcommunity@tibco.com) or calling (877) 724-8227. Upon your request, you may have these Terms sent to you by e-mail.

23. How to Contact TIBCO: Email: [tibcommunity@tibco.com](mailto:tibcommunity@tibco.com)

Phone: (877) 724-8227  
U.S. Mail: TIBCO Software Inc.  
3303 Hillview Avenue  
Palo Alto, CA 94303

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TUFIN SOFTWARE NORTH AMERICA INC.  
OLIVER ST.  
BOSTON, MA 02109

## EXHIBIT B

### END USER LICENSE AGREEMENT

This End-user License Agreement (the "**Agreement**") is made and entered into as of the date set forth in the Purchase Order, Statement of Work, or similar document (the "**Effective Date**") between the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (hereinafter "**Customer**" or "Ordering Activity"), and the GSA Multiple Award Schedule Contractor acting on behalf of Tufin Software North America, Inc., whose main office is located at 2 Oliver Street, Boston, MA, 02109, United States, on behalf of itself, its parent companies and subsidiaries (together "**Tufin**" or "**Tufin Technologies**").

#### 1. DEFINITIONS

1.1 "**Affiliate**" means any partnership, joint venture, corporation or other form of enterprise, that directly or indirectly, controls, is controlled by, or is under common control with a party hereto.

1.2 "**Product**" - the object code copy of the software provided to Customer subject to this Agreement, together with the associated original digital media and all accompanying manuals and other documentation, and together with all enhancements, upgrades, and extensions thereto that may be provided by Tufin Technologies to Customer from time to time (subject to the provisions of Section 5 below).

1.3 "**Licensed Configuration**" - to the extent applicable, as indicated on the License Key, the choice of features and the maximum number of firewalls configured per Check Point Management Server, or the license type of the Check Point Provider-1 Customer Management Add-On or the maximum number of Juniper devices, or the maximum number of Cisco devices, or the maximum number of Fortinet devices, or any other hardware or Product specifications, as declared by Customer in its purchase order, and upon which the licensing fee was based.

1.4 "**Licensed Server**" - the server which enables the Product to operate in accordance with the Licensed Configuration.

1.5 "**License Key**" - the code provided to Customer by Tufin Technologies, which enables the Product to operate on the Licensed-server for the specified Licensed Configuration.

1.6 "**Third Party Product**" - any software programs provided by third parties and contained in the Product.

#### 2. END USER RIGHTS AND USE

Subject to Customer's compliance with the terms hereunder, Tufin Technologies grants Customer a non-exclusive, non-transferable, non-sub licensable limited license to use the Product in accordance with the documentation provided by Tufin Technologies only on the Licensed Server and only for the Licensed Configuration (the "**License**").

#### 3. LIMITATIONS ON END USER RIGHTS

Customer may not copy, distribute, reverse engineer, or make derivative works of the Product except as follows:

3.1 Customer may make only one copy of the Product on magnetic media for archival backup purposes, provided that such Customer's archival backup copy is not installed or used on any computer without Tufin

Technologies' prior written consent. Any other copies Customer makes of the Product are in violation of this Agreement.

3.2 Customer may not use, modify, translate or reproduce the Product, or assign or transfer the right to use the Product or copy the Product except as expressly provided in this Agreement.

3.3 Customer may not resell, sublicense, rent, lease, or lend the Product.

3.4 Customer agrees to use the Product solely for its internal business purposes, and not to let others use the Product and not to use the Product for the benefit of third parties.

3.5 Customer acknowledges that the source code of the Product, and its underlying ideas and/or concepts, are valuable intellectual property of Tufin Technologies and Customer agrees not to attempt to (or permit others to) decipher, reverse engineer, reverse compile, disassemble, or otherwise attempt to discover the source code of the Product or create derivative works based on the Product.

3.6 Customer agrees that Customer shall only use the Product in a manner that complies with all applicable laws in the jurisdiction in which Customer uses the Product, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights.

3.7 Evaluation License. This Section 3.7 shall only apply if Customer is licensing the Product for an initial evaluation period. In such case and subject to Customer's compliance with the provisions of this Section 3.7, Tufin Technologies grants to Customer a limited in time, a non-exclusive, non-transferable, non-sub licensable license to use the Product in accordance with the relevant documentation provided by Tufin Technologies, only on the Licensed Server and only for the Licensed Configuration (the "**Temporary License**"). The Temporary License is valid only for the designated evaluation period and is designed to allow Customer to evaluate the Product during such period. In the event that Customer wishes to enter into a full License Agreement with Tufin Technologies, Customer may request a License Key from Tufin Technologies which if provided to Customer will allow Customer to use the Product after such evaluation period, but only subject to all of the terms and conditions of this Agreement. In the event that Customer and/or Tufin Technologies determine not to enter into a licensing transaction with the other party, both during or at the end of such evaluation period, then Customer's rights under this Agreement shall terminate at the end of the evaluation period and Customer shall, at Tufin Technologies' discretion, promptly return to Tufin Technologies or destroy all copies of the Product. It is a violation of this End User License Agreement to create, set-up or design any hardware, software or system which alters machine's date or time during the evaluation period. Sections 3.2 to 3.6 shall apply, *mutatis mutandis*, to any Temporary License.

#### 4. MAINTENANCE AND SUPPORT

4.1 Tufin performs Maintenance and Support services in accordance with Tufin's standard Software Maintenance Program: [http://web.tufin.com/hubfs/Tufin\\_Maintenance\\_\\_Support\\_Services.pdf](http://web.tufin.com/hubfs/Tufin_Maintenance__Support_Services.pdf) Tufin may modify its Software Maintenance Program upon written notice to Customer, provided, however, that in no event may Tufin make any modifications to its Software Maintenance Program that would materially reduce the level of maintenance and support services that Tufin provides to Customer hereunder during the then-current term for which Customer has paid maintenance and support fees.

4.2 Tufin will provide Maintenance and Support services on an annual (twelve month) basis, provided that Customer pays Tufin's then-current annual maintenance and support service fees according to Tufin's price list and the GSA Schedule Pricelist. Customer will purchase maintenance and support for all licensed Software during the first twelve (12) months from the date of delivery of the Software ("Initial Term").

4.3 Customer may choose to continue maintenance and support on an annual basis ("Renewal Term") after the Initial Term. Customer shall notify Tufin at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term of its intent to renew maintenance and support services under this Agreement. Maintenance and support services for the Software shall not automatically renew on annual basis. If Customer elects to purchase maintenance and support, Customer must purchase maintenance and support

services with respect to all of the licensed Software. Reinstatement of lapsed maintenance and support services is subject to payment by Customer of Tufin's reinstatement fees equal to the amount that would have been paid by the Customer for the past maintenance and support services period(s) had coverage been maintained continuously.

4.4 Exclusions to Maintenance and Support Services. Tufin shall have no obligation of any kind to provide maintenance and support services for problems in the operation or performance of the Software caused by any of the following (each, "Customer-Generated Error"): (a) non-Tufin software or hardware products; or (b) Customer's failure to properly maintain Customer's site and equipment on which the Software is installed or accessed. If Tufin determines that it is necessary to perform maintenance and support services for a problem caused by a Customer-Generated Error, Tufin will notify Customer thereof as soon as Tufin is aware of such Customer-Generated Error and, upon Customer's approval, Tufin will have the right to perform such services and invoice Customer at Tufin's then-current published time and materials rates in accordance with the GSA Schedule Pricelist for all such maintenance and support services performed by Tufin.

## **5. COPYRIGHT**

The Product and all rights, without limitation including proprietary rights therein, are owned by Tufin Technologies and/or its licensors and Affiliates and are protected by international treaty provisions and all other applicable national laws of the country in which it is being used. The structure, organization, and code of the Product are the valuable trade secrets and confidential information of Tufin Technologies and/or its licensors and Affiliates. Customer must not copy the Product, except as set forth in clause 3.1 (Limitations on End-User Rights). Any copies which Customer is permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on the Product.

## **6. COMMENCEMENT & TERMINATION**

This Agreement is effective from the first date Customer installs the Product and shall remain in effect until terminated, in accordance with the terms herein. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Tufin shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination of this Agreement, Customer agrees to cease any and all use of the Product and to return to Tufin Technologies or destroy, at Tufin Technologies' discretion, the Product and all documentation and related materials in Customer's possession, at Customer's own costs, and so certify to Tufin Technologies in writing. Except for the License and/or Temporary License granted herein and except as expressly provided herein, the terms of this Agreement shall survive termination.

## **7. INDEMNIFICATION**

Tufin Technologies shall have the right to intervene to defend or settle, at its option, any action at law against Customer resulted directly from a claim that Customer's permitted use of the Product under this Agreement infringes any patent, copyright, or other ownership rights of a third party (a "Claim"). Notwithstanding the aforementioned, claims associated with any or all of the following are excluded from Tufin Technologies' indemnification obligations: (i) any alterations, modifications, or adaptations to the Products made by anyone other than Tufin Technologies (including – without limitation – Customer); (ii) the use of the Products in combination with products and/or information not provided and/or approved by Tufin Technologies; or (iii) use of any version other than the then current, unaltered version of the Product, where Customer was previously advised not to make any further use of previous versions. Customer agrees to provide Tufin Technologies with written notice of any such Claim within ten (10) days of Customer's notice thereof and provide reasonable assistance in its defense. Tufin Technologies has sole discretion and control over such defense and all negotiations for a settlement or compromise, unless it declines to defend or settle, in which



case Customer is free to pursue any alternative Customer may have, provided that Tufin Technologies shall not be required to indemnify Customer for any settlement reached without Tufin Technologies' prior written consent. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

## **8. WARRANTY DISCLAIMER**

TUFIN WARRANTS THAT THE PRODUCT WILL, FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH PRODUCT WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, CUSTOMER ACKNOWLEDGES THAT THE PRODUCT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. TUFIN TECHNOLOGIES, ITS LICENSORS AND AFFILIATES, EXPRESSLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE PRODUCT WILL NOT INFRINGE ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER RIGHTS. THERE IS NO WARRANTY BY TUFIN TECHNOLOGIES OR BY ANY OTHER PARTY THAT THE FUNCTIONS CONTAINED IN THE PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ASSUMES ALL RESPONSIBILITY AND RISK FOR THE SELECTION OF THE PRODUCT TO ACHIEVE CUSTOMER'S INTENDED RESULTS AND FOR THE INSTALLATION, USE, AND RESULTS OBTAINED FROM IT.

## **9. LIMITATION ON LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TUFIN TECHNOLOGIES BE LIABLE FOR ANY LOST PROFITS, REVENUE, SALES, DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, PROPERTY DAMAGE, INTERRUPTION OF BUSINESS, LOSS OF BUSINESS INFORMATION, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, ECONOMIC, COVER, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, TORT, OR OTHER THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, EVEN IF TUFIN TECHNOLOGIES OR ITS LICENSORS OR AFFILIATES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME COUNTRIES/STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF LIABILITY, BUT MAY ALLOW LIABILITY TO BE LIMITED, IN SUCH CASES, TUFIN TECHNOLOGIES, ITS EMPLOYEES OR LICENSORS OR AFFILIATES' LIABILITY SHALL BE LIMITED TO THE AMOUNT ORDERING ACTIVITY PAID FOR THE PRODUCT DURING THE LAST TWELVE (12) MONTHS. Nothing contained in this Agreement limits Tufin Technologies' liability to Customer for its indemnification obligations under Section 7 (other than as specified therein), or in the event of death or personal injury resulting from Tufin Technologies' gross negligence. Tufin Technologies is acting on behalf of its employees and licensors or Affiliates for the purpose of disclaiming, excluding, and/or restricting obligations, warranties, and liability as provided in this clause 9, but in no other respects and for no other purpose. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 52.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 52.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).



**10. EXPORT CONTROLS**

The Product is subject to various export control laws including, without limitation, the export control laws of the United States. Customer agrees that Customer will not ship, transfer, or export the Product into any country, or make available or use the Product in any manner prohibited by any applicable export control laws.

**11. GENERAL**

11.1 Taxes. Tufin shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

11.2 Miscellaneous. Except by operation of law, neither party may assign its rights or obligations under this Agreement to any party without the prior written consent of the other party. Both parties shall remain fully responsible to the other party for a breach of this Agreement by its assignees. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Agreement, and the remainder of the provisions of this Agreement shall remain in full force and effect.

11.3 Governing Law; Venue. The Federal laws of the United States shall govern all issues arising under or relating to this Agreement. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded.

11.4 Entire Agreement. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), sets forth the entire understanding and agreement between Customer and Tufin Technologies and may be amended only in writing signed by both parties.

11.5 Third Party Software. The provisions of this Agreement shall apply to all Third Party product providers and to Third Party products as if they were the Product and Tufin Technologies, respectively.

11.6 Government Restricted Rights. This provision applies to Product acquired directly or indirectly by or on behalf of any government. The Product is a commercial product, licensed in accordance with FAR 12.212 and was developed entirely at private expense and without the use of any governmental funds. Any use modification, reproduction, release, performance, display, or disclosure of the Product by any government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement, and no license to the Product is granted to any government requiring different terms.

11.7 This is the entire agreement between Tufin Technologies and the Customer relating to the Product, and it supersedes any prior representations, discussions, undertakings, end-user agreements, communications, or advertising relating to the Product.

**Customer**

**Tufin Software North America, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**UMT 360 LLC**  
10800 NE 8th St.  
Suite 210  
Bellevue, WA 98004

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached UMT 360 LLC ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.2293.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All

Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

- 3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



COMPLETE PERSPECTIVE. SMARTER DECISIONS.

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## SUBSCRIPTION SERVICES TERMS AND CONDITIONS

**Any capitalized terms that are used in these Subscription Services Terms and Conditions but are not defined herein have the meaning ascribed to such term in the Order Form. Each of Company and Customer may be referred to as a "Party" and together, the "Parties".**

### 1. DEFINITIONS.

- (a) **"Confidential Information"** means any non-public or proprietary information disclosed by a Party ("**Discloser**") to the other Party ("**Recipient**") that is in written, graphic, machine readable, oral, or other form and that (i) is identified as "Confidential" or "Proprietary" or in some other manner to indicate its confidential nature or (ii) based upon the facts and circumstances of the disclosure, information that a reasonable person would consider confidential. Confidential Information does not include any information that (1) was publicly available prior to the time of disclosure by the Discloser, (2) becomes publicly available after disclosure by the Discloser to the Recipient through no action or inaction of the Recipient, (3) is already in the lawful possession of the Recipient at the time of disclosure, (4) is obtained by the Recipient from a Third Party without a breach of such Third Party's obligations of confidentiality, or (5) is independently developed by the Recipient without use of or reference to the Discloser's Confidential Information.
- (b) **"Data"** means any data or information Customer stores in or transmits through the Service.
- (c) **"Order Form"** means the order form that references this Agreement and is signed by the Parties.
- (d) **"Report"** means any analysis of Data that is provided to or accessed by Customer through the Service.
- (e) **"Service"** means the services identified in the Order Form.

### 2. SERVICE.

- (a) Subject to Customer's continuing compliance with the terms and conditions of this Agreement, Customer may, on nonexclusive basis: (i) during the Term, use the Service to store, access, and download Data (and any Reports made available by Company) through the Service, in each case, solely for Customer's internal business purposes; and (ii) use the Reports for Customer's internal business purposes. Company may from time-to-time upgrade, enhance or modify the Services, at Company's discretion. Company may have to perform maintenance duties which may make the Customer's service unavailable for a period of time.
- (b) Customer will ensure the security and confidentiality of its passwords and usernames ("**Account Information**") and is responsible for all activities performed in the Services with its Account Information.
- (c) Customer will not (and Customer will not permit any third party to): (i) make the Service available to any third party (via, a services arrangement, service bureau, lease, sale, resale, or otherwise); (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Service; (iii) modify, copy, disclose, alter, translate or create derivative works of any of the Service; (iv) circumvent any usage or access limits on the use of the Service; (v) damage, disable, overburden, impair, or disrupt the Service or attempt to gain unauthorized access to any systems or networks that connect thereto or otherwise interfere with the operation of the Service or in any way with the use or enjoyment of the Service by others; (vi) export or re-export any of the Service in violation of any export control laws or regulations administered by the U.S. Department of Commerce; (vii) use the Service in any unlawful manner; (viii) use the Service other than in accordance with this Agreement; (ix) access or use the Service in order to create a product or service competitive with the Service; or (x) remove, alter or obscure any proprietary notices in or on the Service, including copyright, trademark, or other proprietary rights notices.
- (d) Customer will immediately notify Company in writing of any unauthorized use of any Account Information or the Service, in each case, that comes to Customer's attention. In the event of any such unauthorized use by any third party that obtained access to the Service through Customer, Customer will take all steps necessary to terminate such unauthorized use. Customer will provide Company with such cooperation and assistance related to any such unauthorized use as Company may reasonably request.

### 3. FEES.

- (a) Customer will pay Company or its authorized reseller as applicable all fees identified on or referenced in the Order Form(s) in accordance with the GSA Schedule Pricelist ("**Fees**"), in U.S. Dollars, within thirty (30) days of the invoice receipt date, unless a different period is specified in the applicable Order Form.
- (b) Any amount due under this Agreement that remains unpaid after its due date will bear interest from the date that such payment became delinquent until the date such amount is paid in full at the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

### 4. OWNERSHIP.

- (a) As between Company and Customer, Company owns all right, title and interest in the Service. Customer hereby grants to Company a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid-up

license to use and otherwise practice any suggestions, ideas, enhancement requests, feedback, or recommendations that Customer provides to Company. All rights not expressly granted to Customer in this Agreement are hereby expressly reserved and retained by Company and its licensors.

(b) Customer owns all Data. Company will not share any Data with third parties, except for Company vendors and contractors that provide services to Company. Notwithstanding the foregoing, Customer hereby grants Company a non-exclusive royaltyfree license to: (i) use the Data to perform Company's obligations to Customer under this Agreement, and (ii) aggregate, and de-identify the Data (the resulting data, "**Aggregated Data**") for the purpose of providing, developing, improving, and/or reporting on the Platform. Customer hereby further grants Company a non-exclusive, royalty-free, perpetual, irrevocable, transferable license to use, reproduce, distribute, publicly display, publicly perform and create derivative works of the Aggregated Data for Company's business and other purposes, in such a manner that neither Customer nor any Individual can be identified from such data.

(c) Customer hereby grants to Company the right to identify Customer as Company's customer by using Customer's name,;

(i) on Company's website(s); and, (ii) in connection with any of Company's marketing or promotional materials that generally identify Company's customers of the Service to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71, and in each case, in a manner in which Company deems, in its sole discretion, appropriate.

**5. CONFIDENTIALITY.** Recipient will use Discloser's Confidential Information only to exercise rights and fulfill obligations under this Agreement. Recipient will use reasonable care to protect the Discloser's Confidential Information from being disclosed to Persons other than the Recipient's employees, affiliates, contractors, agents, or professional advisors who need to know it and who have a legal obligation to keep it confidential. Recipient's disclosure of Confidential Information pursuant to law or a judicial or administrative order will not be deemed to be a breach of this Agreement, if Recipient (a) provides timely written notice of such disclosure requirement to the Discloser (if permitted to do so under Applicable Law), and (b) reasonably cooperates, at Discloser's expense, with the Discloser's efforts to limit the scope of such disclosure.

#### **6. CONSENTS AND PRIVACY.**

(a) Customer will provide any notices and obtain any consents that are required by Customer's contractual obligations with third parties, law, or applicable self-regulatory principles in order to provide the Data or to use the Services or Reports.

(b) Unless Customer receives prior express written authorization from Company, Customer will not process via, or submit to, the Services any materials or Data that include any: (i) "personal health information," as defined under the Health Insurance Portability and Accountability Act, (ii) government issued identification numbers, including Social Security numbers, driver's license numbers and other state or national issued identification numbers, (iii) financial account information, including bank account numbers, (iv) payment card data, including credit card or debit card numbers, (v) biometric information, such as fingerprints or voiceprints, or (vi) "sensitive" personal data, as defined under Directive 95/46/EC of the European Parliament ("**EU Directive**") and any national laws adopted pursuant to the EU Directive, about residents of Switzerland and any member country of the European Union, including racial or ethnic origin, political opinions, religious beliefs, trade union membership, physical or mental health or condition, sexual life, or the commission or alleged commission any crime or offense.

**7. COMPLIANCE.** Customer will comply with all laws and regulations including state and federal laws and regulations, orders, and ordinances, applicable to it, including privacy laws and regulations governing such Party and its data privacy practices ("**Applicable Law**"). Customer represents, warrants and covenants that Customer has provided all notices, and obtained all rights and permissions required under Applicable Law as may be necessary for each Party to process the Data and provide the Services as contemplated by this Agreement.

**8. WARRANTY DISCLAIMERS.** EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT (OR OTHERWISE REQUIRED BY APPLICABLE LAW WITHOUT POSSIBILITY OF CONTRACTUAL WAIVER), COMPANY AND/OR ITS LICENSORS EXPRESSLY DISCLAIM AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND WARRANTIES IMPLIED FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE OR USAGE OF TRADE. COMPANY WARRANTS THAT THE SERVICE, AND REPORTS WILL, FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SERVICE, AND REPORTS WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE SERVICE, AND REPORTS ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS WITHOUT WARRANTY OR CONDITION OF ANY KIND. THESE DISCLAIMERS WILL APPLY DESPITE THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR OTHERWISE REQUIRED BY LAW, CUSTOMER BEARS THE ENTIRE RISK OF USING THE SERVICES AND THE REPORTS AND RECEIVING THE SERVICES AND THE REPORTS.

CUSTOMER ACKNOWLEDGES THAT COMPUTER AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULTFREE AND OCCASIONAL PERIODS OF DOWNTIME OCCUR. COMPANY DOES NOT GUARANTEE THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR THAT CONTENT LOSS WON'T OCCUR, OR THAT ANY CONNECTION TO OR TRANSMISSION FROM THE COMPUTER NETWORKS WILL OCCUR, AND CUSTOMER ACKNOWLEDGES THAT IT IS NOT TECHNICALLY PRACTICABLE TO DO SO. Customer represents and covenants that Customer has not relied on any warranties, representations, or covenants not set forth in this Agreement.

#### **9. TERM; TERMINATION; AND SUSPENSION.**



(a) Unless earlier terminated as provided in the Agreement, this Agreement commences on the Effective Date and continues so long as an Order Form is in effect (the "Term"). Each Order Form commences on the date specified in the Order Form and continues for as long as specified in the Order Form. Each Order Form may be renewed for the period set forth therein by executing a written order.

(b) When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Company shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

(c) Upon termination or expiration of the Agreement, Customer will cease all access and use of the Service. Not limiting the foregoing, in the event this Agreement expires or is terminated: (i) Customer will not be entitled to any refunds of any Fees; and (ii) Customer will promptly pay any outstanding balance for the Service rendered through the date of termination. The following sections will survive any expiration or termination: 2(c), 2(d), 3 (with respect to fees owing as of the date of expiration or termination), 4, 5, 6(d), 8, 9(c), 10, 11 and 12.

**10. RESERVED.**

**11. LIMITATION OF LIABILITY.**

- (a) TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF SUCH INDIRECT DAMAGES COULD HAVE BEEN FORESEEN OR IF COMPANY HAS BEEN APPRAISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF, TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF ANY STATUTORY DUTY OR OTHERWISE, WITH THE EXPRESS EXCEPTION OF DEATH, PERSONAL INJURY, FRAUDULENT MISREPRESENTATIONS, COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL: (I) COMPANY BE LIABLE FOR DAMAGES FOR LOSS OF PROFIT OR REVENUE, DATA THAT IS LOST OR CORRUPTED, LOSS OF GOODWILL, OR OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES; AND, (II) COMPANY'S TOTAL AND CUMULATIVE LIABILITY, FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER TO COMPANY.
- (b) Customer acknowledges that the Fees, exclusions, disclaimers and limitations of liability set forth in this Agreement are essential components of this Agreement and form the basis for determining the price charged for the Service, and that Company would not enter into this Agreement without these limitations on its liability. These limitations will apply notwithstanding any failure of essential purpose of any limited remedy.

**12. GENERAL.** This Agreement (including all Exhibits attached hereto) constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes and merges all prior proposals, understandings and contemporaneous communications. This Agreement may not be modified except by written agreement of both Parties. Customer will not assign any of the rights or obligations granted hereunder, except with the express written consent of Company, and any attempted assignment in violation of this paragraph is void. The Parties are independent contractors; and, this Agreement does not create or imply any partnership, agency or joint venture. A waiver of any provision of this Agreement must be signed by the waiving Party; and, one waiver will not imply any future waiver. In accordance with GSA Schedule Clause 552.212-4(f), Neither Party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement (other than monetary obligations) as a result of any cause or condition beyond such Party's reasonable control. This Agreement will be governed by and construed in accordance with the Federal laws of the United States, without regard to or application of any conflicts of law rules or principles and without regard to the United Nations Convention on the International Sale of Goods. If any provision (or any part thereof) of this Agreement is unenforceable under or prohibited by any present or future law, then such provision (or part thereof) will be amended, and is hereby amended, so as to be in compliance with such law, while preserving to the maximum extent possible the intent of the original provision. Any provision (or part thereof) that cannot be so amended will be severed from this Agreement; and, all the remaining provisions of this Agreement will remain unimpaired. Any notice or other communication under this Agreement given by any Party to any other Party must be in writing and will be effective upon delivery as follows: (a) if to Customer, (i) when delivered via registered mail, return receipt requested, to the address specified in the Order Form or otherwise on record for Customer; or (ii) when sent via email to the email address specified in an Order Form or otherwise on record for Customer; and (b) if to Company, when sent via registered mail, return receipt requested, to Company at the address set forth in the Order Form or such other address which Company may specify from time to time. This Agreement may be executed in counterparts, all of which together constitute a single agreement and any one of which will be deemed an original. The execution of this Assignment may be evidenced by way of a facsimile, portable document format (.pdf) transmission or electronic production or reproduction, photostatic or otherwise, of such party's or person's signature, and such portable document format (.pdf), or electronic production or reproduction signature will be deemed to constitute the original signature of such party or person.



UNITRENDS, INC.  
200 WHEELER ROAD  
BURLINGTON, MA 01803

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Unitrends, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer

Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when

the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**UNITRENDS**

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**UNITRENDS SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS**

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**Unitrends™ Inc. End User License Agreement****1. Software Use**

1.1. License Grant Subject to the terms and conditions of this Agreement, Licensor grants to the Ordering Activity a personal, limited, non-exclusive, non-transferable, license to use the Software for the term set forth in the applicable purchase order accepted by Licensor (either perpetual or for the subscription period selected in the ordering process) in object code form only on such computers, servers, or equipment in which such Software is embedded or for which such Software is approved for use by Licensor in the Documentation and on such storage capacity as specified in the Documentation (collectively "Approved Systems") solely for Ordering Activity's own internal information processing services and computing needs and subject to any license limitations specified by Licensor or its Channel Partners as part of the ordering process. Any use of the Software that is inconsistent with the terms and conditions of this Agreement, including without limitation the transfer of the Software to another computer or a third party shall be in violation of this Agreement. All rights not expressly granted to Ordering Activity are retained by Licensor. Ordering Activity agrees that its use of the Software will comply with all Federal, state and local laws, rules and regulations of the United States and any foreign country in which the Software is used. The license granted herein is subject to the specific terms set out in this Agreement, the technical restrictions of the Software and/or any additional licensing terms specified by Licensor in the Documentation. Ordering Activity shall pay all applicable license fees as set forth in the applicable purchase order for the Software to Licensor or the Channel Partner through which Ordering Activity issued its purchase order for the Software in accordance with the payment terms set forth on the applicable purchase order.

1.2. Third Party Contractors. Notwithstanding anything to the contrary contained herein, Ordering Activity may permit its Third Party Contractors to use the Software on Ordering Activity's behalf solely in connection with providing information processing and computing services to Ordering Activity. Ordering Activity may not use the Software for providing computing services to third parties. "Third Party Contractor" means a third party engaged by Ordering Activity to provide services to Ordering Activity that is not a competitor of Licensor. Ordering Activity shall require its Affiliates and Third Party Contractors to agree to the terms of this Agreement and shall be liable for any breach of this Agreement by its Affiliates or Third Party Contractors.

1.3 License Keys. In order to use the Software, a license key may be required. After Licensor has received a valid purchase order issued by Ordering Activity which specifies the proper fees and identifies the platform and host name of each computer, server or other equipment on which the Software is installed or will be installed, Licensor will issue a license key to Ordering Activity.

**1.4 Restrictions.**

(i) General. Except as otherwise expressly permitted herein, Ordering Activity shall not and shall not permit any third party to: (a) translate, adapt, reverse engineer, decompile, decrypt, disassemble, or create derivative works based on the Software; (b) copy (except for one archival copy and provided all of Licensor's trademark, copyright, patent and other notices of proprietary rights are reproduced on all copies), modify or create derivative works of the Software; (c) rent, lease, transfer, assign, sublicense or otherwise transfer rights to the Software; (d) transfer, distribute, resell, rent, lease, sublicense or loan the Software to any third party; (e) use the Software in a service bureau, or application service provider environment, or in any commercial time share arrangement or otherwise use or make available the Software or any part of the Software for the benefit of any third party, or make the Software or any part of the Software publicly available for download or use via an internet website; (f) distribute any software or device incorporating a part of the Software; (g) use the Software except on the Approved Systems on Ordering Activity's own internal computer networks; (h) attempt to circumvent, disable or defeat any Licensor license key encoded into the Software; (i) use the Software in contravention to any applicable laws or government regulations, including without limitation export laws, and shall not remove the Software or, if applicable, the license keys from the country in which such use was originally licensed; (j) disclose to any third party or publish the results of Software performance benchmarks obtained using the Software; (k) remove any proprietary rights, trademark or copyright notices or other notices contained in the Software. If 1.4(i)(a) is prohibited by applicable law, Ordering Activity shall provide Licensor with a detailed prior written notice of any such intention to reverse engineer the Software and shall provide Licensor with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services provider for such work. Ordering Activity shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Software.

(ii) Software Embedded In Approved System. If the Software is delivered as embedded in an Approved System, Ordering Activity agrees not to remove the Software from the Approved System without Licensor's prior written consent.

(iii) Reserved

(iv) Use Where Invoiced. Ordering Activity's use of the Software under a paid license is limited to the country where Ordering Activity has been invoiced for the Software under the applicable purchase order.

(v) Prior Versions. If the Software is a version that Ordering Activity has converted or exchanged from a valid licensed prior version (i.e., an Upgrade), Ordering Activity agrees that by using the Upgrade, Ordering Activity will no longer use the prior version. Licensor reserves the right to require the certification of the destruction of such previous version of the Software.

1.5 Third Party Software. The Software may include certain third party open source components that are distributed under their own licensing terms. For more details, see the User Guide document in the Documentation available at the Licensor web site ([www.unitrends.com](http://www.unitrends.com)) or accompanying the Software. All terms herein are offered by Licensor and not by the rightsholders of such components, and are without prejudice to the terms thereof. Ordering Activity may obtain the location of a copy of the source code of these components by contacting Licensor.

1.6 Continual Development. This Agreement governs any updates, upgrades, new versions, bug fixes, corrections, improvements, revisions or enhancements to the Software which Licensor may furnish to Ordering Activity pursuant to support services or otherwise (collectively, "Upgrades") and any additional copies of the Software licensed or provided to Ordering Activity for which Ordering Activity has purchased and, if applicable, holds the corresponding license keys, all of which are deemed included in the definition of "Software." Ordering Activity acknowledges that the Software may change and that future versions of the Software may be incompatible with prior versions of the Software. Ordering Activity further acknowledges and agrees that Licensor has no obligation to provide any Upgrades or additional copies of the Software under this Agreement. If any Upgrades or additional copies are provided (i) Ordering Activity does not have a license or right to use any such Upgrades or additional copies unless Ordering Activity, at the time of

acquiring such Upgrade or copy already hold a valid license and corresponding license key, if applicable, to the original Software and (ii) use of the Upgrades is limited to Approved Systems for which the original Software was purchased.

1.7 Support Services. Licensor will not provide, and Ordering Activity is not entitled to, any support services under this Agreement. Ordering Activity may procure support services separately and such support services will be subject to the terms and conditions of the underlying GSA Schedule Contract, Schedule pricelist, and the applicable purchase order. This Agreement does not give Ordering Activity any rights to any updates or upgrades to the Software or to any extensions or enhancements to the Software developed by Licensor at any time in the future. Any of the foregoing updates, upgrades, extensions or enhancements may be available at Licensor's discretion and Ordering Activity will be notified in the event of their availability.

1.8 APIs. Licensor may provide to Ordering Activity Application Programming Interface ("API's") for Ordering Activity's use solely for the purpose of creating software that communicates with the Software ("Interfaces"). Ordering Activity hereby acknowledge and agree that Ordering Activity will not (1) use the APIs to create, design or develop anything other than Interfaces; (2) make any more copies of the APIs than are reasonably necessary for the authorized use and backup and archival purposes; (3) modify, create derivative works of, reverse engineer, reverse compile, or disassemble the APIs, except that Ordering Activity may modify and create derivative works of, and distribute any code provided in the APIs that is designated by Licensor in the API's documentation as "distributable code" solely as part of Interfaces; (4) distribute, sell, lease, rent, lend, or sublicense any part of the APIs to any third party or; (5) use the APIs to (a) create, design or develop software or services to circumvent, enable, modify or provide access, permissions or rights which would violate the technical restrictions of the Software or this Agreement; or (b) upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware.

1.9 Additional Terms Applicable to Boomerang. If Ordering Activity has licensed Licensor's Boomerang Software the following terms apply and shall supersede any conflicting terms in Section 1.1.

1.9.1 License. Licensor grants to the Ordering Activity a limited, non-exclusive, non-transferable license during the subscription period selected by Ordering Activity as part of the ordering process (the "Subscription Period") to use the Boomerang Software for the "Permitted Purpose" on the terms and conditions of this Agreement and limited to the number of virtual machines selected by Ordering Activity in the ordering process ("VM Quota Entitlement"). Ordering Activity acknowledges and agrees that the Boomerang Software is provided as a virtual OVA appliance only. The license granted in this Agreement is solely for the following "Permitted Purpose": to replicate, cloudburst, and migrate virtual machines ("VMs") between Ordering Activity's VMware environment and AWS cloud, and perform services for Ordering Activity's internal business purposes only. If Ordering Activity has issued a purchase order for the "Migration Only" offering, Ordering Activity acknowledges and agrees that the Subscription Period is sixty (60) days and Boomerang may be used on only one virtual machine. Ordering Activity may not use the Boomerang Software except on Ordering Activity's own VMware environment and Amazon Web Services ("AWS") cloud.

1.9.2 Reserved.

2. Reserved.

3. Reserved.

4. Ownership

4.1 Software. The Software and APIs are licensed and not sold. Ordering Activity acknowledges and agrees that the Software and the APIs are the sole property of Licensor and its suppliers, and has been developed at great expense; therefore, Ordering Activity agrees to protect the Software and APIs from unauthorized disclosure to third parties. As between Licensor and Ordering Activity, all right, title and interest in and to the Software and the APIs, and all enhancements, updates, modifications, new versions, and derivative works thereof, and all intellectual property rights therein and thereto, are solely owned by Licensor and Licensor reserves all rights not expressly granted hereunder.

4.2 Reserved.

4.3 Feedback. Ordering Activity and its users may, from time to time, make known to Licensor suggestions, enhancement requests, techniques, know-how, comments, feedback or other input to Licensor with respect to the Software (collectively, "Suggestions"). Unless otherwise agreed to in writing by the parties with respect to any Suggestion, Licensor shall have a royalty-free, worldwide, irrevocable, perpetual license to use, disclose, reproduce, license, distribute and exploit any Suggestion without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into its services any service, product, technology, enhancement, documentation or other development ("Improvement") incorporating or derived from any Suggestion with no obligation to license or to make available the Improvement to Ordering Activity or any other person or entity. To assist Licensor in its efforts to enhance the features available in the Software in order to improve Ordering Activity's experience in using the Software, Ordering Activity agrees that Licensor may collect log and usage information from the Software, which may be used by Licensor for its business purposes. Licensor may use any technical information Ordering Activity provides to Licensor for any Licensor business purposes without restriction, including for product support and development. Licensor will not use technical information in a form that personally identifies Ordering Activity.

4.4 Reserved.

5. Reserved.

6. Limited Warranty; Disclaimer

6.1. Reserved.

6.2 Limited Warranty. Subject to the provisions of this Section 6, Licensor warrants only that the Software will conform in all material respects to its published Documentation for a period of sixty (60) days from the earlier of (i) the date Ordering Activity first downloads and is able to use the Software and

(ii) the date Licensor or its Channel Partner provides Ordering Activity with the associated license key(s). Ordering Activity's sole and exclusive remedy for any breach of this warranty is for Licensor or its designated third party service provider to, at Licensor's option and in its sole discretion, to either (i) repair or replace, without charge, any Software which is not in conformity with the foregoing warranty or (ii) to terminate this Agreement and refund the license fees paid by Ordering Activity for the Software instead of repairing or replacing the Software. This limited warranty extends only to the original Ordering Activity. This warranty is subject to the following conditions: (i) the Software is installed by Licensor or its authorized representatives or installed in accordance with all of Licensor's installation instructions by personnel trained by Licensor; and (ii) Ordering Activity notifies Licensor within the sixty (60) day warranty period of the breach of warranty. This warranty does not cover (x) any defect or deficiency which is not reproducible or which results from: (1) any alteration, repair or maintenance of the Software by anyone other than Licensor or its authorized contractors; (2) failing to follow in all material respects Licensor's written recommendations or instructions; (3) use the Software on other than the Approved Systems or using or combining the Software with products or services of others, other than under Licensor's direction; (4) any of Ordering Activity's designs, specifications or instructions; or (5) any abnormal physical or electrical stress, or any accident, misuse, abuse or other cause external to the Software as furnished by Licensor and beyond Licensor's reasonable control; (y) any software support not strictly necessary to correct warranty defects as provided herein and (z) any Approved Systems, third party software, supplies or accessories included with the Software. Such Approved Systems and other third party products are provided with the owner's or manufacturer's warranties, if any, which Licensor is permitted to pass on to Ordering Activity. OTHERWISE, SUCH THIRD PARTY PRODUCTS ARE PROVIDED TO ORDERING ACTIVITY "AS IS".

6.3 DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WITH RESPECT TO THE SOFTWARE, THE TRIAL VERSION AND ANY FREE SOFTWARE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE, THE TRIAL VERSION OR ANY FREE SOFTWARE WILL BE ERROR-FREE, SECURE, ACCURATE, RELIABLE, OR WILL OPERATE WITHOUT INTERRUPTION OR THAT LICENSOR WILL BE ABLE TO CORRECT ALL DEFECTS. THE SOFTWARE, THE TRIAL VERSION AND ANY FREE SOFTWARE ARE NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. LICENSOR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES. Ordering Activity assumes the risk of any and all liability, damage or loss from use, or inability to use the Software, the Trial Version, and any Free Software. If applicable law requires any warranties other than those set forth in this Section 6, all such warranties are limited in duration to sixty (60) days from the earlier of the date the Software is first made available for download or is delivered.

7. Reserved.

8. Government End Users: This section applies to all acquisitions of the Software by or for the United States Federal Government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal Government. The Software was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the Software. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, then the Government's rights to use, duplicate or disclose the Software are limited to "Restricted Rights" as defined in 48 CFR Section 52.227-14, or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the Government's needs or is inconsistent in any respect with Federal law, the Government agrees to return the Software, unused, to Licensor at the address set forth above.



**Uplogix, Inc.**  
7600B N CAPITAL OF TEXAS HWY  
SUITE 200  
AUSTIN, TX 78731

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Uplogix, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
  
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

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- e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
- f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
- g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
- h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301),



since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## Uplogix Limited Warranty, Disclaimer of Warranty and End User License Agreement

### LIMITED WARRANTY

*The following terms of this Limited Warranty govern, except to the extent there is a separate signed agreement between Customer and Uplogix with a different limited warranty. To the extent of a conflict, the order of precedence will be: (a) the signed agreement, and (b) this Agreement.*

**Hardware.** Uplogix, Inc. (“Uplogix”) warrants that commencing from the date of shipment to Customer (and in the case of resale by an Uplogix reseller, commencing not more than 90 days after original shipment by Uplogix to the reseller), and continuing for a period of (a) one year, or (b) if there is a Warranty Card accompanying the Product, the warranty period specified in the Warranty Card (which may be a shorter or longer period than one year), the Hardware will be free from defects in material and workmanship under normal use. The date of shipment of a Product by Uplogix is set forth on the packaging material in which the Product is shipped. This limited warranty extends only to the original user of the Product. Customer’s sole and exclusive remedy and the entire liability of Uplogix and its suppliers under this limited warranty will be, at Uplogix’s option, shipment of a replacement within the warranty period and according to the replacement process described in the Warranty Card (if any), or if no Warranty Card, according to Uplogix’s then-current Return Material Authorization (RMA) process (available through Uplogix’s support desk), or a refund of the purchase price of the Hardware if the Hardware is returned to the party supplying it to Customer, freight and insurance prepaid. Uplogix replacement parts used in Hardware replacement may be new or equivalent to new. Uplogix’s obligations hereunder are conditioned upon the return of the affected Hardware in accordance with Uplogix’s then-current RMA process.

**Software.** Uplogix warrants that commencing from the date of shipment to Customer (but in case of resale by an authorized Uplogix reseller, commencing not more than 90 days after original shipment by Uplogix to reseller), and continuing for a period of 90 days, or (b) if there is a Warranty Card accompanying the Product, the warranty period specified in the Warranty Card (which may be a shorter or longer period than one year): (i) the media on which the Software is furnished will be free from defects in materials and workmanship under normal use, and (ii) the Software substantially conforms to its documentation. The date of shipment of the Software by Uplogix is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided “AS IS”. This limited warranty extends only to the Customer who is the original licensee. Customer’s sole and exclusive remedy and the entire liability of Uplogix and its suppliers and licensors under this limited warranty will be, at Uplogix’s option, repair, replacement, or a refund of the Software fee paid by Customer if reported (or, upon request, returned) to Uplogix or the party supplying the Software to Customer. In no event does Uplogix warrant that the Software is error-free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Uplogix does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

**Restrictions:** This warranty does not apply if the Hardware or Software or any other equipment on which the Software is authorized to be used: (a) has been altered, except by Uplogix or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Uplogix or its authorized representative, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, (d) has not been updated with provided or available modifications or corrections, or (e) is licensed for beta, evaluation, testing or demonstration purposes for which Uplogix does not charge a purchase price or license fee. In addition, Uplogix makes no warranty with respect to any of the following: (i) Products whose external

housing or cover has been opened, (ii) Products which have had their serial numbers or date of manufacture removed or altered, (iii) unsupported network devices, accessories or expendable items, or (iv) with respect to defects related to Customer's database errors.

**Third Party Products.** Certain third party products provided by Uplogix (“Third Party Products”) may have a separate warranty statement from the third party vendor; such warranty statements may or may not be included in the Third Party Product packaging for Hardware, but will be included in the packaging for Third Party Products for Software. Warranty support for such Third Party Products will be provided pursuant to such third party vendors’ warranty terms and conditions, and Uplogix will pass on such third party warranty coverage to Customer. Uplogix will notify Customer at the time of any warranty support inquiries of any such separate third party warranty statements and provide Customer with contact information for warranty support from the applicable third party vendor. ALL THIRD PARTY PRODUCTS ARE PROVIDED BY UPLOGIX ON AN "AS IS" BASIS.

**DISCLAIMER OF WARRANTY**

EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY UPLOGIX, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion will apply even if the express warranty above fails of its essential purpose.

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**END USER LICENSE AGREEMENT**

**IMPORTANT – PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. DOWNLOADING, INSTALLING OR USING UPLOGIX OR UPLOGIX-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.**

UPLOGIX, INC. (“UPLOGIX”) IS WILLING TO LICENSE THE SOFTWARE TO ORDERING ACTIVITY UNDER GSA SCHEDULE CONTRACTS IDENTIFIED IN THE PURCHASE ORDER, STATEMENT OF WORK, OR SIMILAR DOCUMENT (“YOU”) ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS END USER LICENSE AGREEMENT (“AGREEMENT”). BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, YOU ARE BINDING THE BUSINESS ENTITY THAT YOU REPRESENT (“CUSTOMER”) TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN UPLOGIX IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND

(a) DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (b) YOU MAY RETURN THE SOFTWARE FOR A FULL REFUND, OR, IF THE SOFTWARE IS SUPPLIED AS PART OF ANOTHER PRODUCT, THEN YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND.

*The following terms of this Agreement govern Customer's access and use of the Software, except to the extent: there is a separate signed agreement between Customer and Uplogix governing Customer's use of the Software, or. To the extent of a conflict between the provisions of the foregoing documents, the order of precedence will be:*

*(i) the signed agreement, and (ii) this Agreement.*

**License.** Subject to compliance with the terms and conditions of this Agreement including but not limited to payment of the required license fees, Uplogix grants to Customer a non-exclusive and non-transferable license to use the Software (including the accompanying Documentation) for Customer's internal business purposes and in accordance with the Documentation. Customer may allow its agents and contractors to use the Software on Customer's behalf for the purposes set forth, and subject to the terms and conditions in this Agreement, provided that Customer will remain responsible for such agents' and contractors' compliance with this Agreement. Uplogix reserves all rights and licenses in and to the Software not expressly granted herein. Documentation means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) specifically pertaining to the Software and made available by Uplogix with the Software in any manner (including via CD or on-line).

Customer's license to use the Software is limited to, and Customer will not use the Software in excess of, a single hardware chassis or card or that number of agents, concurrent users, sessions, IP addresses, ports, seats, servers or sites specified in the applicable purchase order which has been accepted by Uplogix or its authorized representative and for which Customer has paid the required license fee. Customer will not transfer the Software to another hardware device except in the event of a hardware malfunction.

Unless otherwise expressly provided in the Documentation, Customer will use the Software solely as embedded in, for execution on, or (where the applicable Documentation permits installation on non-Uplogix equipment) for communication with Uplogix equipment owned or leased by Customer and used for Customer's internal business purposes.

Certain third party software products provided by Uplogix ("Third Party Software Products") may have a separate license directly from the third party vendor, which license is included in the Third Party Software Product packaging. Such Third Party Software Product license will apply instead of the license set forth in this Agreement. Further, the Software may include open source software ("OSS"). The license terms associated with OSS require that Uplogix provide copyright and license information to Customer. A list of the OSS included in the Software and applicable license terms are available at Uplogix's website ([www.uplogix.com](http://www.uplogix.com)) or in Uplogix's on-line user documentation for the Software. ALL THIRD PARTY SOFTWARE PRODUCTS AND OSS ARE PROVIDED BY UPLOGIX ON AN "AS IS" BASIS.

Evaluation copies of the Software are provided only for the term set forth in Customer's applicable purchase order accepted by Uplogix or its authorized representative or as set forth in the applicable quote provided by Uplogix or its authorized representative. For evaluation or beta Software copies for which Uplogix does not charge a license fee, and for any OSS, the above requirement to pay license fees does not apply.

**General Limitations.** This is a license, not a transfer of title, to the Software and Documentation, and Uplogix retains ownership of all copies of the Software and Documentation. The Software and Documentation contain trade secrets of Uplogix, its suppliers and licensors, including, without limitation, the specific internal design and structure of individual programs and associated interface information. Accordingly, except as otherwise expressly provided under this Agreement, Customer will have no right, and Customer will not:

- (a) transfer, assign or sublicense its license rights, or provide an interest, to any other person or entity, or use the Software on unauthorized or secondhand Uplogix equipment; any attempted transfer, assignment, sublicense or use will be void and any security interest granted will not allow the secured party to use or transfer the Software;
- (b) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;
- (c) reverse engineer or decompile, disassemble or otherwise reduce the Software to human-readable form, except to the extent such a prohibition would violate applicable law;
- (d) use or permit the Software to be used to perform services for third parties, whether on a service bureau, time sharing, subscription or rental basis or otherwise, without the express written authorization of Uplogix;

- (e) disclose results of any Software benchmark tests without Uplogix's prior written consent;
- (f) install any portion of the Software except solely for the purpose of integration with the Uplogix components as specified in the Documentation;



(g) make copies of the Software, except to the extent for a sufficient number of copies for Customer's licensed use and backup purposes; or

(h) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Uplogix. Customer will implement reasonable security measures to protect such trade secrets.

To the extent required by law, and at Customer's written request, Uplogix will provide Customer with interface information needed to achieve interoperability between the Software and another independently created program, on payment of Uplogix's applicable fee, if any. Customer will observe strict obligations of confidentiality with respect to such information and will use such information in compliance with applicable terms and conditions upon which Uplogix makes such information available.

**Software, Upgrade and Additional Copies.** For purposes of this Agreement, "Software" includes (and the terms and conditions of this Agreement will apply to) computer programs including, without limitation, firmware, as provided to Customer by Uplogix or an authorized Uplogix reseller, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of the Software licensed or provided to Customer by Uplogix or an authorized Uplogix reseller. The term "Software" does not include Third Party Products. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (a) CUSTOMER HAS NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE OR ADDITIONAL COPIES, (b) USE OF UPGRADES IS LIMITED TO UPLOGIX EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR WHO OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED, AND (c) THE MAKING AND USING OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

**Proprietary Notices.** Customer will maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in this Agreement, Customer will not make any copies or duplicates of any Software without the express prior written permission of Uplogix.

**Term and Termination.** This Agreement and the license granted herein will remain effective until terminated. Customer may terminate this Agreement and the license at any time by destroying all copies of the Software and Documentation. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Uplogix shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. All confidentiality obligations of Customer and all limitations of liability and disclaimers and restrictions of warranty will survive termination of this Agreement. In addition, the provisions of the sections titled "U.S. Government End User Purchasers" and "General Terms Applicable to the Limited Warranty Statement and End User License" will survive termination of this Agreement.

**Customer Records.** Customer grants Uplogix and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours and subject to Government security requirements to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, Customer will promptly pay to Uplogix or its authorized reseller the appropriate license fees, plus the reasonable cost of conducting the audit.

**Export.** Software and Documentation, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer will comply with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Software and Documentation.

**U.S. Government End User Purchasers.** If Customer is an agency, department, or other entity of the United States Government (“Government”), the use, duplication, reproduction, release, modification, disclosure or transfer of the Software, Documentation, Specifications or other related materials of any kind, including technical data (“Software and Documentation”), is restricted in accordance with Federal Acquisition Regulation (“FAR”) 12.212. The Software and Documentation is commercial computer software and commercial computer software documentation. The use of the Software and Documentation is further restricted in accordance with the terms of this Agreement, or any modification thereto.

**Third Party ..** The programs provided by Oracle included in the Software are subject to a restricted license and may only be used in conjunction with the Software. Oracle is not required to perform any obligations for Customer. The results of the audit performed by Uplogix with respect to the Oracle programs may be reported to Oracle. Some Oracle programs provided with the Software may contain source code and such source code is subject to the terms and conditions of this Agreement.

### **General Terms Applicable to the Limited Warranty Statement and End User License Agreement.**

**Disclaimer of Liabilities.** REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL UPLOGIX OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE OR OTHERWISE AND EVEN IF UPLOGIX OR ITS SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF

THE POSSIBILITY OF SUCH DAMAGES. In no event will Uplogix’s or its suppliers’ or licensors’ liability to Customer, whether in contract, tort breach of warranty, or otherwise, exceed the price paid by Customer for the Software that gave rise to the claim or if the Software is part of another Product, the price paid for such other Product. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

Customer agrees that the limitations of liability and disclaimers set forth herein will apply regardless of whether Customer has accepted the Software or any other product or services delivered by Uplogix. Customer acknowledges and agrees that Uplogix has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

The Limited Warranty and the End User License Agreement will be governed by and construed in accordance with the Federal laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act as it may be enacted in the applicable jurisdiction will not apply to this Agreement. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement will remain in full force and effect. Except as expressly provided herein, this Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation and supersedes (except as set forth in the order of precedence paragraph set forth at the beginning of this Agreement) any conflicting or additional terms contained in any purchase order or elsewhere, all of which terms are excluded. This Agreement has been written in the English language, and the English version will govern.

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**VARONIS SYSTEMS, INC.  
1250 BROADWAY, 29TH FLOOR  
NEW YORK, NY 10001**

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**VARONIS SYSTEMS, INC.**

**License Agreement**

**THE TERMS OF THIS LICENSE SUPERSEDE IN THEIR ENTIRETY ANY CONFLICTING TERMS OF ANY LICENSE AGREEMENT WHICH ACCOMPANIES THE SOFTWARE, AS APPLICABLE, BASED ON THE SOFTWARE KEY THE GSA CUSTOMER HAS BEEN ASSIGNED (THE "SOFTWARE").**

Grant of License. Varonis Systems, Inc. ("Licensor") grants the Ordering Activity under GSA Schedule contracts ("the GSA Customer") a limited, , non-exclusive, nontransferable, non-sublicensable license to (i) use the Software as provided herein, during the Evaluation Period (as defined below), solely for the trial and evaluation of the Software (a "Temporary License"), and/or (ii) subject to the full payment of the applicable license fee, to use the Software, in executable form only, internally (the " License") solely during the term set forth in Section 5 below. The GSA Customer may not make any commercial use of the Software, nor grant any third party any right to use the Software, whether or not for any consideration. This License Agreement allows the GSA Customer to run and use the Software on the GSA Customer's internal network, subject to the number of users (i) limited by the software key provided to the GSA Customer by the Licensor, if a Temporary License is granted to the GSA Customer, or (ii) indicated in the GSA Customer Purchase Order pursuant to which a License is granted to the GSA Customer. For the purpose of this Agreement, with respect to each Software, a "user" shall include any account that is monitored by such Software during the term of the License.

Other Rights and Limitations. The GSA Customer may not, and may not permit or aid others to, translate, reverse engineer, decompile, disassemble, update, modify, reproduce, duplicate, copy, distribute, place the Software onto a server so that it is accessible by third parties via a public network or otherwise disseminate all or any part of the Software, or extract source code from the object code of the Software. The GSA Customer may not publish or make available to the public, without Licensor's prior written approval, its impressions, evaluations, notes or recommendations from the use of the Temporary License. The Software is licensed as a single product. The GSA Customer may not separate its component parts for use on more than one computer or for any other purpose. The GSA Customer may not assign, sublicense, transfer, pledge, lease, rent, or share the GSA Customer's rights under this Agreement. Any data processed, shared, transferred or otherwise used by the GSA Customer, including any of its users, is the GSA Customer's sole responsibility. The GSA Customer must comply with applicable federal data protection laws and regulations. The GSA Customer must verify that no unauthorized users have access to its data. **THE GSA CUSTOMER SOLELY, IS RESPONSIBLE TO BACK UP ITS DATA.** Under no circumstances will Licensor be liable for any inaccuracy, loss of or damages to the GSA Customer's data used by it including any of its users by means of the Software.

Proprietary Rights; Confidentiality. The GSA Customer acknowledges and agrees that the Software is a proprietary product of Licensor, protected under copyright laws and international treaties. The GSA Customer further acknowledges and agrees that all right, title and interest in and to the Software, including associated intellectual property rights, are and shall remain with Licensor. All intellectual property rights (including, without limitation, copyrights, trade secrets, trademarks, etc.) evidenced by or embodied in and/or attached/connected/related to the Software, including any revisions, corrections, modifications, enhancements, updates and/or upgrades thereof (to the extent provided by Licensor) are and shall be owned solely by Licensor. This Agreement does not convey to the GSA Customer any interest in or to the Software, except for a limited right of use as set forth herein, terminable in accordance with the Federal Acquisition Regulation (the "FAR"), the GSA Schedule Contract and/or any applicable GSA Customer Purchase Orders. The GSA Customer will maintain all copies of the Software and all related documentation in confidence, and in a manner that the Software and all related documentation are not publicly accessible, and that only those that need access to Software shall be able to access it. When the end user is an instrumentality of the U.S. Government, neither this EULA nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement. Licensor recognizes that Federal agencies are subject to the Freedom of

Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

License Fees. In consideration of the License, the GSA Customer shall pay the applicable license fees in accordance with the GSA Schedule Pricelist.

Term and Termination. The Temporary License shall be effective upon delivery of the Software, and shall continue until the lapse of thirty (30) days from the delivery day (or such longer period as approved in writing by the Licensor), unless terminated earlier as set forth in the FAR, the underlying GSA Schedule Contract, and/or any GSA Customer Purchase Orders (the "Evaluation Period"). Depending on the type of License purchased, the License shall be valid: (i) in perpetuity, if a perpetual license is purchased, or (ii) during the subscription period indicated on the relevant purchase order, if a term license is purchased, unless the License (whether term or perpetual) is: (a) terminated by Licensor in accordance with the Contract Disputes Act (if and as applicable) due to a breach by the GSA Customer of any term hereof, or (b) terminated by Licensor in accordance with the FAR, the underlying GSA Schedule Contract, and/or any GSA Customer Purchase Orders. When the end user is an instrumentality of the US Government, recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract disputes clause (Contract Disputes Act). During any dispute under the disputes clause, Varonis shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract and comply with any decision of the Contracting Officer.

Limited Warranty. With respect to the Temporary License, no warranties are provided by the Licensor in connection with the Software. With respect to the License, Licensor warrants, for the GSA Customer's benefit only, that the media on which the Software is provided will be free from defects in material and workmanship under normal use for a period of twelve (12) months from the date on which a License was granted to the GSA Customer. Licensor does not warrant that the Software shall be error free or that it shall meet the GSA Customer's requirements. This limited warranty is void if failure of the Software has resulted from accident, abuse, unauthorized use or misapplication. LICENSOR WARRANTS THAT THE SOFTWARE WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SOFTWARE WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, EXCEPT FOR THE WARRANTY SET FORTH ABOVE, THE SOFTWARE MEDIA AND THE SOFTWARE ARE LICENSED "AS IS", AND LICENSOR DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT.

Maintenance and Support. Following the Evaluation Period, and in connection with Software granted a License, the GSA Customer may purchase maintenance and support services pursuant to the execution of a new GSA Customer Purchase Order. The use and installation of any updates, upgrades, patches or other software the GSA Customer may receive or purchase from Licensor or its resellers in connection with the GSA Customer's use of the Software, shall also be subject to and governed by the terms of this Agreement and the terms of Licensor's Support Principles attached hereto as Exhibit A.

Limitation of Liability. Notwithstanding anything herein to the contrary, Licensor's cumulative liability to the GSA for any loss, cost or damage resulting from any claims, demands, or actions arising out of or relating to this License Agreement, the Temporary License and/or the License shall not exceed the total Purchase Order price, including license fees actually paid to Licensor hereunder, if any. In no event shall Licensor be liable for any indirect, incidental, consequential, special, or exemplary damages or lost profits, even if Licensor has been advised of the possibility of such damages. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Qualifications and Limitations Basis of Bargain. The limited warranty, exclusive remedies and limited liability provisions set forth herein are fundamental elements of this License Agreement and the license granted hereunder, and the GSA Customer accepts and confirms that Licensor would not be able to provide the Software on an economic basis without such limitations. The foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Varonis' negligence; (2) for fraud; or (3) for express remedies under law or the contract; or (4) for any other matter for which liability cannot be excluded by law.

U.S.-Related Special Provisions. The GSA Customer agrees that the Software is not being or will not be shipped, transferred or re-exported, directly or indirectly, into any country prohibited by the United States Export Administration Act and the regulations thereunder, nor will it be used for any purposes prohibited by such Act. If any part of the Software is acquired by or on behalf of a unit or agency of the U.S. Government, the Government agrees that the Software and all related documentation are "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the Government's rights with respect to the Software and the related documentation are limited by the terms of this Agreement, pursuant to FAR 12.212(a), FAR 52.227-14 "Rights in Data" (MAY 2014) and/or DFARS 252.227. 7015 "Technical Data- Commercial Items"(Jun. 2013), as applicable.

Governing Law and Jurisdiction; Litigation Costs. This Agreement shall be construed and governed in accordance with Federal the laws of the United States of America without reference to conflict of laws, and dispute resolution shall take place in a forum, and within the time period, prescribed by applicable federal law. No equitable or injunctive relief, and no shifting of legal fees or costs, may be sought against the GSA Customer except as, and then only to the extent, specifically authorized by applicable federal statute.

Auto-updates & Environment Settings survey. The following functionality shall automatically be available to the GSA Customer with the Software: (i) if the GSA Customer purchases software subscription services, and subject to Government Information Security Requirements, including but not limited to those imposed by the Federal Information Security Management Act (FISMA), Licensor will regularly download and install software fixes and improvements to the installed DatAdvantage® environment. This includes only database scripts and does not compromise the data collected at the GSA Customer's environment. Use of the software fixes and improvements shall be subject to the terms of this Agreement; and (ii) if the GSA Customer purchases support services, subject to Government information security requirements, Licensor will monitor and collect general information about the GSA Customer's installed Software environment. This includes general information (the number of probes, shadows, file servers, folders, users and permissions that are monitored), as well as health status (database sizes, jobs and status of executables). This information can be used by Licensor's support engineers to improve the service if a problem arises, or to contact the customer proactively to prevent problems. Note that the GSA Customer may choose not to activate these functions by manually selecting "I Refuse" during the installation process.

Miscellaneous. Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof. This Agreement, together with the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Orders represents the entire agreement concerning the program between the GSA Customer and Licensor and it supersedes any prior proposal, representation, or understanding between the parties. This Agreement, however shall not take precedence over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order. The GSA Customer may not assign this Agreement to any third party without the prior written consent of Licensor. Assignment by Varonis is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR subpart 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013). The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

Third Party Software. The Software contains software provided by third parties. The restrictions contained in this Agreement shall apply to all such third party software providers and third party software as if they were Licensor's and the Software, respectively. In addition, the Software may contain software provided by Oracle, Inc. Such software is subject to the provisions in Exhibit B hereto, in addition to those contained in this Agreement.



## Exhibit A

### Varonis Support Principles

#### **VARONIS SUPPORT PRINCIPLES**

Throughout the Support Services term (the period for which applicable Support Services fees have been paid), Varonis Systems (“Varonis”) provides standard Support Services to customers using our North America and EMEA support centers during our standard operation hours. Our support offers and standard operating goals are outlined below.

#### **Support Services Goal:**

Varonis Technical Support is intended to make our customers’ use of our software products (the “**Software**”) successful by assisting with troubleshooting and helping to resolve specific issues resulting from the use of Varonis products on supported platforms. Customers may be required to perform reasonable troubleshooting tasks as recommended by Varonis’ support staff.

#### **SUPPORT OFFERINGS:**

During the Support Services term, Standard Support includes:

- Product updates and upgrades (if and when available)
- Web based, Email and phone support for installation and general use questions
- Access to Varonis’ Support Portal, Knowledgebase and Customer Community
- Create, update and manage your support cases online
- Unlimited Knowledge Base access
- Unlimited access to technical documents
- Use of Varonis’ dedicated toll-free number (<https://www.varonis.com/services/support>)
- Two named contacts

**Response Times:** Response times are dependent upon the level of Support Services the customer has purchased and the severity of the case. Varonis’ ability to provide support will depend, in some cases, on the ability of the customer to provide accurate and detailed information and to aid in handling a support request or error report.

**Relief Goals:** Relief Goals describe the target time period for Varonis to provide a temporary resolution of an issue. Varonis reserves the right to request a customer to download an Update (as defined below) or to upgrade to the Current Version (as defined below) in order to resolve a known problem or a technical issue.

#### **ESCALATION PROCEDURES:**

Varonis’ escalation procedures raise the visibility of your most important issues internally. Varonis may, at its discretion, pass any issue into the escalation process. Our normal escalation process includes evaluating the severity level of the issue. Our goal is to solve issues in a timely manner taking into consideration the severity of the issue.

In general, if you are not satisfied with a response from the Technical Support staff, you may request that the issue be escalated to a Support Team Lead or to the Director of Technical Support. Once an issue has been escalated, Varonis Technical Support will coordinate internal and customer resources in gathering relevant data required to identify and solve the issue. Varonis expects our customers to provide adequate resources and the requested data to assist in resolution of the issue.

**RESPONSE TIME**

Severity Level	Description	Contact Method	Response Time	Relief Goals
<b>Severity 1</b>	A down situation where core components of the Software are non-operational and there is no known work-around.	Notify Support via portal, phone or email	<b>Standard:</b> up to 4 hours, during the regional operation hours.	<b>Standard = 7</b> days
<b>Severity 2</b>	A major component of the Software is not functioning and no work-around is available, but the Software still supports core functionality.	Notify Support via portal, phone or email	<b>Standard:</b> up to 6 hours, during the regional operation hours.	<b>Standard = 14</b> days
<b>Severity 3</b>	A minor component of the Software is not functioning and any other case where a Software feature is not operating as documented.	Notify Support via portal, phone or email	<b>Standard:</b> 24 hours, during the regional operation hours.	Shall be repaired within a reasonable time

To qualify for the above response times, customers are required to cooperate with the Varonis Technical Support team in providing reproducible results for errors reported.

**HOURS OF OPERATION:**

**North America:** Monday–Friday, 09:00-21:00 EST, for a list of observed holidays click [here](#)

**EMEA:** Monday–Friday, 09:00-21:00 CET, for a list of observed holidays click [here](#)

**APAC:** Monday–Friday, 09:00-21:00 China Standard Time

Each customer may choose only one of the time zones identified above for the Support Services. Such time zone shall dictate the hours of support provided by Varonis for all Software licensed by the customer.

**Contact Support:** <http://www.varonis.com/services/support/>

**GENERAL SUPPORT INFORMATION:**

Technical Support for supported products is available via a variety of contact methods, including the Varonis Knowledge Base, Support Portal, email and phone during scheduled support hours, for current Software versions and during the support term purchased by a customer. Providing technical support does not imply that Varonis will make changes to the Software.

The following items are **NOT** supported:

- Operating systems and third-party applications
- Alterations or revisions to the Software made by the customer or third parties
- Use of the Software in a manner other than as authorized in the applicable license agreement
- Use of any Software that has been announced as End of Life
- Escalations from personnel other than the named contacts
- Continued support for issues which Varonis has provided corrections not implemented by the customer or data requested from the customer but not provided
- Free Varonis software products and tools
- Any migration services
- Issues of performance when the environment does not meet Varonis' sizing recommendations as provided to Customer, or as set forth in the Software documentation

## **SUPPORTED VERSIONS**

Varonis will provide Support Services under these principles only for the most current generally available Version (as defined below) of the Software (the "**Current Version**") and the Version immediately preceding the Current Version of the Software (the "**Previous Version**"). Notwithstanding the aforesaid, for a period of three (3) months from the release date of the Current Version of the Software, Varonis will provide Support Services to the version of the Software which is immediately preceding the Previous Version, at such level as determined by Varonis in its sole discretion.

**"Version"** shall mean a subsequent release of a Software or associated Documentation (the user documentation made generally available by Varonis to customers in connection with the Software) denoted by a change in the Software's release number. "Versions" do not include new functionality, features or modules offered by Varonis as separate or additional products or components or add-ons by Varonis.

## **SUPPORTED USERS**

Varonis will provide Support Services under these principles with respect to the number of users for which the Customer duly purchased the Support Services. Upon any renewal of the Support Services, Customer shall be required to renew the Support Services for the then current number of users using the Software (the "Supported

Number of Users"). Varonis shall be entitled, at any time, to run an audit check (including through running a script) in order to verify the Supported Number of Users. If the audit reveals any underpayments by Customer of any fees payable for the Support Services, Customer shall: (a) promptly pay the outstanding amounts, plus interest from the due date at a rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. The foregoing is without derogating from any other right or remedy Licensor may have under these principles or applicable law.

#### **SOFTWARE SUBSCRIPTION**

**Provision of Updates.** Varonis shall make available to Customers Updates of the Software, if and when Varonis makes such Updates generally available to its other customers then covered by Software Subscription. “**Updates**” shall mean new Versions, modifications, Work Around (a technically reasonably feasible change in the operating procedure of the Software whereby the adverse effects of the Error on the normal operation of the Software are reasonably minimized), upgrades, patches, error-correction, releases hotfixes, service packs, feature packs, which are designed and released by Varonis to optimize and/or repair the operation of the Software or the Documentation, if and when generally made generally available by Varonis to its customers. Updates shall not include any new functionality, features or modules offered by Varonis as separate or additional products, components or add-ons.

All Updates and upgrades are subject to the terms and conditions of the customer’s license agreement.

#### **REINSTATEMENT**

In the event Customer elects not to renew Support Services following the conclusion of the applicable Support Services term, Customer may later request Varonis to reinstate Support Services. In such event, Customer shall pay Varonis a Support Services reinstatement fee equal to the cumulative standard Support Services fees applicable for the Support Services terms during which Support Services lapsed, in addition to the Support Services fees for the then-current Support Services period.

#### **CUSTOMER OBLIGATION**

**Customer Cooperation.** Customer will cooperate with Varonis with regard to the provision of any Support Services, including, without limitation, by providing as much detail as available about reported Errors and taking all such reasonable measures requested by Varonis in order to detect and provide further information with respect to each Error. Customer shall ensure the readiness of its hardware, computerized systems, environment and personnel operating the Software and shall ensure the appropriate conditions so as to enable Varonis to comply with its undertakings hereunder, including, without limitation: (i) enabling Varonis to remotely access the Software; (ii) ensuring the availability of Customer’s personnel required for the operation of the Software; (iii) providing Varonis and its representatives with Customer’s accompany and on-demand consent, a remote control access to the servers where the Software is installed.

**Access.** If requested by Varonis, Customer shall grant Varonis such access to its information, premises and hardware as may be necessary or appropriate for Varonis to perform the Support Services.

**Customer Contacts.** Customer shall ensure that its contacts authorized to receive the Support Services are fully knowledgeable regarding the Software and its underlying technologies and are capable of receiving remote instructions from Varonis and performing activities reasonably required by a computerized system operator.

**VARONIS SUPPORT PLANS, SERVICES AND OFFERINGS**

Varonis reserves the right to alter its Technical Support Plans, Services and Offerings without prior notice. Varonis has no obligation to provide the Support Services in the event Varonis is not paid for such Support Services.

**VARONIS DATANYWHERE**

Notwithstanding anything herein to the contrary, starting February 28, 2019, Support Services for DatAnywhere will be limited. Varonis will use its best efforts to resolve a known problem or a technical issue within a reasonable time. New updates and upgrades will not be released and new platforms (such as new versions of IOS, Android, Windows, etc.) will not be supported. Support Services for DatAnywhere will no longer be available after February 28, 2020.

**WARNING; DISCLAIMER; AND LIMITATION OF LIABILITY**

VARONIS UNDERTAKES TO PROVIDE THE SUPPORT SERVICES IN A TIMELY AND PROFESSIONAL MANNER. EXCEPT FOR THE ABOVE UNDERTAKING, VARONIS PROVIDES NO WARRANTY, EXPRESS OR OTHERWISE, WITH RESPECT TO THE SUPPORT SERVICES, AND VARONIS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

VARONIS' LIABILITY HEREUNDER FOR ANY DAMAGES WHICH CUSTOMER MAY SUFFER SHALL IN NO EVENT EXCEED THE AMOUNT OF THE MOST RECENT ANNUAL SUPPORT FEE PAID BY CUSTOMER TO VARONIS OR ITS AUTHORIZED RESELLER.

IN NO EVENT WILL VARONIS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING FOR ANY LOST PROFITS, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY OTHER PARTY, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, EVEN IF VARONIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1)

PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**Exhibit B**

**Additional Provisions Applicable to Oracle, Inc. Software for Government Entity**

The software provided by Oracle, Inc. (the "Oracle Software") may only be used by the legal entity that executed the Agreement. Notwithstanding the preceding sentence, the Oracle Software may be used by the parent company of such legal entity, and the parent company's majority owned subsidiaries, provided that: (a) each of such entities agrees in writing to be bound by the terms of the Agreement, and (b) the legal entity that executed the Agreement shall be responsible for any breach of the Agreement by any such entity.

The Oracle Software may only be used in accordance with the scope of Section 1 of the Agreement, including the license definitions and rules set forth in the Oracle Software documentation, and only for your internal business operations. To the extent you are permitted to do so under the Agreement, you may allow agents or contractors (including, without limitation, outsourcers) to use the Oracle Software on your behalf for your internal business operations as described above, subject to the terms of the Agreement. In any such case, you shall be responsible for your agent's, contractor's, outsourcer's, customer's and supplier's use of the Oracle Software and their compliance with the Agreement.

Ancillary programs specified in the Oracle Software documentation may only be used for the purposes of installing or operating the Oracle Software with which the ancillary programs are delivered.

Oracle, Inc. or its licensor retains all ownership and intellectual property rights to the Oracle Software.

The Oracle Software is subject to a restricted license and can only be used in conjunction with the Software.

Third party technology that may be appropriate or necessary for use with some Oracle Software as specified in the applicable documentation or as otherwise notified by Licensor and such third party technology is licensed to you only for use with the Oracle Software under the terms of the third party license agreement specified in the applicable documentation or as otherwise notified by Licensor and not under the terms of the Agreement.

The Oracle Software is not specifically designed, manufactured or intended for use as parts, components or assemblies for the planning, construction, maintenance or operation of a nuclear facility and may not be used for these purposes.

You may not (a) transfer the Oracle Software except for temporary transfer in the event of computer malfunction;

(b) assign, give or transfer the Oracle Software and/or any services related thereto or an interest in them to another individual or entity; (c) use the Oracle Software for rental, timesharing, subscription service, hosting, or outsourcing; (d) remove or modify any Oracle Software markings or any notice of Oracle's or its licensors' proprietary rights; (e) make the Oracle Software available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted under the Agreement); (f) reverse engineer (unless required by law for interoperability), disassemble or decompile the Oracle Software (the foregoing prohibition includes, but is not limited to, review of data structures or similar materials produced by the Oracle Software) or duplicate the Oracle Software except for a sufficient number of copies of each Oracle Software for your licensed use and one copy of each Oracle Software media.

Any additional programs that Oracle may include with the Oracle Software ordered may be used by you only for



trial, non-production purposes only. You may not use such additional programs included with an order to provide training or attend training provided by Licensor or a third party on the content and/or functionality of such programs. You have 30 days from the delivery date to evaluate the additional programs, subject to the terms of the Agreement. If you decide to use any additional programs after the 30 day trial period, you must obtain a license for such programs from Licensor. If you decide not to obtain a license for the additional programs after the 30 day trial period, you will cease using and will delete any such programs from your computer systems. Additional programs included with an order are provided "as is," and Oracle does not provide technical support or offer any warranties for these programs.

Technical support, if ordered from Oracle, is provided under Oracle's technical support policies in effect at the time the services are provided and that Oracle's technical support policies can be accessed at <http://oracle.com/contracts>. You acknowledge that Oracle's technical support policies are incorporated into the Agreement by reference. If you decide not to purchase technical support on the date hereof, then you will be required to pay reinstatement fees equal to the amount that would have been paid to bring the support fees to the time of service.

Any third party firms retained by you to provide computer consulting services are independent of Oracle and are not Oracle's agents, and Oracle is not liable for nor bound by any acts of any such third party firm.

Some Oracle Software may include source code that Oracle may provide as part of its standard shipment of such programs, which source code shall be governed by the terms of the Agreement.

Licensor disclaims, to the extent permitted by applicable law, Oracle's liability for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the programs. Varonis shall remain liable in accordance with the terms of this license agreement.

Upon the termination of the Agreement, you shall discontinue use and destroy or return to Licensor all copies of the Oracle Software and related documentation.

You may not publish any results of benchmark tests run on the Oracle Software.

You shall comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the Oracle Software, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws.

In accordance with Government security requirements and not more than once a year, Licensor may audit your use of the Oracle Software. You will provide reasonable assistance and access to information in the course of such audit. Licensor may report the audit results to Oracle or assign its right to audit your use of the Oracle Software to Oracle. Licensor and Oracle shall not be responsible for any costs incurred by you in cooperating with the audit.

You hereby confirm that you have not relied on the future availability of any hardware, programs or updates in entering into the Agreement; however, (a) if you order technical support from Oracle, the preceding sentence does not relieve Oracle of its obligation to provide updates under such order, if-and-when available, in accordance with Oracle's then current technical support policies, and (b) the preceding sentence does not change the rights granted to you for any Oracle Software licensed under the Agreement, per the terms of the Agreement.

Non-material terms of this Exhibit B are subject to change at Oracle's discretion upon 30 days' notice.

SUBSCRIPTION SERVICES AGREEMENT

This Subscription Services Agreement (this “**Agreement**”) is entered into on the **e date set for** th in the Order by and between **Varonis Systems, Inc.**, a Delaware corporation, having its principal place of business at 1250 Broadway, 29th floor, New York, NY 10001 and its subsidiaries and affiliates (“**Varonis**”) and Ordering Activity under GSA Schedule contracts identified in the Order (“**Subscriber**”).

**WHEREAS** Varonis holds proprietary rights of certain Subscription Services and **WHEREAS**, subject to the terms of this Agreement, Varonis agrees to grant Subscriber a limited right to access and use the Subscription Services and provide Subscriber with certain Services in connection with the Subscription Services; **NOW, THEREFORE**, in consideration of the conditions contained herein, the parties, intending to be legally bound, agree as follows:

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective authorized representatives. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

<p>_____</p> <p>By:</p> <p>Title:</p> <p>Date:</p>	<p>Varonis Systems, Inc.</p> <p>By:</p> <p>Title:</p> <p>Date:</p>
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**TERMS AND CONDITIONS**

**1. DEFINITIONS.** Any capitalized terms used in this Agreement that are not otherwise defined shall have the meaning as set forth below:

- 1.1 “**Additional Services**” means services which are supplemental or ancillary to Subscriber’s use of the Subscription Services as may be offered by Varonis to Subscriber from time to time, including without limitation, professional services, penetration testing services and forensic services.
- 1.2 “**Affiliate**” means any entity which directly or indirectly controls, is controlled by or is under common control with the subject entity, where “control” means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.3 “**Authorized Usage**” means the usage metric(s) and factor(s) identified in the applicable Purchase Confirmation. Authorized Usage may include, among other metrics and factors, the number of individuals who have an account(s) on the systems and/or environments monitored by the Subscription Services (the “**Authorized User(s)**”), and/or the data and events tracked and/or monitored by the Subscription Services (the “**Monitored Data**”).
- 1.4 “**Client Program**” means the object code form of the service application made available to Subscriber to be installed on Subscriber’s computing device/environment and used solely in connection with the Subscription Services.
- 1.5 “**Documentation**” means Varonis’ product documentation detailing the operation and use of the Subscription Services, as generally made available to Varonis’ subscribers, and as updated from time to time by Varonis.
- 1.6 “**Fees**” has the meaning ascribed thereto in Section 8.1 hereof.
- 1.7 “**Intellectual Property Rights**” means all intangible legal rights, titles and interests including without limitation, all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets, Proprietary Information (as defined below), and all other proprietary rights in whatever form or medium, in each case, on a worldwide basis; together with all revisions, extensions, reexaminations translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.
- 1.8 “**Purchase Confirmation**” means the purchase confirmation issued by Varonis to Subscriber from time to time (each, a “**Purchase Confirmation**”) which lists the products and services to be provided by Varonis. Each Purchase Confirmation, and the products and services included therein, shall be subject to the terms of this Agreement.
- 1.9 “**Services**” means Support Services and Additional Services.

1.10 **"Subscriber Data"** means electronic data about Authorized Users' activity and Subscriber's applications that is collected and processed in or through the use of the Subscription Services by Subscriber.

1.11 **"Subscription Services"** means

Varonis' web-based cloud solution that is offered on a software-as-a-service basis. For the purpose of this Agreement, the Client Program, and any Updates thereto (as defined in the SLA), shall be considered an integral part of the Subscription Services.

1.12 **"Support Services"** means the provision of Updates and technical support by Varonis pursuant to its SLA as further detailed in Section 3.

1.13 **"Term"** has the meaning ascribed thereto in Section 9.1 hereof.

## **2. SUBSCRIPTION**

### **SERVICES.**

2.1 Subject to the terms and conditions of this Agreement, including the Subscriber's payment of all applicable Fees when due, Varonis grants Subscriber a non-exclusive, non- transferrable, non-sublicensable and limited license to access and use the Subscription Services during the subscription period set forth in the applicable Purchase Confirmation. The Subscription Services may be accessed solely for Subscriber's internal business purposes, in accordance with the Documentation, and for the Authorized Usage purchased by Subscriber, all as set forth in the applicable Purchase Confirmation.

2.2 Subject to the terms and conditions of this Agreement, including Subscriber's payment of all applicable Fees when due, Varonis grants Subscriber a non-exclusive, nontransferable, non- sublicensable, limited license, to: (a) install the Client Program solely in Subscriber's computing device/environment; and (b) during the subscription period set forth in the applicable Purchase Confirmation, use the Client Program solely as required for using the Subscription Services in accordance with this Agreement.

## **3. SUPPORT AND**

### **ADDITIONAL SERVICES.**

3.1 Varonis shall provide Subscriber with Support Services in connection with the Subscription Services, all subject to the terms of this Agreement and Varonis' standard support principles, as may be updated by Varonis from time to time ("**SLA**"), provided that any such update shall not adversely and materially affect Subscriber's rights.

3.2 Varonis may provide Subscriber, from time to time, with certain Additional Services. Unless otherwise acknowledged or agreed by the parties on a case-by-case basis, all Additional Services shall be subject to the terms and conditions of this Agreement.

## **4. RESTRICTIONS AND**

### **RESPONSIBILITIES.**

4.1 Subscriber shall not (and shall not permit others to) do any of the following with respect to the Subscription Services: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, lend, distribute, time share, operate as a service bureau, or otherwise make any of the Subscription Services available for access by third parties; (ii) conduct any security scanning and/or penetration testing or use the Subscription Services in any way which is not in accordance with their intended usage, and/or in a way which may affect other subscribers and their use of the Subscription Services or the service integrity or availability; (iii) make any commercial use of the Subscription

Services or grant any third party any right to use the Subscription Services, whether or not for any consideration; Subscriber shall not access or use the Subscription Services for developing or operating products or services intended to be offered to third parties; (iv) disassemble, reverse engineer, decompile, or otherwise attempt to derive the source code, algorithms or technology included in the Subscription Services; (v) copy, create derivative works based on, or otherwise modify the Subscription Services; (vi) remove or modify a copyright, trademark, logo or other proprietary rights notice or brand labeling in the Subscription Services; (vii) publish or release any benchmarking or performance data, or comparative study or analysis, applicable to the Subscription Services; (viii) circumvent, disable or otherwise interfere with security-related or access-related features of the Subscription Services; (ix) represent that it possesses any proprietary interest in the Subscription Services; or

(x) directly or indirectly, take any action to contest Varonis' Intellectual Property Rights in the Subscription Services or infringe them in any way. Subscriber represents, covenants, and warrants that Subscriber will use the Subscription Services solely in compliance with this Agreement, the Documentation and all applicable laws and regulations.

4.2 Subscriber shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect, access to or otherwise use the Subscription Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, and web servers (collectively, "**Equipment**"). Subscriber shall also be responsible for maintaining the security of the Equipment, Subscriber's account(s), password(s) (including but not limited to administrative and user passwords) and files, and for all uses of Subscriber's account or the Equipment. Under no circumstances shall Varonis be liable for any Equipment and/or services used by Subscriber to connect, access or otherwise use the Subscription Services.

4.3 Subscriber is solely responsible for all activity occurring in and through the Subscription Services by the Subscriber and its Authorized Users and for each of the Authorized Users' compliance with this Agreement. Subscriber shall use its best efforts to prevent unauthorized access to, or use of, the Subscription Services and will notify Varonis immediately, and in any event within 48 hours, in case of any unauthorized use of any password or account or any other known or suspected breach of security or privacy rights.

4.4 Subscriber acknowledges that the provision of the Subscription Services and the Services according to the terms of this Agreement requires, and is contingent upon, the Subscriber's full compliance with the requirements of this Agreement and the documents referred to in this Agreement.

4.5 Subscriber shall be solely responsible for ensuring that its use of the Subscription Services complies with all applicable laws (including, all privacy laws), rules, and regulations.

4.6 Subscriber acknowledges that the

Subscription Services are subject to the U.S. Export Administration Regulations. Subscriber further agrees that it will comply with all financial sanctions and export control laws, regulations, and orders administered by the U.S. Government and/or, to the extent consistent with U.S. antiboycott law, comparable controls imposed by other governments having jurisdiction over activities under this Agreement (collectively, "Trade Control Laws") to assure that the Subscription Services are not exported, re-exported, transferred, installed or accessed, directly or indirectly, in violation of such Trade Control Laws. Subscriber warrants that neither Subscriber nor any party/ies that individually or in the aggregate own 50% or more of the Subscriber, nor, to the best of Subscriber's knowledge, any party authorized by Subscriber to use the Subscription Services, is subject to financial sanctions or other restriction on receipt of goods or services imposed by applicable Trade Control Laws (collectively, "**Restricted Parties**") and agrees that it shall be deemed a material breach if Subscriber violates Trade Control Laws in connection with activity under this Agreement, or becomes a Restricted Party, or otherwise becomes subject to applicable restrictions under Trade Control Laws, whether such restrictions apply to Subscriber or to the region in which Subscriber is located, including any restrictions that result in a requirement not to use License Exception ENC and to instead obtain an export license or similar government authorization to supply Subscriber with products or services]. Notwithstanding Section 9.2, a breach by

Subscriber of this Section shall entitle Varonis to terminate (as with respect to specific Subscriber/ Ordering Activity under GSA Schedule) the Agreement and any rights granted hereunder immediately, without prior notice to Subscriber.

#### 5. Reserved.

#### 6. CONFIDENTIALITY.

6.1 During the Term, each party may be provided with certain non-public technical, financial, proprietary, confidential or trade secret information or data of the other party, which given the totality of the circumstances, a reasonable person or entity should have reason to believe is proprietary, confidential, or competitive (the "**Confidential Information**"). Without limitation from the generality of the above said, Confidential Information shall include sensitive information, including without limitation, any information identified as confidential, Information about the Subscription Services, the Client Program, Documentation, roadmap, information related to Varonis' business, products, internal practices and any proprietary or sensitive information of Varonis (together, regardless of the manner in which it is furnished, the "**Confidential Information**"). Confidential Information shall exclude any information that the receiving party can demonstrate by clear and convincing evidence (i) is now or subsequently becomes generally available in the public domain through no fault or breach on the part of receiving party; (ii) was in the rightful possession or known by the receiving party prior to disclosure by the disclosing party; (iii) receiving party rightfully obtained, without restrictions, from a third party who has the right to transfer or disclose it, without default or breach of this Agreement and/or any other confidentiality obligations; or (iv) the receiving party has independently developed, without breach of this Agreement or any use of or reference to the disclosing party's Confidential Information.

6.2 The receiving party agrees: (a) not to disclose the disclosing party's Confidential Information to any third parties other than to its controlled affiliates and their directors, officers, employees, advisors or consultants (collectively, the "**Representatives**") on a strict "need to know" basis only, and provided that such Representatives are bound by written agreements to comply with the confidentiality obligations as protective as those contained herein; (b) not to use or reproduce any of the disclosing party's Confidential Information for any purposes except to carry out its rights and responsibilities under this Agreement; (c) to keep the disclosing party's Confidential Information confidential using at least the same degree of care it uses to protect its own confidential information, which shall in no event be less than a reasonable degree of care. The receiving party shall remain liable at all times for any breach of this Section by any of its Representatives.

6.3 Notwithstanding the foregoing, if any

Confidential Information is required to be disclosed by law, order of a court or by an administrative body, to the extent legally permissible, the Receiving Party shall Disclosing Party of such required disclosure notify the promptly and in writing and shall reasonably cooperate with the disclosing party, at the disclosing party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure and it efforts to seek a protective order or other appropriate relief. The parties recognize that

Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by a party. The

Subscriber shall use all reasonable measures to avoid or object disclosing and shall, to the extent legally permissible, notify Varonis of request for information and cooperate in it efforts to object the disclosure

6.4 The parties' obligations with respect to Confidential Information shall expire five years following termination or expiration of this Agreement unless a longer period of protection applies under applicable law.

## 7. PROPRIETARY

### RIGHTS; PRIVACY.

7.1 Varonis owns and will retain all right, title and interest, including all Intellectual Property Rights, in and to the Subscription Services, the Services, and the Documentation. This Agreement does not convey to the Subscriber any interest or right in or to the Subscription Services, Services or Documentation.

7.2 Subscriber, or its licensors, own and retain all right, title and interest in and to the Subscriber Data. Subscriber hereby grants to Varonis a worldwide, non-exclusive, royalty-free, fully paid-up license during the Term (and, if applicable, the retrieval period as identified in Varonis' Privacy Policy), to use the Subscriber Data as reasonably necessary for Varonis to perform its rights and obligations under this Agreement.

7.3 Subscriber hereby grants to Varonis a worldwide, perpetual, irrevocable, royalty-free, fully paid-up license to use any questions, comments, suggestions, ideas, feedback to the extent provided by Subscriber in connection with the Subscription Services or the Services ("**Feedback**") for any business purpose determined by Varonis, including for incorporating the Feedback into Varonis' products and services. Varonis acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

7.4 Subscriber Data is held and retained by Varonis in accordance with Varonis' Privacy Policy attached hereto as Exhibit A. If Varonis Processes any Personal Data (as defined in the DPA) made available by Subscriber in connection with the Subscription Services, the terms of the Data Processing Addendum attached hereto as Exhibit B ("**DPA**") will apply to any such Personal Data and the DPA shall be considered an integral part of this Agreement.

## 8. PAYMENT OF FEES.

8.1 Subscriber will pay Varonis or its authorized reseller (the "**Reseller**") the fees for the Subscription Services and Services, if applicable, in accordance with the payment terms set forth herein (the "**Fees**").

8.2 Fees for the Subscription Services will be charged annually in advance. Fees for Additional Services, if any, will be invoiced upfront, or as otherwise set forth in a statement of work signed between the parties. Varonis reserves the right to update the Fees at the end of each Subscription Services period in accordance with the then current Varonis-GSA Schedule Pricelist (as specified in the Purchase Confirmation). All payments are final and non-refundable.

8.3 Full payment for invoices issued at any given time must be paid by Subscriber or the Reseller on a net 30 basis or, if necessary to comply with applicable financial sanctions imposed by the U.S. or other government authority with jurisdiction over the transaction, such other payment terms as agreed by the parties to comply with such laws. Unpaid amounts are subject to a late payment charge at the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

8.4

Varonis shall state separately on invoices taxes, levies, duties or other similar federal, state, local or non US government assessments of any nature, included but not limited to, sales, value added, withholding, digital economy, or technical service tax assessable by any jurisdiction, excluding any tax based on Varonis' net income, property or employment (collectively, "**Taxes**"), excluded from the fees, and the Customer agrees either to pay the amount of Taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).

8.5 All payments shall be made in U.S. dollars unless otherwise agreed by Varonis in writing.

8.6 The address listed by the Subscriber in this Agreement (the "**Subscriber's Address**") shall be presumed to be the place from which, and in which, the Subscriber shall receive any services under this Agreement. If Varonis identifies a potential over usage based on the Subscriber's then current usage patterns, Varonis may notify the Subscriber and the parties shall work in good faith in an effort to address such matter and avoid the occurrence of such over usage. If, however, Subscriber's use of the Subscription Services exceeds the Authorized Usage for which the Subscription Services were purchased by the Subscriber as set forth in the applicable Purchase Confirmation (the "**Over Usage**"), Subscriber, whether directly or through the Reseller, shall be billed for the Over Usage and Subscriber agrees to pay the additional Fees promptly; such revised Fees shall be applicable for the remainder of the then current Subscription Services period.

8.7 Upon reasonable notice to

Subscriber, not more than once per year, Varonis shall have the right to perform, and Subscriber agrees to reasonably cooperate and assist Varonis or any of its representative with, an audit, review or investigation (the "**Audit**") that relates to (i) Subscriber's compliance with applicable laws and regulations; (ii) any amounts payable by the

Subscriber and/or due to Varonis. In connection with an Audit, Subscriber will deliver to Varonis all relevant records, information and documents reasonably requested by Varonis, and any such information shall be deemed as Subscriber's Proprietary Information. Subscriber will immediately rectify non-compliance discovered in the Audit as requested by Varonis. If an Audit reveals Over Usage, Subscriber shall promptly pay Varonis any outstanding amounts to reflect Subscriber's actual usage, plus interest from the due date at a rate equal to the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. The foregoing is without derogating from any other right or remedy Varonis may have under this Agreement and/or under any applicable law.

## **9. TERM AND**

### **TERMINATION.**

9.1 This Agreement shall remain in effect unless terminated in accordance with the terms hereof (the "**Term**"). The Subscription Services and the Services shall remain in effect for the period(s) specified in the relevant Purchase Confirmation(s).

9.2

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Varonis shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer Upon termination or expiration of this Agreement: (i) Subscriber shall immediately cease using the Subscription Services; and (ii) any outstanding Fees (including for committed future periods as set forth in the Purchase Confirmation) shall become immediately due and payable.

9.3 In addition to any of its other rights or remedies (including, without limitation, any termination rights) set forth in this Agreement, Varonis reserves the right to suspend the Subscription Services and/or Services if: (a) Subscriber (or the Reseller, if applicable) is overdue on a payment, (b) Varonis deems such suspension necessary as a result of Subscriber's breach of Sections 2.1 and/or 4, (c) Varonis reasonably determines that such suspension is necessary to avoid material harm to Varonis or its other subscribers, including without limitation, if the Subscription Services are experiencing denial of service attacks, mail flooding, or other attacks or disruptions beyond Varonis' control, or (d) such suspension is required by law or at the request of governmental entities having jurisdiction.

9.4 All sections of this Agreement which by their nature are intended to survive termination or expiration of the Agreement, including, without limitation, accrued rights to payment, and Sections 1, 4, 5, 6, 7, 8, 9, 10.2, 11, 12 and 13 will survive termination or expiration of this Agreement.

## **10. WARRANTIES AND**

### **DISCLAIMER.**

10.1 Each party represents and warrants that: (i) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms of this Agreement, and (ii) its execution and delivery of this Agreement and its performance hereunder will not violate any applicable law, rule or regulation. Varonis warrants that subscription period set forth in the applicable Purchase Confirmation, the Subscription Services will conform in all material respects to the Documentation. Varonis' sole liability and Subscriber's exclusive remedy for any breach of this performance warranty shall be to

remedy or replace any such non-conformance in accordance with the SLA. Varonis further represents and warrants that the Services will be performed by Varonis in a professional and workmanlike manner. The foregoing warranty will not apply if the non-conformance was caused by (i) use of the Subscription Services other than in accordance with the Documentation and this Agreement, including, without limitation, any accident and/or abuse, (ii) the Subscriber's failure to properly maintain the Subscription Services in accordance with the instructions provided by Varonis, (iii) modifications to the Subscription Services by Subscriber or any third-party, or (iv) third-party hardware, software, or services used in connection with the Subscription Services, including the Equipment.

10.2 EXCEPT FOR THE WARRANTIES SPECIFICALLY SET FORTH IN THIS AGREEMENT,

VARONIS DOES NOT WARRANT THAT THE

SUBSCRIPTION SERVICES OR THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, THAT ALL ERRORS WILL BE CORRECTED OR THAT THEY SHALL MEET THE SUBSCRIBER'S REQUIREMENTS; NOR DOES VARONIS MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SUBSCRIPTION SERVICES OR THE SERVICES. THE SUBSCRIPTION SERVICES ARE NOT INTENDED TO BE USED AS A STORAGE, BACKUP OR ARCHIVING SERVICE. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SUBSCRIPTION SERVICES AND THE SERVICES ARE PROVIDED "AS IS" AND VARONIS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## **11. LIMITATION OF LIABILITY**

11.1 NEITHER PARTY SHALL BE

RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR

OTHER THEORY: (A) FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY OR PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF BUSINESS OR REVENUE, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION AND LOST PROFITS; OR (B) FOR ANY AMOUNTS THAT EXCEED THE FEES RECEIVED BY VARONIS FOR THE SUBSCRIPTION SERVICES DURING THE 12 MONTHS PERIOD PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM, IN EACH CASE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME



JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN SUCH JURISDICTIONS, THESE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY. THE FOREGOING LIMITATION OF LIABILITY SHALL

11.2 The limitations set forth above will not apply with respect to damages occasioned by: (A) the willful misconduct or fraud of a party; (B) personal injury or death resulting from a party's gross negligence; (C) matter for which liability cannot be excluded by law.; or (C) Subscriber's breach of its obligations under Sections 4.1 or 4.6.

## 12. EVALUATION

Varonis may, at its sole discretion, grant Subscriber a limited right to: (i) access the Subscription Services or a part thereof, and/or (ii) use new features, functionalities, platforms, modules or services developed by Varonis, if presented as part of "private preview" and/or "beta" versions, as further detailed in the SLA, in each case, for trial and evaluation purposes (the "Evaluation Subscription") and for a period to be determined by Varonis (the "Evaluation Period"). Varonis may extend the Evaluation Period at its sole discretion. Any such Evaluation Subscription will be: (i) on an as-is basis, without warranties of any kind, including without any obligation to provide Services to Subscriber, (ii) without any liability whatsoever, and (iii) except as set forth in this Section 12, subject to the terms of this Agreement. Upon the termination or expiration of the Evaluation Period, Subscriber will cease using the Evaluation Subscription to which Subscriber was granted access. Subscriber hereby agrees to receive communications from Varonis for promotional and support purposes during the Evaluation Period and thereafter.

## 13. MISCELLANEOUS

### 13.1 Publicity. Varonis may refer to

Subscriber as a customer of Varonis and include Subscriber's name, including, without limitation, as part of its public filings, and/or in marketing materials (including in a list of its customers) and/or on Varonis' web site, subject to Subscriber's prior written approval to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Neither party may issue any press release regarding this Agreement without the other party's prior written consent nor use the name or logo of the other party.

13.2 **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

13.3 **Assignment.** This Agreement is not assignable, transferable or sublicensable by Subscriber except with Varonis' prior written consent, which shall not be unreasonably withheld or delayed.

13.4 **No Agency.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Subscriber does not have any authority of any kind to bind Varonis in any respect whatsoever.

13.5 **Notices.** All notices given under this Agreement shall be in writing and shall be deemed to have been duly given when delivered, if delivered by messenger during normal business hours of the recipient; when sent, if transmitted by email transmission (receipt confirmed and with a confirmation copy sent by post) during normal business hours of the recipient; or on the third business day following posting, if posted by international air mail. Notices to Varonis shall be sent to: 1250 Broadway, 29th floor, New York, NY 10001, USA; Attn: Varonis Legal Department, varonis@legal.com. Notices to you shall be sent to the Subscriber's Address.

### 13.6 Third Party Software. The

Subscription Services may contain software provided by third parties. The restrictions contained in this Agreement shall apply to all such third-party software providers and third party software as if they were Varonis' and the Subscription Services, respectively. In addition, some of the Subscription Services may contain software provided by Oracle, Inc. ("Oracle"). Such Subscription Services are subject to Oracle provisions attached hereto in addition to those provisions contained in this Agreement.

13.7 **Law and Jurisdiction.** All disputes arising out of, or relating to, this Agreement shall be governed and construed in accordance with the Federal law of the United States. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act (UCITA) are expressly excluded from this Agreement.

### 13.8 Force Majeure. Excusable delays shall

be governed by GSA Schedule Contract Clause 552.212-

4(f)

### 13.9 High Risk and Restricted Data

**Activities.** The Subscription Services are not fault-tolerant and are not designed, manufactured or intended for use or resale (i) as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Subscription Services could lead directly to death, personal injury, or severe physical or environmental damage or (ii) for containing or processing health, financial or other similar restricted or sensitive data that is regulated under law, including but not limited to, HIPAA (Health Insurance Portability and Accountability Act), GLBA (Gramm-Leach-Bliley Act) or similar federal or state data security statutes (collectively, "High Risk and Restricted Data Activities"). Varonis and its suppliers specifically disclaim any express or implied warranties of fitness for High Risk and Restricted Data Activities.

13.10 **Data Backup.** Although Varonis performs routine backups of its subscribers' data, Subscriber is solely responsible for all data that Subscriber has transferred to Varonis or the Subscription Services (including Subscriber Data) or that relates to any activity Subscriber has undertaken using the Subscription Services. Subscriber agrees that Varonis shall have no liability to Subscriber for any loss or corruption of any such data.

### 13.11 U.S. Federal Government End User

**Provisions.** If any part of the Subscription Services is acquired by or on behalf of a unit or agency of the U.S. Government (a "US Governmental Entity"), such US Governmental Entity agrees that the Subscription Services and all related Documentation are "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the US Governmental Entity's rights with respect to the Subscription Services and the related Documentation are governed by the terms of this Agreement, pursuant to FAR §12.212(a) and/or DFARS §227.7202-1(a), as applicable. **Amendments.** This Agreement may not be amended except by a written agreement signed by authorized representatives of both parties.



13.12 **Entire Agreement.** This Agreement, including all documents referred to herein, represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior written and oral understandings between the parties, including any interim agreements executed by the parties and including any non-disclosure agreement(s) entered by the parties.

13.13 **Consent to Conduct Business**

**Electronically.** The parties understand and agree that, notwithstanding anything herein to the contrary, their electronic signature (including, without limitation, by typing their name at the end of an email confirming agreement, acceptance or consent) manifests their consent to be bound by all terms and conditions set forth in this Agreement.

13.14 **Reseller Orders.** Subscriber may procure the Subscription Services and the Services directly from a Reseller pursuant to a separate agreement with Reseller that includes the Reseller order form and other terms (a "**Reseller Arrangement**"). Varonis will be under no obligation to provide the Subscription Services and the Services to Subscriber as a result of a Reseller Arrangement if Varonis has not received a purchase order from such Reseller. Subscriber acknowledges that Reseller is not authorized to make any changes to this Agreement or otherwise provide any warranties, representations, promises or commitments on behalf of Varonis or in any way concerning the Subscription Services or the Services. If Subscriber procured the Subscription Services and/or Services through a Reseller Arrangement, then Subscriber agrees that Varonis may share certain Subscriber Data with Reseller in relation to Subscriber's Authorized Usage of the Subscription Services and the Services.

**VBRICK SYSTEMS, INC.**  
**12 BEAUMONT ROAD**  
**WALLINGFORD, CT 06492**

**EC America Rider to Product Specific License Terms and Conditions**  
**(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **VBrick Systems, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is

triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**VBRICK SYSTEMS, INC.**

**VBRICK SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

GRANT OF LICENSE

The Software Product is being licensed, not sold, to Ordering Activity. In accordance with and subject to the terms and conditions of this Attachment A, Contractor grants Ordering Activity a personal, non-transferable, non-exclusive license to use the object code version of the Software Product and Documentation. All rights and title in and to the Software Product and Documentation and all derivative works thereof (as such term is defined by the United States Copyright Act (as amended) at Title 17 U.S.C. and in accordance with FAR 52.227-19), including without limitation copyrights and trade secret rights, belong to Contractor and/or its partners, licensors and suppliers (collectively, "Suppliers"), and Contractor and its Suppliers hold title to each copy of the Software Product and Documentation, and any portion thereof. Contractor and its Suppliers reserve all rights to the Software Product and Documentation not expressly granted to Ordering Activity herein. This Attachment A grants Ordering Activity the following rights:

**Software Product.** Ordering Activity may install and use one copy of the Software Product, or any prior version for the same operating system, only on the number of computers and users for which the license is given pursuant to Ordering Activity's Purchase Order. In addition, Ordering Activity may make a copy of the Software Product for backup purposes at no cost. Except as expressly provided herein, Ordering Activity may not copy, nor encourage or allow copying of, the Software Product or Documentation. Ordering Activity may not cause or permit the disclosure, copying, renting, licensing, sublicensing, leasing, dissemination or other distribution of the Software Product or the Documentation by any means or in any form without Contractor's prior written consent.

**Storage/Network Use.** Ordering Activity may also store or install a copy of the Software Product on a storage device, such as a network server, used only to install or run the Software Product on Ordering Activity's other computers over an internal network; however, Ordering Activity must acquire either a Single User License for each separate computer on which the Software Product is installed or run from the storage device, or a Single Building License or an Enterprise License (defined below). If Ordering Activity have acquired appropriate licenses to allow installation of the Software Product on a computer file server within Ordering Activity's internal network Ordering Activity may also use such server to push firmware updates to other VBrick products. No server or network use of the Software Product is permitted except the uses expressly permitted in this Attachment A.

**Single User License.** Ordering Activity may use the Software Product on one computer only, or must have a license for each computer on which the Software Product is installed. A Single User License for the Software Product may not be shared or used concurrently on different computers or by separate users unless otherwise specified in Ordering Activity's Purchase Order.

**Connection License.** Ordering Activity is granted license to interconnect a single external server to Ordering Activity's VBrick Server Software; additional connections require purchase of additional connection licenses.

**No Modification.** Ordering Activity may not alter or modify the Software Product or create a new installer for the Software Product. The Software Product is licensed and distributed for viewing, distributing, and sharing media files. Ordering Activity is not authorized to integrate or use the Software Product with any software except software authorized by Contractor.

**Automatic Connection.** THE SOFTWARE PRODUCT MAY INCLUDE PRODUCT ACTIVATION AND OTHER TECHNOLOGY DESIGNED TO PREVENT UNAUTHORIZED USE AND COPYING. THIS TECHNOLOGY MAY CAUSE ORDERING ACTIVITY'S COMPUTER TO AUTOMATICALLY CONNECT TO THE INTERNET. ADDITIONALLY, ONCE CONNECTED, THE SOFTWARE PRODUCT MAY TRANSMIT ORDERING ACTIVITY'S SERIAL NUMBER TO CONTRACTOR OR ITS SUPPLIERS AND IN DOING SO MAY PREVENT USES OF THE SOFTWARE THAT ARE NOT PERMITTED.

**Third-Party Website Access.** The Software Product may allow Ordering Activity to access third-party websites ("Third-Party Sites"). Ordering Activity's access to and use of any Third-Party Sites, including but not limited to any goods, services, or information made available for such sites, is governed by the terms and conditions found at each Third Party Site, if any. Third-Party Sites are not owned or operated by Contractor or its Suppliers. ORDERING ACTIVITY'S USE OF THIRD-PARTY SITES IS AT ORDERING ACTIVITY'S OWN RISK. NEITHER CONTRACTOR NOR ITS SUPPLIERS MAKES ANY WARRANTIES, CONDITIONS, INDEMNITIES, REPRESENTATIONS, OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE, OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NONINFRINGEMENT OF THIRD-PARTY RIGHTS, TITLE, INTEGRATION, ACCURACY, SECURITY, AVAILABILITY, SATISFACTORY QUALITY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE THIRD-PARTY SITES.

**Compliance With Licenses.** If Ordering Activity is an entity, Ordering Activity agree that upon request from Contractor or Contractor's authorized representative, Ordering Activity will within thirty (30) days fully document and certify that use of any and all Software Products at the time of the request is in conformity with Ordering Activity's valid license(s) from Contractor and/or its Suppliers.

#### OTHER RIGHTS AND LIMITATIONS

**Limitations on Reverse Engineering, Decompilation, and Disassembly.** Ordering Activity may not reverse engineer, decompile, or disassemble the Software Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Ordering Activity may not use the Software Product to conduct a service bureau or similar business for the benefit of third parties. Ordering Activity may not modify, adapt, translate, or otherwise create derivative works based on the Software Product or Documentation.

**Separation of Components.** The Software Product is licensed as a single product. Its component parts may not be separated for use on more than one computer beyond the licensed number of users. If the Software Product is an upgrade or a revision of a component of a package of software programs that Ordering Activity licensed as a single product, the Software Product may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

**Dual Media Software.** Ordering Activity may receive the Software Product in more than one medium. Regardless of the type or size of medium Ordering Activity receive, Ordering Activity may use only one medium that is appropriate for the computer or computers for which the license is given (pursuant to the Purchase Order). Ordering Activity may not use or install the other medium on another computer. Ordering Activity may not loan, rent, lease, or otherwise transfer the other medium to another user, except as part of the permanent transfer (as provided below) of the Software Product.

**Support Services.** Contractor through VBrick may or may not provide Ordering Activity with support services related to the Software Product ("Support Services"). Any supplemental software code provided to Ordering Activity as part of the Support Services shall be considered part of the Software Product and subject to the terms and conditions of this Attachment A. With respect to any technical information Ordering Activity may provide as part of

the Support Services, Contractor through VBrick may use such information for its business purposes, including but not limited to product support and development.

**COPYRIGHT**

All title and copyrights in and to the Software Product (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Software Product), the Documentation or other accompanying printed materials, and any copies of them are owned and retained by Contractor and/or its Suppliers. Copyright laws and international treaty provisions protect the Software Product. Therefore, Ordering Activity must treat the Software Product like any other copyrighted material, except that Ordering Activity may install a copy of the Software Product on a single computer, storage device or as otherwise provided in this Attachment A, provided that Ordering Activity keep the original solely for backup or archival purposes. Ordering Activity may not copy the printed materials accompanying the Software Product.

**U.S. GOVERNMENT RESTRICTED RIGHTS**

The Software Product and Documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, or RESTRICTED RIGHTS notice per 52.227-14 as applicable. Manufacturer is VBrick Systems, Inc. 12 Beaumont Road, Wallingford, CT 06492 USA.

**LIMITED WARRANTY**

THE SOFTWARE PRODUCT AND DOCUMENTATION ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES OR CONDITIONS, EXPRESS AND IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OR CONDITIONS WITH RESPECT TO THE SOFTWARE PRODUCT'S OR THE DOCUMENTATION'S TITLE, NONINFRINGEMENT OF THIRD PARTY'S RIGHTS, QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

WITHOUT LIMITING THE FOREGOING, NEITHER CONTRACTOR NOR ITS SUPPLIERS WARRANT THAT THE SOFTWARE PRODUCT SHALL BE OPERABLE, UNINTERRUPTED OR ERROR-FREE, OR THAT IT MEETS ORDERING ACTIVITY'S REQUIREMENTS, OR THAT IT WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR HARDWARE.

THE ENTIRE RISK AS TO THE USE, QUALITY AND PERFORMANCE OF THE SOFTWARE PRODUCT AND DOCUMENTATION IS WITH ORDERING ACTIVITY. NEITHER CONTRACTOR NOR ITS SUPPLIERS IS OBLIGATED TO PROVIDE ANY SUPPORT SERVICES TO ORDERING ACTIVITY. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF ALL WARRANTIES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO ORDERING ACTIVITY.

**EXHIBIT A – VBRICK WARRANTY AND SUPPORT**

THE FOLLOWING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING, BUT NOT BY WAY OF LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CONTRACTOR SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

PRODUCTS OR PARTS WHICH ARE SAMPLES OR PROTOTYPES ARE SOLD "AS IS" "WHERE IS" WITH ALL FAULTS, *i.e.* WITHOUT ANY WARRANTY WHATSOEVER.

WHEN SUBMITTING AN ORDER FOR SOFTWARE MAINTENANCE (REFERRED TO THROUGHOUT THIS DOCUMENT AS SUPPORT SERVICES) ORDERING ACTIVITY MUST CERTIFY THAT ORDERING ACTIVITY HAS READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE FOLLOWING ATTACHMENT A TERMS AND CONDITIONS. ADDITIONALLY, IF ORDERING ACTIVITY IS ACTING AS AN EMPLOYEE OR AGENT OF THE ORDERING ACTIVITY FOR THE VBRICK PRODUCT FOR WHICH SOFTWARE SUPPORT SERVICES ARE TO BE PROVIDED, ORDERING ACTIVITY FURTHER CERTIFY THAT ORDERING ACTIVITY HAS FULL LEGAL AUTHORITY TO ACCEPT THE TERMS AND CONDITIONS OF THIS ATTACHMENT A ON BEHALF OF THE ORDERING ACTIVITY.

DO NOT SUBMIT ORDERING ACTIVITY'S ORDER UNTIL ORDERING ACTIVITY HAS CAREFULLY READ, UNDERSTOOD AND AGREED TO THESE ATTACHMENT A TERMS AND CONDITIONS. IF ORDERING ACTIVITY DOES NOT AGREE TO THESE ATTACHMENT A TERMS AND CONDITIONS, OR IF ORDERING ACTIVITY DOES NOT HAVE LEGAL AUTHORITY TO ACCEPT THEM ON BEHALF OF THE ORDERING ACTIVITY, CONTRACTOR WILL NOT ACCEPT ORDERING ACTIVITY'S ORDER.

THE CHART BELOW IS A SUMMARY OF THE WARRANTY TERMS AND CONDITIONS APPLICABLE TO CONTRACTOR'S LIMITED WARRANTY FOR PRODUCTS. THE TERMS AND CONDITIONS APPLICABLE TO CONTRACTOR'S LIMITED WARRANTY ARE AS SET ONWARD BELOW.

VBrick Maintenance Services Offerings	Gold Program	Gold Plus Program	Platinum Program
Hardware Warranty. Standard RMA (guarantee five-day turnaround after receipt)	Yes	Yes	Yes
Hardware Warranty. Next day RMA			Yes
Minor Software releases and patches	Yes	Yes	Yes
Major Software releases		Yes	Yes
E-mail/Phone Support (Response within 24 business hours)	Yes	Yes	
E-mail/Phone Support (Response within 4 business hours)			Yes
Level 3 Telephone Support 8:30 – 7 pm (Monday to Thursday)	Yes	Yes	Yes
Level 3 Telephone Support 8:30 – 5:30 (Friday)			
Level 1, 2 Telephone Support 8:30 – 7 pm (Monday to Thursday)			Yes



Level 1, 2 Telephone Support 8:30 – 5:30 (Friday) After hours priority number (Level 3 only. 4 hour response time) Web-Based Knowledgebase Onsite Support (Level 3 only)	Yes	Yes	Yes Yes Yes Yes*
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**I. PRODUCTS COVERED.**

Contractor warrants to Ordering Activity the VBrick Software and Manufactured Equipment, including hardware, software and firmware (the "Equipment"): (i) to be free from defects in material and workmanship under normal use and service, and (ii) to conform in all material respects to the printed specifications for the Equipment which have been delivered to Ordering Activity in connection with Ordering Activity's purchase of the Equipment.

Provision of Software Maintenance Software Support Services by Contractor through VBrick are conditioned upon Ordering Activity having deployed the current shipping release of the respective VBrick Product for which such Software Support Services are to be provided\*. Only these Attachment A terms and conditions, notwithstanding any preprinted or other terms and conditions on Ordering Activity's Purchase Order shall govern Ordering Activity's purchase and Contractor's provision of Software Support Services.

\*Upgrades to the latest version will be provided free of charge according to the program purchased by the Ordering Activity. Contractor does not guarantee it can support versions of software other than the current shipping release.

**II. LENGTH OF WARRANTY.**

Warranty and Software Maintenance shall commence upon the date indicated in the Contractor confirmation notice and shall continue in full force and effect for a period of one (1) year. Ordering Activity may, at the time of your initial order, purchase up to five (5) years of Subscription Service. Contractor will provide Ordering Activity with no less than thirty (30) days prior written notice of any pending Software Subscription Service changes with details on any pricing and/or modifications to these Attachment A terms and condition.

**III. WHO OR WHAT IS COVERED?**

This Limited Warranty covers only the VBrick Software and VBrick Manufactured Equipment acquired by the original Ordering Activity.

**IV. EXCLUSIONS.**

This warranty shall be void if the Ordering Activity fails to use or maintain the Software or Equipment in accordance with Contractor's specifications or instructions, or if the Software or Equipment or any part thereof has been subject to any unauthorized modifications, improper operation, user negligence, service by an unauthorized person, company or association, use with any unauthorized attachment, device or feature, accident neglect, misuse, tampering, acts of God, or any event other than ordinary use.

The following points are not included in Contractor's Limited Warranty and Gold and Platinum programs  
Support on any product not manufactured or produced by VBrick

Professional services:

Integration with 3rd party equipment,

Installation support for new VBrick equipment

Contractor through VBrick Technical Support Services personnel performing or providing over the phone a step by step upgrade of the Equipment.

Support Services related to the relocation of VBrick equipment or the elimination or addition of new VBrick equipment or third party equipment, such as network equipment, audio and video devices, or custom software applications or programs.

Feasibility Studies

Equipment Upgrades/Updates that also require hardware upgrades in order to utilize new functionality of the software. Any such hardware upgrades is not covered. Ordering Activity may purchase the hardware upgrades at the price set forth in the latest-current Contractor GSA Price List.

**V. LIMITATION OF LIABILITY.**

Contractor's obligation and Ordering Activity's remedy for any failure of the Equipment is limited to the repair or replacement of any part of the Software and/or Equipment at Contractor's discretion, which examination shall disclose to Contractor as defective. Contractor reserves the right to satisfy its warranty obligations in full by refunding the purchase price of the Equipment. Nothing herein shall obligate Contractor to make such a refund.

Software Updates and Upgrades: If Contractor, in its discretion, creates Software Updates or Software Upgrades to the VBrick Product during the term for which Ordering Activity has purchased Software Support Services, Contractor shall provide all such Software Updates and Software Upgrades to Ordering Activity designated technical contact. Distribution of Software Updates or Software Upgrades does not include installation by Contractor. Contractor will provide Ordering Activity with all such Software Update or Software Upgrades when Contractor makes them available to its general customer base for the VBrick Product. All Software and related materials provided pursuant to Software Support Services, including documentation and program materials are subject to these Attachment A terms and conditions for the VBrick Product.

**VI. HOW TO OBTAIN WARRANTY SERVICE.**

To receive warranty services, Ordering Activity must register equipment under their name upon arrival at <http://registration.vbrick.com>, or via mail to:

Technical Support Services – Registration Department  
12 Beaumont Rd  
Wallingford, CT 06492

Ordering Activity must notify Contractor through VBrick promptly by telephone, and/or via our website of any alleged defect with the Equipment or software, including a detailed description of such alleged defect. For warranty verification purposes, the Ordering Activity must furnish VBrick Technical Support Services with the equipment serial number or warranty contract number. Failure to provide this number may delay service response time or require payment for services. VBrick's telephone number for warranty service is (203) 303-0222. VBrick's support website is located at <http://www.vbrick.com/support>. Upon notifying VBrick of an alleged defect with the Equipment and after defect has been verified by VBrick's Technical Support Services, Ordering Activity agrees not to use the Equipment until further notice by VBrick. Ordering Activity shall bear all risks of operation, if Ordering Activity operates the Equipment prior to VBrick's determination that the Equipment is suitable for operation, and VBrick shall bear no liability whatsoever for any damages, losses or claims that may arise due to such operation.

Upon notification of a possible defect and after defect has been verified by VBrick's Technical Support Services, Contractor through VBrick will provide to customer a Return Merchandise Authorization ("RMA").

Technical Customer Support is available via telephone at (203) 303-0222, email: [support@vbrick.com](mailto:support@vbrick.com), or website: <http://www.vbrick.com/support>, from 8:30 AM to 7:00 PM Monday to Thursday and 8:30 AM to 5:30 PM Friday (U.S. Eastern Time).

Priority will be given to Ordering Activities who have purchased Extended Warranty / Maintenance Program. Expected response time for Gold products is 24 business hrs and 4 business hrs for Platinum products.

#### VII RETURN MATERIAL AUTHORIZATION (RMA)

All equipment under abnormal operation must be verified by a VBrick Technical Customer Support representative before it is assigned a Return Material Authorization (RMA) number. If Ordering Activity elects to avoid the verification process, a PO for VBrick's in-house diagnostics fee (consult latest GSA price list for diagnostics fee charges) will be required. If equipment is deemed faulty, diagnostic fees will be void.

Replacement equipment will not be shipped without an RMA number assigned. All Equipment received by Contractor through VBrick without an RMA number will be returned to the Ordering Activity without being repaired. Ordering Activities must return the Equipment in need of repair with the same serial number as reported in the RMA. If equipment with a different serial number is returned under the RMA, the equipment will be returned without being repaired. Ordering Activity is responsible for properly packing the Equipment before it is shipped to Contractor through VBrick.

If Contractor through VBrick determines that the defect was not caused by accident, improper use, abuse, neglect, unauthorized alteration or service, inconsistent use with the specifications or any use other than ordinary use, VBrick shall, at its option, repair or replace the applicable part(s) of the Equipment within the limits of the program in which the Equipment is enrolled, and at VBrick's expense, return the Equipment to the Ordering Activity in the same or equivalent manner that the Equipment was delivered to VBrick.

Next Day Shipment: ensures that a replacement for defective Equipment will be shipped to the Ordering Activity before requiring the Ordering Activity to return the defective Equipment to Contractor through VBrick. Equipment will be shipped to arrive at Ordering Activity's site the next business day after dispatch. However, any requests for replacement Equipment processed in North America after 3:00 PM Eastern Time (ET) may ship the following business day for second business day delivery. Any international requests for replacement processed after 3:00 PM ET may ship the following business day for international delivery. Delivery times depend upon each country customs regulations. Contractor through VBrick is not responsible for any customs or tax charges related to any country other than the U.S.A. A replacement Equipment may be new or reconditioned of like kind, functionality, and quality. The defective Product or part must be returned to VBrick within fifteen (15) days of receipt of the replacement product; all shipping costs are borne by Ordering Activity.. Any single request for a single shipment of five (5) or more Equipment of the same type may be subject to delays.

DOA (Dead on arrival): A product can be deemed as DOA, after troubleshooting by Contractor through VBrick Technical Support Services, if it is not fully functioning when it is setup for the first time or received with damage. It does not have to be completely dead or non-functioning to qualify for DOA. It could be anything from a unit not powering up to a unit with a bent connector. If it's not fully functional or has damage when opened and setup for the first time, it qualifies as "DOA" and eligible for a cross ship replacement if within 30 days of the original ship date and registered runtime of the product is not more than 4 days. After 30 days, follow normal RMA process unless Manager of Support Services approves expedited RMA process.

#### VIII. REPLACEMENT PARTS.

Parts replaced during the Limited Warranty Period, as applicable, will be covered for the remaining term of such period or for thirty (30) days from time of replacement, whatever is longer. Such replacement parts may, at Contractor's option, be new or remanufactured. All parts removed from warranted Equipment shall become property of Contractor.

#### IX. PLATINUM PROGRAM - EXTENDED WARRANTY / MAINTENANCE -

Ordering Activities may purchase VBrick's Extended Warranty / Maintenance Program (Platinum) for their equipment at any time within thirty (30) days from the date indicated in the VBrick confirmation notice -and for additional 1 year incremental periods if renewals of the Extended Warranty / Maintenance Program are purchased (the "Extended Warranty / Maintenance Program").

Hardware coverage/warranty under this program is provided up to 5 years from the date the equipment is shipped from Contractor through VBrick's facilities. After this period this program only covers technical support and major software releases.

#### X. GOLD and GOLD PLUS PROGRAMS - EXTENDED WARRANTY / MAINTENANCE -

Contractor through VBrick's Limited Warranty Gold Program is in effect for one (1) year from the date indicated in the VBrick confirmation notice -and for additional periods if renewals of the Extended Warranty / Maintenance Program are purchased (the "Extended Warranty / Maintenance Program"). Periods must be consecutive one to each other. Ordering Activity shall not be allowed to renew the program for their Equipment and/or Software in the



case the program period expired for the Equipment and/or Software in question and Ordering Activity missed to renew between 30 days of renewal due date.

Hardware coverage/warranty under this program is provided up to 5 years from the date the equipment is shipped from Contractor through VBrick's facilities. After this period this program only covers technical support and minor software releases.

#### XI. SOFTWARE COVERAGE

Software: means all computer programming code, entirely in binary form, which is directly executable by a computer and includes those computer programs which have been licensed to Ordering Activity either as a separate product or as part of another VBrick Product.

Software coverage includes the following:

Major Software Release (Software Upgrade): initial or new version of a software product or application. It means a version of the Software as classified by Contractor through VBrick which has been enhanced, improved and/or modified and replaces the existing version of the Software. This includes any minor software releases, user interface changes, usability changes, and new features and functions. As an example a major release is denoted by a version change from 2.0 to 3.0

Minor Software Release (Software Update): piece of software designed to correct discovered deficiencies and/or bugs affecting performance to the software description, program or its supporting data. This includes improved performance, bugs fixes, or graphics replacement. As an example a minor releases is denoted by version changing from 2.0 to 2.1.

Software upgrades during the Extended Warranty/Maintenance Program period. The upgrades will be provided to the Ordering Activity via CD-ROM or VBrick's website. The Ordering Activity is required to perform the upgrade.

Software upgrades may not include upgrades that require disassembly of the Equipment.

#### XII. HARDWARE COVERAGE

Hardware coverage includes the following:

Repair or replacement of defective Equipment during Warranty Program period.

Firmware upgrades (upgrades of code that require disassembly of Equipment).

#### XIII. TECHNICAL SUPPORT SERVICES

The following is an explanation of services performed at each level:

Level 1: provide answers and helpdesk for Equipment features. Basically all the "what" questions. This information can be found in the Equipment Documentation.

Level 2: diagnose and troubleshoot complex network problems including multicast issues. Diagnose and troubleshoot Server software related problems. Provide answers on how to perform upgrades. Basically able to answer the entire "how" questions. This information can be found in the Equipment documentation and in training materials.

Level 3: diagnose and troubleshoot "error and abnormal Equipment behaviors".

Onsite Support: When a problem cannot be resolved by utilizing remote technical support, Contractor through VBrick will dispatch an engineer to arrive on-site pursuant to the Service level purchased by Ordering Activity. VBrick will not be held responsible for delays in the delivery of the services due to Ordering Activity's stoppage to provide access to Ordering Activity's facilities or due to security requirements. Contractor through VBrick may comply with all Ordering Activity imposed security requirements.

The Extended Warranty/Maintenance Program is obtained in the manner outlined in Part IX, X above and is limited as provided in the introduction and Parts III, IV, V, VII, VII and XI, XII, XIII above.

#### XIV. PRODUCTS OUT OF WARRANTY RE-JOINING A WARRANTY PROGRAM

No product can be renew under the old warranty program except for products from Ordering Activity and only until the new GSA pricing becomes effective.

If warranty coverage has lapsed, there can be NO Hardware repair claim made for a minimum of 60 days after the renewal. If a claim is made within the first 60 days - it will be billed to the Ordering Activity at then-current GSA repair rate.

#### XV. REPAIR SERVICE OUTSIDE WARRANTY OR MAINTENANCE PROGRAM POLICY.

In the event that Equipment requires service that is not covered by Contractor's Limited Warranty or any other Program, Equipment may be shipped to Contractor through VBrick for repair. Ordering Activity must notify VBrick's Technical Customer Support of the problem via telephone at (203) 303-0222, or via website at <http://www.vbrick.com/support>, obtain a RMA and ship the Equipment to VBrick, at Ordering Activity's expense. Repairs are performed under flat fee charges (please refers to latest Contractor's GSA price list for charges). Contractor through VBrick will repair the Equipment within five (5) business days from the date the equipment is delivered at VBrick's facilities and will, at VBrick's expense, return the Equipment to Ordering Activity in the same or equivalent manner that the Equipment was delivered to VBrick.

Limited Services Warranty. THE PROVISION OF SOFTWARE SUPPORT SERVICES DOES NOT EXTEND, MODIFY OR ENHANCE THE ORIGINAL SOFTWARE WARRANTIES, IF ANY, FOR THE VBRICK PRODUCT (S). CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE, AND ANY WARRANTIES WITH RESPECT TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

CONTRACTOR NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PARTY TO ASSUME ANY OTHER LIABILITIES IN CONNECTION WITH THE SOFTWARE SUPPORT SERVICE(S) PROVIDED HEREUNDER.

VECTRA NETWORKS, INC.  
550 SOUTH WINCHESTER BLVD, #200  
SAN JOSE, CA 95128

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Vectra Networks, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is

triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**VECTRA NETWORKS, INC.**

**VECTRA NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**ATTACHMENT A - VECTRA NETWORKS, INC.**

**Definitions**

**“Hardware”** means the VECTRA hardware products set forth in the Order.

**“Product”** means the VECTRA security services product(s) set forth in the Order that consist of Hardware, Software, and/or Subscriptions.

**“Order”** means an ordering document issued by Ordering Activity that specifies Product(s) to be provided under this Agreement.

**“Software”** means the executable code version of VECTRA's software products set forth in the Order and any updates thereto furnished by VECTRA under this Agreement.

**“Subscriptions”** means subscription-based Software or services provided by VECTRA to Ordering Activity for a fixed or recurring period, subject to subscription fees for each such period as set forth in the Order.

## Scope

**Authorized VECTRA Resellers.** While VECTRA shall remain the “licensor” for purposes of the grant of the licenses and other rights hereunder, and Ordering Activity shall remain the “licensee” for purposes of the obligations contained herein, Ordering Activity shall contract directly with the authorized VECTRA reseller for the purchase of Hardware and/or Maintenance provided by such authorized VECTRA reseller.

## Products and Services

### Reserved.

**Software License.** Subject to the terms and conditions of this Agreement and the applicable Order, VECTRA grants to Ordering Activity a nonexclusive, nontransferable, limited license to use the Software in accordance with the applicable user documentation and license keys provided by VECTRA solely for Ordering Activity's internal use: (i) at the Ordering Activity facility authorized in the Order, (ii) during the period for which Ordering Activity has purchased a then-current license and Subscription, (iii) by Licensee employees up to the number of users for whom then-current licenses and Subscriptions have been paid, and (iv) for the measured bandwidth usage (“Measured Usage”), up to the service level set forth in the Order (“Service Level”).

**Subscriptions.** The Subscriptions will commence on the Effective Date (or other applicable start date specified in the Order) and will continue for the period set forth in the Order (the “Initial Subscription Term”).

**Maintenance and Services.** To the extent maintenance services are provided by VECTRA, such maintenance services are subject to Exhibit A (“Maintenance”). Installation, training and other support services may be provided if set forth in the Order, subject to the terms set forth in Exhibit A.

**Evaluation.** Any Hardware, Software or Subscriptions provided for evaluation or at no charge or for a nominal charge may only be used for evaluation during the evaluation period set forth in the Order, not to exceed 90 days (“Evaluation Period”) and solely for considering whether to purchase the applicable Product from Ordering Activity and not for any other purpose or any productive use. Ordering Activity shall return and discontinue all use of such Products at the end of the Evaluation Period.

**Restrictions.** Ordering Activity shall not (and shall not permit any third party to) (i) copy, modify, translate, reverse engineer, decompile, disassemble or otherwise reduce the Software or Subscriptions to human perceivable form or attempt to discover underlying source code, algorithms or techniques, except to the extent that such activities may not be prohibited under applicable law, (ii) provide, lease, use for timeshare or service bureau purposes, or lend or otherwise allow use of any Product by or on behalf of any third party or at any location other than the Ordering Activity facility authorized in the Order, (iii) disclose any benchmarking, competitive analysis or other results obtained from any Product or use any Product or portion thereof to develop any similar item or any competitive products or services, (iv) use or remove the applicable Software or Subscriptions from any Hardware on which or for which they are provided under the applicable Order, (v) attempt to disable or circumvent any license key, encryption or other security device or mechanism used in connection with the Product, Software or Subscriptions; or (vi) remove or otherwise interfere with any portion of the Product designed to monitor Ordering Activity's compliance with this Agreement. Ordering Activity acknowledges that Software and Subscriptions may include license keys and other features that disable use at the end of the applicable license or Subscription Term, or once the Service Level set forth in the Order is met.

**Proprietary Rights.** The Software and Subscriptions are licensed and not sold. VECTRA shall retain ownership of all Software and Subscriptions and all intellectual property rights relating thereto. Ordering Activity agrees that VECTRA may use and exploit without restriction any error reports, suggestions and other information provided by Ordering Activity with respect to the Products and shall own any fixes, modifications, improvements and new versions made by VECTRA based on such information. The Products, Software, documentation and other non-public information provided by VECTRA are confidential to VECTRA and shall not be disclosed by Ordering Activity to any third party. All implied licenses are disclaimed and all rights not expressly granted herein are reserved to VECTRA.

**Data Access.** VECTRA collects personally identifiable information uploaded during registration or account administration and information provided during support requests (collectively, “Ordering Activity Administrative Data”). Ordering Activity Administrative Data includes, for example, name, email address, phone number, and VECTRA-generated licenses associated with a Ordering Activity's account or email address. In the provision of the Product or a Subscription (including services related thereto), VECTRA may receive, store, process, and utilize network traffic data, including system stability data, threat detection information, user experience data, user interface data, and session and detection metadata (including packet capture data) (such data, “Ordering Activity Traffic Data” and, together with Ordering Activity Administrative Data, all such data is “Ordering Activity Data”). Without limiting the foregoing, VECTRA may automatically access, process, and retain Ordering Activity Traffic Data transferred on networks to which Ordering Activity connects any Product for purposes of product improvement, analysis, and evaluation as follows:

**Default Access.** VECTRA may monitor and access: (i) system stability data, including uptime statistics for various processes; hardware, software and network failure indicators; and back trace and call stack data; (ii) threat detection information, including the number, type and score of each threat



detection instance (based on VECTRA proprietary metrics); the attribution of each threat detection to an anonymized host; and the score for each anonymized host; (iii) anonymized user experience data, including the last login time; the frequency of logins; and User Interface clickstream data; and (iv) interface data.

**Optional Metadata Access.** As set forth in the Order or as Ordering Activity otherwise elects during the installation, configuration or use of the Products, VECTRA may (in addition to the Ordering Activity Traffic Data set forth in Section 00a) monitor and access nonidentifying session and detection metadata, including DNS, HTTP and session data; detection details; host ID mapping data; and precursors.

**Optional Virtual Private Network ("VPN") Access.** As set forth in the Order or as Ordering Activity otherwise elects during the installation, configuration or use of the Products, VECTRA may (in addition to the Ordering Activity Traffic Data set forth in Sections 0a and 0b) receive VPN access to Ordering Activity's network, monitor and access packet capture data, and facilitate troubleshooting.

**3.9 Data Access Consent.** Ordering Activity acknowledges that the Products detect threats and attacks by monitoring Ordering Activity Data, and that the Products may be less effective in detecting threats, attacks, or other suspicious or unauthorized activity if the Products do not have adequate access to Ordering Activity Data. Ordering Activity authorizes and directs VECTRA to store, process, retrieve, and disclose Ordering Activity Data for the following purposes: (i) providing service to Ordering Activity; (ii) analyzing, maintaining and improving VECTRA's products and services; (iii) complying with legal, governmental or contractual terms or requirements, including without limitation good faith efforts to comply with such terms or requirements; (iv) making malicious or unwanted content anonymously available to its licensors for the purpose of further developing and enhancing VECTRA products and services; and (v) anonymously aggregating and statistically analyzing malicious or unwanted content. In addition, VECTRA may use Ordering Activity Administrative Data for the following purposes: (i) to inform Ordering Activity about products, seminars and services VECTRA believes may be of interest to you; (ii) to contact Ordering Activity if VECTRA needs to obtain or provide additional information; and (iii) to verify the accuracy of VECTRA's records. VECTRA may use web analytics and cookies as set forth in the VECTRA Privacy Policy attached.

**Data Protection by Ordering Activity.** Ordering Activity represents and warrants that Ordering Activity's use of the Products and Subscriptions complies with all applicable laws, including those related to data privacy, data security, and international communications and that Ordering Activity has obtained any and all consents necessary for VECTRA to engage in data processing under this Agreement. Submission or provision of Ordering Activity Data to VECTRA shall be at Ordering Activity's own risk, and VECTRA assumes no responsibility or liability for receipt of such Ordering Activity Data.

Reserved.

**Reserved.**

**Reserved.**

#### **Limited Warranty**

**Limited Warranty.** Hardware as delivered by VECTRA will be free from material defects in materials and workmanship for a period of ninety (90) days from the date of shipment. Ordering Activity's sole remedy, and VECTRA's exclusive liability, with respect to such warranty will be to repair, replace or provide a refund of the purchase price (at VECTRA's option) for the defective Hardware or portion thereof, subject to return within the applicable warranty period in accordance with VECTRA's return materials authorization (RMA) procedures and provided the defect is not due to accident; unusual physical, electrical or electromagnetic stress; neglect; modification, alteration or misuse; or failure to properly install, operate and maintain in accordance with the manufacturer's specifications. Software and Subscriptions are subject to maintenance as set forth in Exhibit A and not warranty. VECTRA does not warrant that Product will meet Ordering Activity's requirements or function uninterrupted or error free. EXCEPT AS EXPRESSLY SET FORTH ABOVE, PRODUCTS, SOFTWARE, HARDWARE, SUBSCRIPTIONS AND ANY SERVICES ARE "AS IS" AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AND VECTRA SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

**RMA Procedures.** Prior to return of any Hardware, Ordering Activity will execute and report the results of any tests or diagnostics specified by VECTRA, confirm limited warranty status with VECTRA and obtain and affix an RMA number from VECTRA prior to shipment. Returns with RMA number are to be shipped by Ordering Activity, freight pre-paid, to VECTRA's designated return or repair facility, so that they are received within 2 weeks of obtaining the RMA number. Any Hardware found to be out-of-warranty, including any with a voided warranty, is subject to charges for processing and repair or replacement at VECTRA's then-current GSA Schedule Contract rates.

**Reserved.**

**Reserved.**

**Export; FCPA.** Products may not be exported without prior written consent of VECTRA. Ordering Activity warrants and hereby gives written assurance to VECTRA that Ordering Activity will comply with all U.S. and foreign export and re-export restrictions applicable to the Products, documentation and technical information provided hereunder. Company warrants that it shall comply with the Foreign Corrupt Practices Act ("**FCPA**") in all dealings with, by, for or on behalf of VECTRA, and shall not offer, promise, give, demand, seek or accept, directly or indirectly, any gift or payment, consideration or benefit in kind that would or could be construed as an illegal or corrupt practice.

**Reserved.**

#### **Vectra Networks privacy policy**

This Privacy Policy is designed to assist you in understanding how we collect and use personal information related to our website [www.vectranetworks.com](http://www.vectranetworks.com). References to "Vectra," "we," "our" and "us" refer to Vectra Networks, Inc.

#### **Registration Information**

When you register to download content from Vectra, we may ask you to provide us with personal information that may include your name, company, job position, email address, and phone number.

We are committed to protecting your privacy. Authorized employees within the company on a need to know basis only use any information collected from individual visitors. We constantly review our systems and data to ensure the best possible service to our customers. We will not sell, share or rent your personal information to any third party.

#### **User Communication**

If you send us email or other communications, we may retain the content of your communications together with your email address and our responses.

We may send you information that we think you will find interesting. If you want to be removed from our mailing list at any time, you may opt out of these communications by contacting [info@vectranetworks.com](mailto:info@vectranetworks.com)

#### **Links to External Sites**

We are not responsible for the practices employed by websites linked to or from our website nor the information or content contained therein. Often links to other websites are provided solely as pointers to information on topics that may be useful to the users of our website.

Please remember that when you use a link to go from our website to another website, our Privacy Policy is no longer in effect. Your browsing and interaction on any other website, including websites which have a link on our website, is subject to that website's own rules and policies. Please read over those rules and policies before proceeding.

We reserve the right to modify this privacy statement at any time. If we change how we use your personally identifiable information, we will notify you here, by email, or by means of a notice on our home page.

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### **EXHIBIT A**

#### **Maintenance Services**

**Maintenance Term.** Maintenance service as set forth in this Exhibit A ("**Maintenance Services**") commence on the Effective Date (or other applicable start date specified in the Order) and will continue until the end of the Subscription Term. If Ordering Activity elects not to renew Maintenance Services or fees are not kept current, Ordering Activity may re-enroll only upon prior written consent of VECTRA and payment of the applicable subscription fee for the coming period and all fees that would have been paid had Ordering Activity not discontinued Maintenance Services.

**Maintenance Services.** If Ordering Activity purchases such Maintenance Services, the following Maintenance Services will be made available during the applicable Subscription Term: (a) Updates released during the Subscription Term, and (b) Error resolution assistance for Errors in the Software reported by Ordering Activity during the Subscription Term, as further described below. Maintenance Services and Support will be provided only with respect to the then current version of the Software and only for active Subscriptions. VECTRA shall have no obligation to provide Maintenance Services or Support for: (i) altered or damaged Software or any portion of the Software incorporated with or into other software; (ii) Software or Subscription problems caused by Ordering Activity's negligence, abuse or misapplication, use of the Software or Subscriptions other than as specified in VECTRA's user manual or other causes beyond the control of VECTRA; or (iii) Software or Subscriptions installed or used on any hardware that is not supported by VECTRA. Support requests may be submitted online 24/7 at [support.vectranetworks.com](mailto:support.vectranetworks.com). For Error resolution assistance, VECTRA will use commercially reasonable efforts to correct any Error reported by Ordering Activity in the Software attributable to VECTRA, employing a level of effort commensurate with the severity of the Error, provided, however, that VECTRA shall have no obligation to correct all errors in the Software.

**Ordering Activity Responsibilities.** Ordering Activity is responsible for providing sufficient information and data to allow VECTRA to readily reproduce all reported Errors. If VECTRA believes that a problem reported by Ordering Activity may not be due to an Error in the Software or cannot be readily reproduced VECTRA will so notify Ordering Activity. Ordering Activity shall document and promptly report all Errors to VECTRA and take all steps necessary to carry out procedures for the rectification of Errors or malfunctions within a reasonable time after such procedures have been received from VECTRA.

**Certain Definitions.** For the purpose of this Exhibit only, the following terms shall have the following meanings:

"Error" means a reproducible programming error in the Software which significantly degrades the Software as compared to VECTRA's published performance specifications. Correction may be provided by patch, correction in the next Update, work-around or avoidance procedure, or other resolution to remedy the Error.

"Support" means technical support telephone or email assistance provided by VECTRA to a designated Ordering Activity support contact during normal business hours concerning the installation and use of the Product.

"Update" means a maintenance release of the Software designated as such by VECTRA and released on a general, regularly scheduled basis as part of standard maintenance to VECTRA's other maintenance customers for the same version of the Software without additional charge.



VEEAM SOFTWARE CORPORATION  
8800 LYRA DRIVE  
SUITE 350  
COLUMBUS, OH 43240

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Veeam Software Corporation** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is

triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**VEEAM SOFTWARE CORPORATION**

**VEEAM SOFTWARE CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS**

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**Important - Read Carefully**

This EULA is a legally binding agreement between licensee end user ("End User") and Veeam setting forth the terms and conditions governing the use and operation of Veeam's proprietary computer software products (the "Software") and the written technical specifications for the use and operation of the Software (the "Documentation"). Where the sense and context permit, references in this EULA to the Software include the Documentation. By downloading and installing, copying or otherwise using the Software, and/or otherwise accepting this EULA, End User agrees to be bound by the terms and conditions of this EULA. If End User does not agree to or accept the terms of this EULA, End User may not access or use the Software.

## 1.0 Definitions

1.1 "Fee(s)" means any License, Maintenance, professional services, consulting or other Fees agreed to by the parties as set forth in a Transaction Document.

1.2 "Maintenance" and "Maintenance Policies" have the respective meanings set forth in Section 7.0.

1.3 "Transaction" and "Transaction Document" have the following meanings: "Transaction(s)" is a License transaction pursuant to which End User: i) accepts this EULA as provided above and ii) takes actual or constructive possession of the Software. A Transaction may take place by any lawful means, electronically or in writing, and may be confirmed by a) purchase orders, credit orders, commitment letters, license keys, amendments to this EULA or other similar materials, signed or unsigned, (each a "Transaction Document(s)"), or b) by the conduct of the affected parties. A Transaction may be initiated and implemented by any entity that is directly or indirectly a party to it, including End User, Veeam, or authorized third party distributors, dealers, and/or other resellers of the Software. A Transaction Document may contain usage, business, legal and other terms and conditions agreed to by the parties. The foregoing notwithstanding, each Transaction will require that: i) this EULA be accepted by End User and ii) End User obtains actual or constructive possession of the Software. In the event of a conflict or inconsistency between the terms and conditions of this EULA and those set forth in a Transaction Document, the terms and conditions of this EULA will govern and control.

1.4 "Open Source" means various open source software components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. A current list of Open Source Software used by Veeam can be found at <http://www.veeam.com/eula-oss.html>.

## 2.0 Grant of License

2.1 License Grant. When the Software is delivered to End User as part of a Transaction, End User will have, subject to the terms and conditions of this EULA, a perpetual, non-transferable, non-exclusive, license ("License"), to use the Software in object code format, solely for government purpose for the management and processing of its own data and not the data of any third party(ies). Veeam Software License is perpetual, unless the Software is delivered to End User as part of a Transaction on a non-perpetual basis for a defined period, in such case, the End User's right to use such Software will cease on the end date of the defined period.

The data processing restriction set forth in the preceding paragraph will not apply to End User if End User a) has been accepted by Veeam, under "Veeam Cloud Provider Program" at <http://www.veeam.com/veeam-cloud-providers.html> and b) has accessed and is utilizing the Software with a stock-keeping unit number that designates End User as a "Cloud Provider" or similar description, thus authorizing End User to utilize the Software to perform systems management services for its customers.

## 3.0 Additional Terms

Nothing contained in this EULA is intended to prohibit or restrict the parties from mutually agreeing to enter into separate terms and conditions that i) modify or supplement the terms and conditions (including business and/or financial terms) of this i) EULA or the License granted to End User pursuant to this EULA; or ii) create or modify the terms a particular Transaction.

## 4.0 Evaluation License

A License designated as an "Evaluation" License in a Transaction Document authorizes End User to use one (1) copy of the Software for a 30 day period for non-production evaluation or demonstration purposes only.

## 5.0 Not for Resale License

A License designated as a "Not for Resale" License in a Transaction Document authorizes End User to use one (1) copy of the Software with full functionality for evaluation or demonstration purposes only, and for a defined period of time.

## 6.0 Limited Term License

A license designated as a "Limited Term" License in a Transaction Document authorizes End User to use one (1) copy of the Software in production environment at End User's site for a defined period of time. The defined period for a "Limited Term" License commences immediately upon generation of the license key.

## 7.0 Maintenance

Maintenance and support ("Maintenance") for the Software will be available in accordance with Veeam's applicable Maintenance Policies then in effect and shall commence on delivery of the Software. Provided End User is current on Maintenance, End User will receive (a) online support and (b) any Software updates, enhancements and/or improvements that are included or otherwise separately defined under the Maintenance Policies and are not licensed by Veeam at its discretion to its customers for a separate charge. Veeam's current Maintenance Policies can be found at <http://www.veeam.com/support.html>.

## 8.0 Copyright and Other Restrictions

The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold. The Software contains copyrighted material, trade secrets and other proprietary material of Veeam. All right, title and interest in the Software remains at all times with Veeam. In no event will End User directly or indirectly permit the Software to be decompiled, reverse engineered, or disassembled. End User will not disclose, transfer or otherwise make available the Software, or the results of any benchmark or other tests of the

Software, to any third party without the prior written consent of Veeam. End User shall not remove any proprietary notices from the Software. End User may make one copy of the Software solely for backup or archival purposes.

#### **9.0 Limited Warranty and Limitation of Liability**

Veeam warrants that it has the right and authority to grant the License under this EULA. Veeam will defend or, at its option, settle any action against End User based upon a claim that its use of the Software infringes any patent, copyright or other intellectual property right of a third party, and will indemnify End User against any amounts awarded against End User as a result of the claim, provided Veeam is promptly notified of the assertion of the claim and has control of its defense or settlement. Veeam warrants that the Software, in its unmodified form as initially delivered or made available to End User, will perform substantially in accordance with the Documentation for a warranty period of ninety (90) days from the date the Software is delivered to End User. In the event the Software fails in a material respect to operate in accordance with the Documentation during the warranty period and Veeam is unable to correct the defect, Veeam's sole and exclusive liability and End User's sole and exclusive remedy shall be a refund of the License fee, if any, paid by End User for the Software. The foregoing limited warranty will not apply if failure of the Software is the result of damage or misuse caused by End User.

EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE SOFTWARE IS FREE OF DEFECTS, MERCHANTABILITY OR FIT FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VEEAM OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY VEEAM DISTRIBUTORS OR RESELLERS, SHALL CREATE ANY WARRANTY IN ADDITION TO, OR IN ANY WAY INCREASE THE SCOPE OF, THE LIMITED WARRANTY.

In no event will Veeam, its affiliates, resellers, or distributors or suppliers be liable for any indirect, special, incidental or consequential damages arising out of the use of or inability to use the Software, including, without limitation, damages for lost profits, loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, even if advised of the possibility thereof.

#### **10.0 Assignment**

Except in the event of a sale or transfer by Veeam of all or substantially all of its assets or voting securities, neither party will assign all or any portion of its rights or obligations under this EULA to any third party without the prior written consent of the other party.

#### **11.0 U.S. Government End Users**

Use, duplication, or disclosure of the Software to or by the U. S. Government is subject to the provisions and restrictions as set forth in FAR 52.227-14 and FAR 52.227-19, or equivalent restrictions and provisions as set forth in DFAR 252.227-7013 and DFAR 252.227-7014.

#### **12.0 General**

This Agreement sets forth Veeam's entire obligation and End User's exclusive rights with respect to the Software and, except to the extent otherwise specifically provided in a purchase order or other written communication or advertising signed or jointly issued by both parties with respect to the Software, supersedes any conflicting terms of any purchase order and any other communication or advertising with respect to the Software. No failure of either party to exercise or enforce any of its rights under this EULA will act as a waiver of those rights. If any provision of this EULA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this EULA will not be affected. To the extent not preempted by federal law or regulation, this EULA will be governed by the laws of the State of Ohio, without regard to its choice of law principles. The United Nations Convention for the International Sale of Goods will not apply.

#### **13.0 Export Controls**

The Software is subject to U.S. Export Administration Regulations. Veeam prohibits any export or re-export of Veeam Software products, services, or technical data to any destinations subject to U.S. embargoes or trade sanctions, except in compliance with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. End User agrees not to use or make available the Software to or on behalf of any person that is a citizen, national, or resident of, or that is controlled by the government of the countries with which the U.S. may prohibit export transactions. The following countries are subject to the United States embargo or restricted trade sanctions: **Burma (Myanmar), Cuba, Iran, North Korea, the Republic of South Sudan, the Republic of the Sudan, Syria**, or any other country with which the United States may prohibit export transactions.

# Veeam Licensing Policy

This licensing policy, which is incorporated into and part of Veeam’s End User License Agreement (“EULA”), defines the specific licensing terms and conditions for your use of Veeam software products and documentation (collectively, “Software”). Definitions for all capitalized terms are found in [Definitions section](#) below.

## 1. Veeam Licensing

### 1.1. Veeam Universal License (VUL) Offerings

<b>Offering</b>	<b>License type(s)</b>	<b>License unit</b>	<b>Specifics</b>
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<b>Veeam Availability Suite</b>	Subscription or Perpetual	Instance	Bundle offered in packs of 10 Instances. Support and Maintenance is limited to Production level. Basic level is not offered.
<p><b>Offerings included:</b></p> <ul style="list-style-type: none"> <li>• Veeam Backup &amp; Replication</li> <li>• Veeam ONE</li> </ul>			
<b>Veeam Backup &amp; Replication</b>	Subscription or Perpetual	Instance	Offered in packs of 10 Instances.
<p>Support and Maintenance is limited to Production level. Basic level is not offered.</p>			
<p><b>Applications included:</b></p> <ul style="list-style-type: none"> <li>• Veeam Backup <i>for AWS</i></li> <li>• Veeam Backup <i>for Microsoft Azure</i></li> <li>• Veeam Backup <i>for Nutanix AHV</i></li> <li>• Veeam Agent <i>for Windows</i></li> <li>• Veeam Agent <i>for Linux</i></li> <li>• Veeam Agent <i>for Oracle Solaris</i></li> <li>• Veeam Agent <i>for IBM AIX</i></li> </ul>			
<b>Veeam Backup Essentials</b>	Subscription or Perpetual	Instance	Bundle offered in packs of 5 Instances with a minimum of 5 Instances (or 1 pack) and a maximum of 50 Instances (or 10 packs).
<p>Designed exclusively for small businesses and installations. Cannot be merged with another product license or centrally managed to scale above maximum. Purchase of an upgrade SKU required to grow beyond maximum limit.</p>			
<p>Support and Maintenance is limited to Production level. Basic level is not offered.</p>			
<p><b>Offerings included:</b></p> <ul style="list-style-type: none"> <li>• Veeam Backup &amp; Replication</li> <li>• Veeam ONE</li> </ul>			

Offering	License type(s)	License unit	Specifics
<b>Veeam Backup Essentials NAS Capacity Packs</b>	Subscription or Perpetual	TB	Offered in increments of 1TB with minimum of 5TB and maximum of 50TB.  This NAS license is only available to Veeam Backup Essentials VUL Customers. Support and Maintenance is Production level, tied to a Veeam Backup Essentials contract.
<b>Veeam Backup Starter</b>	Subscription	Instance	Effective October 1, 2020, this product is no longer offered, and all Veeam Backup Starter subscriptions were converted to Veeam Backup Essentials subscriptions.

### 1.1.1 Instance calculation for Veeam Universal License

Veeam Universal License (available in both Subscription and Perpetual License Types) removes complexity from license consumption tracking, providing portability of the license across a breadth of product functionality. All Protected Workloads consume 1 (one) Instance for the following Licensed Objects:

Workload type	Licensed object(s)	Instance
<b>VM or Cloud VM</b>	1	1
<b>Server or Application Server</b>	1	1
<b>Workstation</b>	3	1
<b>NAS</b>	250 GB	1

## 12 Standalone Offerings (non-VUL)

Offering	License type(s)	License unit	Specifics
<b>Veeam Availability Suite</b>	Perpetual	Socket	Bundle for VMware and Hyper-V virtual machine workloads only.  <b>Product Edition options include:</b> <ul style="list-style-type: none"> <li>Enterprise <i>Plus</i></li> <li>Enterprise*</li> <li>Standard*</li> </ul> Support and Maintenance options include: <ul style="list-style-type: none"> <li>Production level</li> <li>Basic level*</li> </ul> <b>Offerings included:</b> <ul style="list-style-type: none"> <li>Veeam Backup &amp; Replication (with Socket License Unit limitations)</li> <li>Veeam ONE</li> </ul> *Only available for customers with the above Product Editions or Support and Maintenance prior to January 1, 2021. Not available for new sales.



Offering	License type(s)	License unit	Specifics
<b>Veeam Backup &amp; Replication</b>	Perpetual	Socket	<p>Offering for VMware and Hyper-V virtual machine workloads only.</p> <p><b>Product Edition options include:</b></p> <ul style="list-style-type: none"> <li>• Enterprise <i>Plus</i></li> <li>• Enterprise*</li> <li>• Standard*</li> </ul> <p>Support and Maintenance options include:</p> <ul style="list-style-type: none"> <li>• Production level</li> <li>• Basic level*</li> </ul> <p><b>Applications NOT included:</b></p> <ul style="list-style-type: none"> <li>• Veeam Backup for AWS</li> <li>• Veeam Backup for Microsoft Azure</li> <li>• Veeam Backup for Nutanix AHV</li> <li>• Veeam Agent for Windows</li> <li>• Veeam Agent for Linux</li> <li>• Veeam Agent for Oracle Solaris</li> <li>• Veeam Agent for IBM AIX</li> </ul> <p>*Only available for customers with the above Product Editions or Support and Maintenance prior to January 1, 2021. Not available for new sales.</p>
<b>Veeam Backup Essentials</b>	Perpetual	Socket	<p>For VMware and Hyper-V virtual machine workloads only.</p> <p>Bundle offered in packs of 2 Sockets with maximum of 6 Sockets (3 Packs).</p> <p>Designed exclusively for small businesses and installations. Cannot be merged with another product license or centrally managed to scale above maximum limit of Sockets. Can be combined with Veeam Availability Suite VUL. Purchase of an upgrade SKU required to grow beyond maximum limit of Sockets.</p> <p><b>Product Edition options include:</b></p> <ul style="list-style-type: none"> <li>• Enterprise <i>Plus</i></li> <li>• Enterprise</li> <li>• Standard</li> </ul> <p><b>Support and Maintenance options include:</b></p> <ul style="list-style-type: none"> <li>• Production level</li> <li>• Basic level</li> </ul> <p><b>Offerings included:</b></p> <ul style="list-style-type: none"> <li>• Veeam Backup &amp; Replication (with Socket License Unit limitations)</li> <li>• Veeam ONE</li> </ul>

Offering	License type(s)	License unit	Specifics
<b>Veeam ONE</b>	Perpetual	Socket	When purchased as a standalone without Veeam Backup & Replication, offering provides monitoring, reporting and analytics for VMware and Hyper-V virtual machine workloads only.  <b>Support and Maintenance options include:</b> <ul style="list-style-type: none"> <li>• Production level</li> <li>• Basic level</li> </ul>
<b>Veeam Backup for AWS</b>	Subscription	Instance	Offered in packs of 10 Instances. Available as part of AWS Marketplace subscription or with BYOL version.
<b>Veeam Backup for Azure</b>	Subscription	Instance	Offered in packs of 10 Instances. BYOL version only.
<b>Veeam</b>	Subscription	Orchestrated	Offered in packs of 10 Orchestrated Instances.
<b>Availability Orchestrator</b>		Instance	Non-transferable to or from other Veeam products using Instances.  For VMware and Hyper-V virtual machine workloads only. Not available as an Add-on for Veeam Backup Essentials  <b>DR Pack Offering:</b> quantity must match Veeam Backup & Replication license quantity.
<b>Veeam Backup for Microsoft Office 365</b>	Subscription	User	Minimum of 10 Users.  Licensed per User account in all customer organizations. A license is not required for:  Shared, resource and group mailboxes Group SharePoint sites  External SharePoint users
<b>Veeam Management Pack for System Center</b>	Subscription or Perpetual	Socket	Minimum of 10 Sockets.  For Subscription Offering, Support and Maintenance is limited to Production level. Basic level is not offered.  For Perpetual Offering, Support and Maintenance options include: <ul style="list-style-type: none"> <li>• Production level</li> <li>• Basic level</li> </ul>

### 13. Multiyear Subscription Billing Options

Multiyear Subscriptions with **Upfront Billing** contain all years in one SKU. Customer commits to pay for the entire length of the contract upfront. Multiyear Subscriptions with **Annual Billing** require all yearly options to be purchased together on initial order. Customer commits to pay annual amount by the yearly anniversary each year for the length of contract.

## 14. Gifted (Built-in) Product License

For all Perpetual Licenses with Sockets, Veeam Backup & Replication and Veeam ONE products will enable additional FREE Instance licenses to be available for use — one Instance per each Socket with maximum of 6 gifted Instances.

For Veeam ONE, these FREE instances can only be used on monitoring and reporting on all non-VM workloads from the connected Veeam Backup & Replication.

## 15. Combining Socket and Instance licenses in Veeam Backup & Replication

Customers who need to combine purchased Socket and Instance licenses into one License Key can do so on the Customer Portal (<https://my.veeam.com>). Read more about [License Key merges](#).

Starting with version 10, Veeam Backup & Replication allows installing separate Socket and Instance License Keys at the same time without prior merging of keys at the customer portal. The following conditions will apply:

- Both Socket and Instance licenses are valid product licenses
- Company name matches between licenses
- Socket License Key will define the Support level, Support ID and Product Edition
- Only one Socket and one Instance License Key can be installed into the product at the same time
- Sockets will only protect VMware vSphere and Microsoft Hyper-V VMs

Instances, when in the presence of sockets, will protect NAS, Agents, Plug-Ins, AHV and Cloud VMs, and any workload **excluding** VMware and Hyper-V VMs.

Instance license expiration will, following the grace period, disable all product functionality until the expired license is removed from the product installation.

Socket license support expiration will not have any impact on the product's functionality, except for the limitation to install product updates shipped after the support expiration date.

**Important note:** To receive Production Support for combined license, the Socket license must be at the Production Support and Maintenance level.

## 16. Product Edition

When present, Product Edition of the license regulates the Software capabilities level. In case when both Perpetual per Socket and Subscription VUL licenses are installed, the Software will follow the Perpetual License edition.

## 17. Downgrades

1. Only Customers who are current on Support and Maintenance are eligible for a downgrade.
2. Veeam does not refund the difference in price for downgrades.
3. Offering Downgrades are only offered for Perpetual Licenses, may require a downgrade SKU, and a penalty or fee may be charged.
4. Product Edition Downgrades have no penalty or fee. Support and Maintenance expiration date(s) and licensing terms are not altered in the event of Product Edition Downgrade. Downgrades to Product Editions that Customer does not currently own are not available.
5. Support and Maintenance Downgrades are not available.

For more information, please contact Veeam Renewals at [renewals@veeam.com](mailto:renewals@veeam.com).

## 1.8. Upgrades

1. Only Customers who are current on Support and Maintenance are eligible for upgrades.
2. Upgrades may require a fee — even in cases where Customer is upgrading to what they were previously entitled to.
3. Product Edition Upgrades are only offered for Perpetual Licenses and may require an upgrade SKU.
4. Product Edition Upgrades to Enterprise Plus Product Edition are available. Product Edition Upgrades to Enterprise Product Edition are not available unless Customer currently owns Enterprise Product Edition. Support and Maintenance expiration date(s) and licensing terms are not altered in the event of Product Edition Upgrades.
5. Production level Support and Maintenance is required for, and thus is included in, all upgrades.
6. Support and Maintenance Upgrades are available.

For more information, please contact Veeam Renewals at [renewals@veeam.com](mailto:renewals@veeam.com) or by submitting a format <https://www.veeam.com/renewal.html>.

## 1.9. License Purchase Terms

Except as expressly agreed otherwise, Veeam reserves the right to change Packaging as needed without advanced or written notification. Except as expressly agreed otherwise, renewals or extensions of Perpetual License Support and Maintenance or Subscription Licenses will be at Veeam's GSA Schedule list price in effect at the time of the applicable renewal.

### 1.10. Migrations

Customers with "Active" Support and Maintenance Agreement may migrate their Socket-based Veeam Backup & Replication, Veeam Availability Suite or Veeam Backup Essentials Perpetual License to a Veeam Universal License (VUL) Subscription for additional benefits. Migrations from Socket-based Perpetual License to Perpetual VUL are also available.

For more information, please contact Veeam Renewals by submitting a format <https://www.veeam.com/renewal.html>.

### 1.11. Veeam License Keys

Veeam issues License Key for each license purchased. The End User is authorized to use each License Key to activate and use the Software within the parameters of this Licensing Policy according to this License Policy terms.

Veeam License Key contains specific licensing terms and a signature record that proves the integrity of the License Key file for the product. Only those License Keys that are marked as "Active" in Veeam's records are considered legitimate and valid License Keys. Customer's Active License Keys are always visible on the Customer Portal.

In the event where a License Key is revoked and a written confirmation has been sent, Customer must stop usage of License Key.

Please refer to [technical documentation](#) for product license installation help. The Veeam License Key defines the maximum number of License Units for the Software to consume or process from all objects of the connected Source Infrastructure.

Customers can use copies of the Software and one License Key to manage same or multiple [Source Infrastructures](#). In this scenario, Customers are required to implement centralized license management (for example, Veeam Enterprise Manager) to control total license consumption and compliance with the licensing terms.

Customers can use multiple License Keys with different license terms, but only for **separate backup infrastructures** (which are defined as not sharing servers or storage between each other and are protecting different Source infrastructures). Veeam centralized management is not available/allowed for such use cases. In these cases, Customers will be provided with separate license files for each separate backup infrastructure.

With certain conditions, **Customers can combine License Keys** with different license terms to manage multiple Source Infrastructures with the same backup infrastructure. Customers are advised to implement centralized license management (Veeam Enterprise Manager) to control total license consumption and compliance with the licensing terms.

### 1.11.1 License Start Date

The license expiration date and license support expiration date are calculated from the license start date which is the date when Veeam accepts the Purchase Order from distribution and delivers the License Key to the Customer portal at <https://my.veeam.com>.

When purchasing a renewal of Perpetual or Subscription Licenses, the updated License Keys become available at the Customer portal. If the License Key auto-update functionality is enabled, the updated License Key will be installed into the product automatically.

### 1.11.2 License Key Merge

Customers that are current on maintenance have an option to merge several Production License Keys into a single License Key to use in a product installation. Merge functionality for current versions is available at Customer Portal (<https://my.veeam.com>). For cases when merge is required for older versions of Veeam products, the Licensing support case needs to be opened.

When several License Keys are merged, the lowest Edition terms are selected for the resulting key (e.g. merging a 10 Socket Standard Edition license with the Veeam Universal License will result in a Standard Edition License Key). Similarly, the earliest license expiration date and support expiration date with respective Support ID will be provided.

License Key merge is only available for compatible licenses with up-to-date License Administrator information.

To revert the License Key merge operation, Customers may choose "Undo merge" to destroy the merged license and revert to original product License Keys.

Below are clarifications and exceptions to general merge rules:

License key merge exception	Merge rules
<b>Veeam Backup Essentials</b>	This product offering is not allowed for merging between License Types or with other products.
<b>Veeam Backup Starter</b>	This product offering is not allowed for merging between License Types or with other products. This product will no longer be offered on October 1, 2020. Support will be discontinued with v11 release.
<b>Veeam Universal Licenses</b>	Merge is allowed between Veeam Universal Licenses and other types of supported licenses.

The resulting License Key will contain combined License Units from Perpetual and Subscription Licenses.

Legacy Instance licenses will be re-calculated based one-to-one match (e.g. 10 Instances Standard Edition will match 10 Instances of Veeam Universal Licenses).

All other License Key parameters will follow License Key merge rules

**License key merge exception****Merge rules****Merging License Keys with Sockets and Instances**

Customers can combine Socket Perpetual and Instance Subscription License Keys to use with previous versions of the Veeam Backup & Replication. Below are merging directions for resulting key:

- License type: Subscription
- License expiration: the earliest expiration date of selected Instance Subscriptions License Keys
- Support expiration: the earliest support expiration date of all involved licenses
- Support ID: Socket Perpetual License Key with the earliest support expiration date.

Please note that:

- Sockets will be used to protect VMs on VMware and Hyper-V hosts
- Instances will cover Agents, Plug-Ins, AHV VMs, excluding VMware and Hyper-V VMs.

**1.113. License Auto-update**

Customers who enable the license auto-update feature will benefit from having automatic installation of Software updates and version upgrades, if their Subscription or Support and Maintenance Agreement is current. If separate environments are merged, please contact support to understand how this will affect the auto-update function.

**1.114. Legacy Licenses**

In case a Customer on maintenance needs a License Key for a legacy product version Veeam may provide such a License Key, with the condition that the License terms and License Units are available for that legacy product version. Please see if the "Previous version" action is available for the License Key on the Customer portal.

**1.115. Promotional License Key**

When Veeam gives a free production license or adds licenses/features at no cost for a limited time, the duration of the offer is defined by the promotion's specific terms and conditions or by the License Key parameters. Promotional licenses do not change any pre-existing licensing agreement for paid products.

**1.116. License Transfer**

To initiate the license transfer process to another License Administrator or to another Company, Customers are required to open a licensing case on the [Customer portal \(https://my.veeam.com/\)](https://my.veeam.com/)

The licensing case must be opened by the current Veeam License Administrator or a representative of the Customer with a proof of purchase submitted via the case.

**1.12. License Administrator**

The End User is responsible for providing correct contact information about License Administrator and keep it up to date. The End User is required to submit any changes to License Administrator data to Veeam's Customer Support service via the Customer portal (<https://my.veeam.com/>).

## 1.13. Source Infrastructure

Customers can use copies of the Software under the same License Key and license terms to manage same or multiple Source Infrastructures. In this scenario, Customers are required to implement centralized license management (for example, Veeam Backup Enterprise Manager) to control total license consumption and compliance with the licensing terms.

Sharing of the Source Infrastructure between different Licenses and license terms is prohibited.

## 1.14. Licensed Objects

Licensed Objects are associated with License Units by the Software. Some Software allows revoking License Units from Licensed Objects and re-applying to other License Objects. For example, you can revoke the license from some hosts or virtual machines (VMs) and assign it to other hosts or VMs.

## 1.15. License Units

Older versions of Veeam products prior to Veeam Backup & Replication v10 include the following License Units: VM, Server, Workstation with 1 (one) License Unit consumed by each Protected Workload.

# 2. Support and Maintenance

## 2.1. Paid Offerings

Customers are entitled to the Service Level Agreements (SLAs) associated with the Offering as described in the [support policy](#).

Please note that support may NOT be provided for Customers with expired license or Support and Maintenance agreement.

## 2.2. Free Software

FREE/Community/NFR Licenses DO NOT include Support and Maintenance.

## 2.3. Eligibility

Support and Maintenance is offered with both Subscription and Perpetual License Types. With "Active" Subscriptions, Customers are eligible for Support and Maintenance; however, with Perpetual Licenses, Customers must renew their annual Support and Maintenance agreement in order to stay eligible. Read more details on [Support and Maintenance renewal costs](#).

Please open a licensing support ticket at the [Customer portal](#) for such a request.

## 2.4. Requirement for Software Re-activation

Customers are advised to keep a copy of the Software and License Key file provided to them from the purchase of Veeam products to re-activate the Software as needed. For Customers with an active maintenance contract, Veeam may provide a copy of the Software and the license file for supported versions in response to a Customer request. Customers with expired maintenance contracts may not be granted such a service.



## 25. Support

Veeam has three support programs which may or may not be available for all Offerings: Premier, Production, and Basic. Additionally, there is an Evaluation support program for 30 days following product downloads. Each program provides a guarantee for support via Web, E-mail and Phone, and the ability to open cases via Web or Phone. Support for Customers with the Community Edition/Free License/NFR licensed products is provided on a best-effort basis. For more information, please refer to the [Veeam Customer Support Policy](#).

New product releases and maintenance updates are also available only to Customers with a current maintenance contract. Product updates may be refused by the Software where the License Key Support Expiration date has past.

Support level for Customers always defaults to their lowest contracted level. For example, if a Customer has 90% of their licenses contracted to Production Support and 10% of their licenses contracted to Basic Support, Veeam will only provide Basic Support.

## 26. Support and Maintenance Included in License Types

Perpetual License includes a Production or Basic Support and Maintenance agreement for the first year.

Subscription License includes a Production or Basic Support and Maintenance agreement for the full term of the license.

## 27. Basic Level Agreement Renewal

The annual renewal of Basic level Support and Maintenance is equal to the listed GSA Schedule Pricelist fee for Basic level Support and Maintenance for each product purchased under perpetual licensing.

## 28. Production Level Agreement Renewal

The annual renewal of Production level Support and Maintenance is equal to the listed GSA Schedule Pricelist fee for Production level Support and Maintenance for each product purchased under perpetual licensing.

## 29. Public, Educational or Internal Licensing Discounts

Veeam may provide discounts for public, educational and 'internal use' sectors on Subscription renewals. There are no sector discounts for Perpetual Support and Maintenance Agreement renewals. [Contact Veeam Renewals Team](#) for discounts available in your region.

## 2.10. Prepaid Support and Maintenance Availability

Prepaid discounted SKUs may be purchased within the first six months of the original new License purchase. After this period, standard annual renewal SKUs are required.

## 2.11. Maximum Prepaid Term

Maximum prepaid term for Support and Maintenance is five years for each License. The first year of support included with new Perpetual Licenses counts towards this maximum. Please note that SKUs may not be 'doubled' to increase length of time for support.

## 2.12. Maintenance Upgrades

Customers who upgrade Product Editions which have future years of support remaining on the product contract must also purchase annual and monthly edition maintenance upgrade SKUs to cover the price difference between previous and new product.

## 2.13. Expired Maintenance & Reinstatement Fee

Support renewals past due will be assessed a reinstatement fee equal to the fee for Support and Maintenance had Support and Maintenance remained continuous during the lapsed period. Fee is included in Expired Renewal SKUs, which are required for renewal of agreements expired at time of purchase. Expired Fee Waived SKUs can be used with Veeam approval only.

If support agreement is expired, please contact [Veeam Renewals team](#) to confirm needed SKUs.

## 2.14. Pricing Adjustments

Veeam strives to provide its customers with the best technology support for a broad alliance ecosystem, in a flexible, cost-effective manner. We reserve the right to evaluate our Packaging and Pricing, and adjust Pricing for subscription, subscription renewal and maintenance renewal of any Offering in accordance with the GSA Schedule Pricelist. Please refer to License Purchase Terms section.

## 2.15. End of Support

When a product version reaches end of support stage, this version will no longer be supported by Veeam. No further updates, patches or hotfixes will be created for it (exceptions may be made on case-by-case basis). For more information, read <https://www.veeam.com/kb1530>.

## 2.16. Product Lifecycle

All Software goes through product lifecycles which can affect the licenses and support associated with that Software. To read more about Veeam product lifecycles, read [https://www.veeam.com/releasestatus\\_rn.pdf](https://www.veeam.com/releasestatus_rn.pdf).

# 3. Definitions

## 3.1. Customer

"Customer" means the Ordering Activity under GSA Schedule contracts End User of the Software.

## 3.2. License Administrator

"License Administrator" means a person associated with and recorded in the Veeam License Key who represents the End User (per Veeam's [EULA](#)) and has the authority to request changes to the End User's Veeam Product License.

## 3.3. License Key

"Veeam License Key" or "License Key" refer to (1) a transaction document that defines the scope of the license; (2) eligible License Units and options; and (3) license terms reference, such as License ID and Support ID. Veeam License Key is typically required to enable functionality of the Software.

## 3.4. Protected Workload

"Protected Workload" means a Workload (as defined below) that had at least one restore point created by the Software in the past 31 days in the form of a backup or native snapshot.

## 3.5. Workload

"Workload" means a computer (physical, virtual or cloud), an application (on-prem or SaaS), an unstructured data (files or objects) or any data source that Software protects or manages.

## 36. Source Infrastructure

“Source Infrastructure” means an infrastructure with management servers, hosts, physical/virtual/cloud machines, applications, files or storage that is protected, monitored or otherwise managed by the Software and by the Customer.

## 37. Licensed Object

“Licensed Object” means an element of the Source Infrastructure that may be counted towards the maximum number of License Units. Below is a table of available Licensed Objects with descriptions:

Licensed object	Description
<b>VM</b>	A protected VMware ESX, Microsoft Hyper-V or Nutanix AHV VM that is backed up, replicated, copied, monitored or otherwise consumed by the Software.
<b>Cloud VM</b>	An Amazon AWS EC2 Instance or a Microsoft Azure VM that is backed up, replicated, copied, monitored or otherwise consumed by the Software.
<b>Server</b>	A Windows, Linux, Unix (or other supported operating system) machine, physical or virtual, where the Software is installed. Each node of the clustered setup needs to be licensed.
<b>Application Server</b>	A physical or virtual machine where the application-specific Software is installed. Each node of the clustered setup needs to be licensed.
<b>Workstation</b>	A physical or virtual machine where the Software is installed. Each node of the clustered setup needs to be licensed.
<b>NAS</b>	Front-end storage capacity pack.
<b>User</b>	A User account in all organizations as reported by the management Software.
<b>Socket</b>	An occupied motherboard CPU socket (as reported by the hypervisor API) on hosts with virtual machines (VMs) to be backed up, replicated, monitored or reported on.

## 38. License Unit

“License Unit(s)” means the maximum capacity of Licensed Objects that Software will process. Also represents how an Offering is licensed. For instance, Veeam Backup & Replication is offered in Instances. The following table describes the License Units.

License unit	Description
<b>Instance</b>	Calculated value representing the total “value” of all Licensed Objects that can be protected and/ or managed by the Customer using Veeam or partner solutions. See Instance calculation for VeeamUniversal License
In Rental licenses, Instance represents the value in rental points for managed workloads.	
<b>Orchestrated Instance</b>	1 (one) License Unit is consumed by each Protected Workload.  This instance type allows the workload to participate in orchestration activities (be a part of plans,labs, reports) in Veeam Availability Orchestrator (VAO).
<b>User</b>	1 (one) License Unit is consumed by each User account in all organizations as reported by the management Software.

License unit	Description
<b>TB</b>	Terabytes of front-end storage (NAS).
<b>Socket</b>	1 (one) License Unit is consumed for each occupied motherboard CPU socket as reported by the hypervisor API.

Only source hosts are licensed — hosts on which VMs that you back up or replicate reside. Target hosts (for replication and migration jobs) do not need to be licensed. Each node of the clustered setup needs to be licensed.

## 3.9. Product Edition

If present, "Product Edition" or "Edition" means the specific edition of the Software that defines the functionality available in the Software.

See [VBR Editions Comparison](#) for more information on specific Product Edition features and functionality.

### 3.10. Support and Maintenance

"Support and Maintenance" means Software updates, licensing and technical support to Customers according to [published Veeam Customer Support Policy attached hereto](#).

### 3.11. Offering Downgrade

Change from a higher tier Offering or Bundle to a lower tier Offering or Bundle, if applicable.

### 3.12. Product Edition Downgrade

Change on any product from a higher Product Edition to a lower Product Edition.

### 3.13. Support and Maintenance Downgrade

Change in the middle of contracted term from a higher level of Support and Maintenance to a lower level of Support and Maintenance.

### 3.14. Offering Upgrade

Change from lower tier Offering or Bundle to a higher tier Offering or Bundle, if applicable.

### 3.15. Product Edition Upgrade

Change on any product from a lower Product Edition to a higher Product Edition.

### 3.16. Support and Maintenance Upgrade

Change from lower level of Support and Maintenance to a higher level of Support and Maintenance.

### 3.17. License Type

"License Type" means the type of license to the Software that is purchased by a Customer. License Types (defined below) include: Perpetual, Subscription, Rental, Evaluation, Not-for-Resell (NFR), Community Edition, and Free.

### 3.18. Perpetual License

"Perpetual License" means a License Type that grants Customers the right to use, in perpetuity, any version of the Software delivered prior to the Support and Maintenance expiration date reflected in the license file provided, however, that License Keys are updated from time to time. One year of Support and Maintenance is included with any purchase of a Perpetual License.

### 3.19. Subscription License

"Subscription License" means a License Type that grants Customers the right to use the latest version of the Software for a specified length of time or term, depending on SKU purchased. Basic or Production Support and Maintenance is included for the entire term of the Subscription License, provided the End User is compliant with this Licensing Policy and the EULA. More details on [Support and Maintenance](#).

To renew your Subscription License, please contact your reseller or use [the Veeam Renewal form to contact Veeam](#).

### 3.20. Rental License

"Rental License" means a License Type that grants Veeam Cloud & Service Providers (VCSP) the right to use the Software to perform systems management services for their customers or clients based on monthly usage being reported and paid for by the VCSP. Copies of Rental Licenses can be produced by VCSPs using self-service functionality of Veeam ProPartner Portal to generate individual licenses for their customers' or clients' environments. More details on [VCSP program](#).

### 3.21. Evaluation and Not-for-Resell (NFR) Licenses

"Evaluation License" or "NFR License" mean a License Type that grants Partners and End Users the right to use the Software for a limited period stated in the License Key for evaluation or demonstration purposes only, in a non-production environment.

### 3.22. Community Edition and Free Licenses

Veeam provides some products free of charge with full or limited functionality.

"Community Edition" means a License Type that grants End-Users a fully functional version of the Software for very small environments and is limited to Licensed Units built into the License Key. Some versions of free products may require a valid no-cost license ("Free License") that is available for everyone upon website page registration. Please follow directions in the product interface to obtain such a license.

Community Edition License Customers agree to receive email marketing communications from Veeam Software with ability to unsubscribe from it.

Sharing of the Source Infrastructure between different Community Edition and Free Licenses is prohibited. This includes using multiple Community Edition deployments, or using both paid licenses and Community Edition deployments, to protect different parts of the same Source Infrastructure.

### 3.23. Packaging

"Packaging" means the Software, Features, [Product Editions](#), Add-ons, Bundles, and [Support and Maintenance](#) associated with Veeam's portfolio of Offerings.

### 3.24. Product

"Product" group of features or capabilities designed to function synergistically under one interface, License Key, and title. May be referred to as "Software".

## 325. Offering

“Offering” means Software offered or commercialized with a specific License Unit, License Type, Support and Maintenance program and License Policy rules.

## 326. Add-on

“Add-on” means a dependent Offering offered in addition or complimentary to an independent Offering.

## 327. Bundle

“Bundle” means an Offering composed of a specific group of Software, Offerings and/or Add-ons offered together at a discount.

## 328. Feature

“Feature” means capability designed to complete a function or series of functions found within Software.

## 329. Pricing

“Pricing” means [License Units](#), [License Types](#), terms, structural discounts and price points associated with Veeam’s Packaging in accordance with the GSA Schedule Pricelist.

## 330. Veeam-Published Image

Veeam-Published Image means a virtual machine image made available by Veeam for use in a cloud marketplace (like Amazon Web Services or Azure) and in which the Software is pre-installed. When the Software is delivered to End User as pre-installed on Veeam-Published Image End User has a right to use the Software only in virtual machines in the marketplace deployed from Veeam-Published Image. If the Software is delivered to End User as pre-installed on Veeam-Published Image with the operating system pre-installed, the right to use the operating system is governed by terms of EULA of this operating system. By executing a purchase order incorporating this Agreement in writing the Software End User accepts the terms of EULA of such an Operating System, otherwise the End User must not use the Software.

# Veeam Data Privacy Policy

This Veeam Data Privacy Policy was updated on March 1, 2018

Veeam is committed to protecting your privacy. This Data Privacy Policy tells you about Veeam's policy and practice for the collection, use, processing, storage, transfer, protection, and disclosure of information that we may collect about you through our website, [www.veeam.com](http://www.veeam.com), or any subdomains, Veeam websites, marketing events or our partners.

Before you access and use our websites or submit your personal information to us, you will be asked to provide your authorization and consent by agreeing to the terms and conditions of this Veeam Data Privacy Policy and consenting to the collection, your submission (if applicable), and processing of information about you as described herein, in compliance with relevant data protection laws.

The collection, use, processing, storage, transfer and disclosure of your Personal Information (as defined below) will be limited to the terms under which you provide Veeam your authorization. Veeam is committed to compliance with all relevant country-specific data privacy laws, including EU Standard Contractual Clauses, model contracts / transfer agreements, privacy statements and policies, and country-specific filings if applicable. This Data Privacy Policy covers [www.veeam.com](http://www.veeam.com) and all other Veeam websites.

## Collection of Your Personal Information

Personal information ("Personal Information") is data that can be used to identify, either directly or indirectly, an individual to whom the information applies. The information that we may collect from you includes your name, mailing address, phone number, email address, contact preferences, occupation, login information (account number, password), marketing preferences, social media account information, and as applicable, IP address.

Veeam will not collect any Personal Information about you unless you voluntarily choose to provide it to us or our partners (e.g. to obtain a newsletter subscription, white papers, participate in surveys, generate product downloads, register for marketing events, promotions or job applications), you provide your explicit consent, or unless it is permitted by applicable laws and regulations. You can always "opt out" at any time by visiting your [subscription preferences](#) page, click the «unsubscribe» link in any email or visit the Veeam [unsubscribe page](#).

## Use of Your Personal Information

When you do voluntarily provide us with Personal Information, we will use it to provide you information about our products, process your order, register you for an event, create an account, provide customer service, respond to a specific question, offer you the opportunity to participate in contests, register for courses, manage a job application, or provide access to additional information or offers. We also use the information we collect to improve the content of our website, to notify customers of updates to our website, products, and also to contact customers for marketing and sales purposes, including renewals, that are related to a customer's specific needs and interests.



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## Disclosure to Third Parties, Service Providers, and Others

In order to support and enhance the customer relationship with you, Veeam may store, process, or share your Personal Information with our worldwide partners and affiliates (e.g. channel partners, credit card processors, data hosters and service providers) to perform a function, provide you with information that you may be interested in or complete a transaction related to your purchase or interest in purchasing Veeam solutions.

Veeam also leverages its worldwide partners and affiliates to provide valuable services on our behalf. To provide these services to you we need your explicit consent to share your Personal Information with them. Third parties with whom we share your Personal Information are all bound by all relevant and applicable data privacy laws, terms of confidentiality and Veeam's Privacy Policy.

Veeam may also share non-personal summary information with our worldwide partners and affiliates. In the event Veeam shares any information with a worldwide partner or affiliate, Veeam also does so with your explicit consent and Veeam ensures that all worldwide partners or affiliates who do receive information protect the information with the same care and policies as Veeam does. For purposes of this Privacy Policy, non-personal information combined with personal information is treated as Personal Information.

There are times when Veeam may be required to disclose your Personal Information by law, legal process, litigation, and/or requests from public and governmental authorities. Veeam may also disclose your Personal Information for purposes of investigations of threats to national security, compliance with requests from law enforcement, or other issues of public importance, or when we determine that disclosure is reasonably necessary to enforce our terms and conditions or protect our operations or users.

## Purpose Limitation

Veeam will collect, use or disclose Personal Information supplied by you, for the purposes disclosed to you, unless the disclosure is a use of the Personal Information for an additional purpose related to the original purpose, is necessary to prepare, negotiate and perform a contract with you, is required by law or competent governmental authority, is necessary to establish or preserve a legal claim or defense against a legal claim, or is necessary to prevent fraud or other illegal activities.

## Cookies and Other Technologies

Veeam's websites, advertisements, emails, and online services may use certain automatic data collection technologies such as cookies, web beacons, and pixel tags to collect data, including personal information, about you while you use our website, our products, and when you interact with us. Collection of user data helps us to understand our users' behavior, web searches, and where on our websites users have visited. Our website uses cookies to distinguish you from other users of our website, helps us to provide you with a good experience when you browse our website, and allows us to improve our website. A cookie is a piece of information that is stored on your computer's hard drive by your web browser. When you visit [www.veeam.com](http://www.veeam.com) (or any of the Veeam websites), our server recognizes the cookie, giving us information about your last visit to the website. Many browsers accept cookies automatically, but you can adjust the settings in your browser to disable automatic acceptance of cookies. If you choose not to use cookies, you may experience limited functionality of our website. This Data Privacy Policy only covers Veeam's use of cookies and does not cover the use of any propensity management by advertisers. Veeam complies with global regulations including the EU Cookie Directive. Visitors to our websites are advised of our use of cookies upon landing on our website.

A "web beacon" (also known as a clear gif and pixel tag) helps us better manage the content of our website by informing us of what content is effective. A web beacon is incorporated into a web page or an email to keep track on a user's activity on the page or the email. Just like a cookie, a beacon tracks a user's visit and sends the data to the server, however, unlike cookies, a web beacon cannot and is not used for identification purposes, nor can it store any data on your computer as it is not browser-based.

Information collected by cookies and similar technologies are treated as non-personal information except to the extent under local law that IP addresses (or like identifiers) are otherwise considered Personal Information.

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## Accuracy and Retention of Personal Information

Veeam strives to make it easy for you to keep your Personal Information up to date and to help us maintain its accuracy. Your Personal Information will be stored only for the time period necessary to fulfill the purposes outlined in this Privacy Policy unless otherwise required or permitted by law.

## Communications and Subscription Preferences

You have the choice to determine what information you receive from Veeam about products and services, and how such information is received by specifying your communication preferences by your subscription details at the [subscription preferences](#) page. If you wish to discontinue receiving marketing and/or non-transactional e-mails from us, you may do so in the "My Account" section of our website or using an «unsubscribe» link in any email or the Veeam [unsubscribe page](#). We would like to emphasize that this provision does not apply to transactional emails related to users' business relationship with Veeam.

In the event you choose not to provide certain personal information, we may not be able to respond completely or adequately to your questions, provide updates, and/or information about our products and services. You can always "opt out" of receiving certain communications at any time by updating your [subscription preferences](#) page, click the «unsubscribe» link in any email, or visit the Veeam [unsubscribe page](#). We will however continue to use your Personal Information for the limited purpose of sending you important notices relating to information about your purchases and changes to our policies and agreements, or for other reasons permitted by applicable law.

## Data Security

Veeam takes the security of Personal Information seriously. To protect your Personal Information that you have provided us against accidental or unlawful destruction, loss or alteration, Veeam uses technical and organizational security measures to prevent any unauthorized disclosure or access.

## Data Security Breach

Veeam has implemented strict security controls, intrusion detection software and processes to alert us in the case of a potential or actual intrusion of our information systems. Veeam has a Data Breach Notification Policy and an established Incident Response Team that will react immediately and execute a Remediation Plan in response to any unauthorized access to our information systems or databases. If any data security breach occurs and it may impact your Personal Information, you will be notified as soon as possible once the breach has been determined.

## Collection and Use of Non-Personal Information

When you access [www.veeam.com](http://www.veeam.com) (or other Veeam websites), we may automatically collect non-Personal Information even if you don't register. For example, this information may include the operating system used, the domain name of the website that directed you to our website, the number of visits, average time spent on a page and what pages you viewed. We may use this data and share it with our worldwide affiliates to monitor the content and relevancy of the content on our websites to improve the performance, content or your experience on our websites.

Through your use of services to access our website, your communications data (for example, Internet Protocol Address, or IP Address) or utilization data (information on the telecommunications services you accessed) may be technically generated and could, depending on the applicable law, constitute Personal Information. To the extent it is a necessity, the collection and processing of your communications or utilization data, and the subsequent use of such data will only occur and be performed in accordance with the applicable data privacy protection framework and laws.

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## Forums, Blogs, Third Party Websites and Links

Veeam is only responsible for privacy practices of Veeam and its websites. Veeam's website may contain links to other websites for additional information and convenience. Veeam does not control those other websites, endorse or make any representation about other websites, and is not responsible for the privacy practices of those other websites. Some of Veeam's websites contain interactive elements such as discussion forums and blogs that allow users to publish their own content. Any information posted on these blogs and forums becomes public, which means it could be read, collected or used by other users in any manner. Veeam is not responsible for any Personal Information you choose to submit in forums.

## Consent to Transfer, Process, and Store Personal Information

Veeam is a global organization so the information you provide to Veeam may be transferred or accessed by Veeam corporate entities in Switzerland and other countries around the world, each of which are responsible for the Personal Information which it collects and protects your Personal Information in accordance with this Privacy Policy. Personal Information of individuals who reside in a member state of the European Economic Area and Switzerland is controlled by Veeam Software Corporation AG. Veeam uses approved Model Contractual Clauses for the international transfer of personal information collected in the European Economic Area and Switzerland. Veeam abides by the [Asia-Pacific Economic Cooperation \(APEC\) Cross Border Privacy Rules System](#). The APEC CBPR system provides a framework for organizations to ensure protection of personal information transferred among participating APEC economies.

## Career Page and Apply for a Job with Veeam

If you browse or apply for a job in the careers portion of our website, your application and any additional information that you provide may be used to assess your skills and interests against career opportunities at Veeam. Veeam may retain this information for reporting purposes that may be required by applicable law.

## Right to be Forgotten

Veeam is committed to taking reasonable steps to ensure that any Personal Information requests to be forgotten can be erased with our existing technology will be done so in a reasonable time of the request. However, this doesn't apply to information that you have made public by posting on our forums, blogs, or have made available to third parties yourself, this is beyond the reach of what Veeam can erase. Veeam will do everything possible to erase your Personal Information if you withdraw your consent (opt out) from receiving information for us and request the right to be forgotten. However, Veeam will not be able to erase all of your Personal Information if it is technically impossible due to limitations to existing technology, or for legal reasons (Veeam is mandated by local law to keep the Personal Information).

## Children's Privacy

Veeam will not knowingly collect Personal Information from any person that is not a legal adult, as defined by local law, without insisting that they seek prior parental consent, if such consent is required by applicable law. Veeam does not target children in connection with its products, services, and websites. In the event Veeam uses or discloses Personal Information of a person that is not a legal adult, Veeam will seek parental consent pursuant to local laws and regulations in order to protect the person that is not a legal adult.

## Changes to this Privacy Policy

As a technology company, our systems will mature and change as will this Data Privacy Policy. Non-material changes to this Data Privacy Policy with the most recent revision date will be posted at [www.veeam.com](http://www.veeam.com). We will take the steps to notify you of the material changes to this Data Privacy Policy by posting the changes here or contacting you by e-mail.

## Questions

Veeam is committed to responding to reasonable requests to review any of your Personal Information we may have and to amend, correct, or delete any inaccuracies. To have your information amended, corrected, or deleted, or if you have any questions that weren't answered in this Data Privacy Policy, you can contact us at Veeam Software Group GmbH, Linden Park Lindenstrasse 16 Baar, CH-6340 or email us at [privacy@veeam.com](mailto:privacy@veeam.com).





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# Veeam Customer Support Policy



Switzerland, Linden Park  
Lindenstrasse 16, 6340 Baar  
Phone: +41417667131  
Technical Support Phone:  
+41225331149







# Veeam Customer Support Policy

## Initial Response SLA Matrix

Severity	Initial Production Response SLA				
	Premier	Production	Basic	Evaluation	Free/NFR
Severity 1	30 minutes	1 hour	2 business hours	Best effort to provide 2 business hours	Not applicable
Severity 2	30 minutes	3 hours	8 business hours	8 business hours	Best effort
Severity 3	30 minutes	6 hours	12 business hours	12 business hours	Best effort
Severity 4	30 minutes	8 hours	24 business hours	24 business hours	Best effort

## Business Hours

Business hours are defined as follows during Customer local business days.

Support program	Business hours
Evaluation	Mon – Fri 8 am – 5 pm
Basic	Mon – Fri 8 am – 8 pm
Production	24x7x365
Premier	Support available: 24x7x365 Support Account Manager

Support of FREE/NFR licensed products is provided on a best-effort basis.

## Supported Languages

Veeam is pleased to offer first-level technical support services in the following languages for Veeam Backup & Replication and in English only for all other products during normal business hours (8 a.m. to 6 p.m. (customer local time).

<b>United States</b>	English, Spanish
<b>Canada</b>	English, French
<b>Europe, Middle East, Africa</b>	English, German, French, Russian, Spanish, Italian
<b>Asia Pacific</b>	English, Japanese, Chinese (Mandarin)
<b>Latin America</b>	English, Spanish, Portuguese

After customer business hours, all first-level support is in English only. Regardless of first level supported languages and support programs, all second and third-level support is offered in English only.



# – VEEAM

## Overview

This policy details our support services, contact information and best practices for contacting support to ensure quick responses and issue resolution here are quick links:

[Supported languages](#)

[Support programs](#)

[Severity definitions and response time SLA](#)

[Contacting Customer Support](#)

[Product lifecycle](#)

[Contacts](#)

The Veeam website ([www.veeam.com](http://www.veeam.com)) provides a wealth of information at your fingertips. Refer to the following online resources before you contact Veeam Customer Support.

<b>Community Forums</b>	<p>Exchange information with other Veeam customers and team behind the product; contains product-specific conferences.</p> <p>Maintained and moderated by product management team. By registering you will receive our Weekly Community Digest, which contains notifications of new patches. Available at no additional charge.</p>
<b>Support Portal</b>	<p><a href="http://my.veeam.com">my.veeam.com</a></p> <p>Please log on to our Customer Center support portal to:</p> <ul style="list-style-type: none"> <li>• Manage your support cases.</li> <li>• Request "one click update".</li> <li>• Attach logs to existing cases.</li> <li>• Obtain product downloads and patches.</li> <li>• Manage your license.</li> <li>• Note: you must be case administrators, partner administrators and license administrators to submit support cases.</li> </ul>
<b>Knowledge Base</b>	<p>Browse how to articles and search for solutions to common questions at <a href="http://www.veeam.com/kb_search_results.html">www.veeam.com/kb_search_results.html</a></p>
<b>Documentation</b>	<p>Review and download the latest product documentation online <a href="http://www.veeam.com/documentation-guides-datasheets.html">www.veeam.com/documentation-guides-datasheets.html</a></p>

In addition to the above, Veeam has voice-enabled services. By using or accessing the voice-enabled services, you consent to Veeam recording and collecting your voice input. If you do not consent to Veeam recording and collecting your voice input, you may not use the voice-enabled services. The voice input will be used to provide the voice enabled services to you and improve Veeam products and services. Veeam won't use your voice input for any other purpose. Your privacy is important to us. Please read Veeam privacy policy statement ([www.veeam.com/privacy\\_policy.html](http://www.veeam.com/privacy_policy.html)) to learn how we use and protect your information.



## Supported languages

Veeam is pleased to offer first-level technical support services in the following languages for Veeam Backup & Replication and in English only for all other products during normal business hours (8 a.m. to 6 p.m. (customer local time)).

<b>United States</b>	English, Spanish
<b>Canada</b>	English, French
<b>Europe, Middle East, Africa</b>	English, German, French, Russian, Spanish, Italian
<b>Asia Pacific</b>	English, Japanese, Chinese (Mandarin)
<b>Latin America</b>	English, Spanish, Portuguese

After customer business hours, all first-level support is in English only. Regardless of first level supported languages and support programs, all second and third-level support is offered in English only.

## Support programs

All customers with maintenance agreement in effect, regardless of their program, are entitled to contact support via web or phone 24x7x365 and open a case.

We offer three support response programs (Premier, Production and Basic) to our customers and one program (Evaluation) for 30 days if you are evaluating our software.

Support Program	Product	Product		Business Hours
<b>Premier Support</b> Veeam Premier Support provides high-touch exemplary IT support to our top-tier customers, through personalized and effective service executed through an account-dedicated Support Account Manager (SAM) who will assist you from the very beginning of the case until it is completely resolved.	Yes	Yes	Phone/ web/ SAM	24x7x365 Mon – Fri 8am – 8pm Support Account Manager
<b>Production Support</b> Production Support program provides 24/7 software support services and fast response times for critical issues. To receive Production Support, all production licensed sockets for a product must be licensed at Production Support levels, otherwise support defaults to Basic Support levels.	Yes	Yes	Phone/ web	24x7x365
<b>Basic Support</b> Basic Support program provides software support services during business hours as defined below, along with upgrades and updates to the products. One year of Basic Support is included with your product license purchase.	Yes	Yes	Phone/ web	Mon – Fri 8am – 8pm
<b>Evaluation Support</b> Evaluation Support program provides software support services during business hours (Monday through Friday) as defined below during the defined evaluation period.	No	No	Phone/ web	Mon – Fri 8am – 5pm
<b>Community, Free and NFR licensed products</b> We do not provide phone support for Community, Free or NFR licensed products. Email support is provided on a best-effort basis depending on staff availability, but there are no response goals or response guarantees for this service.	No	No	Web	Best Effort





## Severity definitions and response time SLA

### Severity level guidelines

Severity levels provide an indication of the urgency of an issue, and help us provide a rapid and effective response. Categorizing severity levels incorrectly hinders the overall case-handling process, and can adversely affect you. When you report an issue, you and the Veeam Support Engineer should discuss and agree upon an appropriate severity level. You have the option to change the severity level of an issue as business conditions change around the impact.

Response goals are intended to provide a target for initial response to an issue or query. We will work a Severity 1 issue around the clock for Basic, Production and Premier Support if you have a technical resource available to work with us until:

- A resolution or workaround is in place and business impact has been mitigated.
- The severity is mutually downgraded.

Severity	Initial Production Response SLA				
	Premier	Production	Basic	Evaluation	Free/NFR
Severity 1	30 minutes	1 hour	2 business hours	Best effort to provide 2 business hours	Best effort
Severity 2	30 minutes	3 hours	8 business hours	8 business hours	Best effort
Severity 3	30 minutes	6 hours	12 business hours	12 business hours	Best effort
Severity 4	30 minutes	8 hours	24 business hours	24 business hours	Best effort

### Severity level descriptions

#### Severity 1

A business critical software component or a Veeam managed system is inoperable or unavailable; production system is down; or there is an emergency condition. Requires an immediate workaround or solution. Examples: Excessive abnormal terminations impacting all monitoring, backups and schedules or a down/ offline production system cannot be restored; application or system failure caused by Veeam product.

#### Severity 2

Adversely impacting Production operations, but the production system is not down; product operates, but is seriously restricted. Examples: Production application response times or system performance are slow, system is available. Some monitoring or backups are impacted.

#### Severity 3

A non-production issue; the majority of functions are still usable, a limited condition that can be readily circumvented. Example: non- Production application response times or system performance are slow, system is available. Some monitoring or backups are impacted.

#### Severity 4

Minor issue or question that does not affect the product function, and can be readily circumvented. For example: "How to" questions; the text of a message, or page of documentation is worded poorly or misspelled, General Feedback.







## Contacting Customer Support

If at any point you have concerns or would like Management oversight regarding your Veeam Support Experience, you can escalate the issue directly to Support Management using the Talk to a Manager link from the Case Portal.

### Case Management

Your organization will need to designate a few case administrators who are responsible for opening cases with Veeam, and receiving maintenance information. They should have the appropriate technical skills and system-level access to work with Veeam Support Engineers in resolving open issues. These support contacts will be your interface to Veeam Support, and should be notified of all issues that surface within your organization. They will escalate issues to Veeam Support as necessary. Be prepared to provide the following information:

- Your name, company name, and Support ID
- Case number (if applicable)
- Product name, release level, and any maintenance applied to the product

### Submitting a support case

Only case administrators, partner administrators and license administrators are able to submit support cases. Please make sure to define valid case administrators for your Veeam® licenses. For further information on managing your case administrators, see the user guide here. For quicker support, please have your valid Support ID, if calling to open a support case.

Any information you can provide regarding the issue you are experiencing could have a significant impact on how fast the issue is diagnosed and resolved. You will be asked to provide the following information:

- Issue description, impact on your system and business operations, issue severity, and the exact text of error messages and diagnostic details.
- Steps to reproduce the problem, known workarounds
- Contact number where you can be reached
- Best time to reach you, and contact method (i.e. email/phone)

To file a case, you may use any method below. We encourage you to set the initial severity level for the problem when submitting a case, and highly recommend submitting Severity 1 issues by phone.

### Via the web

Only the license administrator or designated case administrators can file a case using a web browser in the Customer Center: [support.veeam.com](https://support.veeam.com). Please follow the new case wizard to open a case. Upon submitting the case, you will receive an electronic confirmation with a unique case number sent to your email address. You will also be able to see the case in the open cases management tab.

### Via the phone

To open a case using the phone, you will need to have your Support ID. Call one of the phone numbers mentioned in Contacts below. After you log the case with the Veeam Support Engineer, your case will be assigned a unique number given to you over the phone.

If the issue you have reported requires collecting and analyzing diagnostic information, the Veeam Support Engineer may request such information from you or collect it during a brief remote session. While the Veeam Support Engineer will attempt to gather as much detail as possible, they will not investigate the log files online. To make log analysis efficient, we use log parsing tools and other resources available only internally. Once the Veeam Support Engineer receives the required diagnostic information, they will investigate it offline and get back to you.





## Premier Support Customers

Contact your SAM who will assign a ticket to the most appropriate Senior Support Engineer. We start issue analysis within 30 minutes after a call/ticket is logged. Your dedicated Support Account Manager is available to you during your local business hours and will act as the direct point of contact for the coordination of issue management and problem resolution.

## United States Federal Government support

As a US Federal Government agency, Veeam Support will assist you to determine the problem and solution utilizing the methods described above. US based Federal Support is available Monday through Friday 8 a.m.–9 p.m. EST, Saturday 12 p.m.–12 a.m. EST, and Sunday 12 p.m.–8 p.m. EST (weekend support for Production SLA or Severity 1 cases only). To contact Veeam Support at any time, call our US Federal Government phone number listed in the phone number section below. Further information pertaining to our solutions for US Federal Government can be found at [www.veeam.com/federal.html](http://www.veeam.com/federal.html).

## Customer Support issue resolution

A Veeam Support Engineer will contact you by phone and/or email or a combination of both as appropriate during the resolution process. Severity levels may be adjusted with customer consent and mutual agreement on the degree of the impact based on the Severity definitions.

Veeam Support provides trained resources to research and resolve issues on a timely basis. While an issue is open, the support team will keep you informed of the resolution status, and will notify you when a reported issue has been resolved. If at any point during the resolution process, you become dissatisfied with the handling of your issue, simply contact the case owner and request an escalation to the manager. This allows us to understand your concerns and make adjustments in resources if necessary.

We will make three attempts, on separate business days, to contact you for updates or information on an open case. If we are unable to make contact with you, we may close the case without your consent. If the issue continues to exist, you may open a new case and reference the old one.

Resolution of a support case can include any of the following actions:

- Software that provides a fix for the problem (case closed)
- Permanent business or system workaround (case closed)
- Temporary business or system workaround (case severity level is reduced)
- Action plan for the development of a fix or workaround: Milestones and dependencies are set, communicated, and tracked (case severity level might be changed)
- Issue is a customer-specific customization or enhancement, and is not covered under maintenance (customer notification, case closed)
- Customer may be required to upgrade if fix is included in the current GA release

# VEEAM

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## Beyond the scope of Veeam Support's responsibility

- It is beyond the scope of Veeam Support's responsibility to provide installation, configuration, and upgrades of our products. Walkthroughs of installations and upgrades are not supported.
- Veeam Support does not write scripts on demand. Custom script troubleshooting is not supported.

## Third-party software support

We will assist you in problem analysis to determine whether the issue is caused by third-party software or hardware. In order to isolate the problem, and if we believe we have reason, we may ask you to remove third-party software or hardware product.

If it is impossible to identify the cause of the problem we may contact the third-party vendor using TSANet or ask you to open support case with the third-party vendor support organization.

## Feature requests

Veeam always welcomes feature requests, as we highly value feedback from our community on how to continue to make our products even better. If you have a suggestion for our software's functionality or feature set, please visit our [Veeam Community Forums](#) and create a topic describing your request or create a case with our Support Team and describe the desired behavior and a use case, and the Veeam Support Engineer will submit a Feature Request on your behalf.

## Customer satisfaction surveys

We periodically survey customers to obtain additional feedback on recent experiences with Veeam Customer Support, and the survey results are reviewed by management. When a support case is closed, an email may be sent to the customer contact associated with the case.

## Product lifecycle

Level of support services provided depends on the lifecycle phase determined for specific version of the product. Current versions of the products are eligible for full support that includes support services and updates/fixes, while support for older versions may be limited. A list of known workarounds or existing fixes and assistance with upgrading to a supported version is available for customers using old or discontinued versions.

The list is updated each time there is a release. For the current list of products and their status please see the product release matrix located at [www.veeam.com/support/releasestatus.pdf](http://www.veeam.com/support/releasestatus.pdf)

## Previous versions support

- New Releases — All new products issued for General Availability (GA).
- Current Releases — To maximize the quality of our service, Veeam limits technical support to the products listed on the release matrix.
- Releases designated as End of Fixes — Support is available, existing program fixes are available, but no new fixes will be created and no enhancements will be made.
- Releases designated as End of Support or Withdrawal from the Market — No support is available.
- For unsupported releases, new product enhancements and fixes will not be available. Veeam does not have an obligation to provide support for software that has been publicly designated End of Support, Withdrawn from the Market, or similarly designated.

# VEEAM

## Product maintenance

Our goal is to go beyond quickly solving problems, and actually prevent similar problems from occurring in future in the first place.

As a result, stringent quality control procedures are built into the development and release cycle of new products and releases. A typical product goes through multiple test phases – Quality Assurance, Alpha Test, Beta Test, and Controlled Release before it is made generally available.

Issues sometimes occur with complex software operating in equally complex and demanding environments. Fixes and resolutions are often rolled into the next product release, and others are included as part of the next maintenance release, and most urgent are addressed with a hotfix that can be applied on specific product version. Please note that access to hotfixes, patches and updates requires active maintenance contract. Users of Community, Free and NFR licensed products receive fixes by downloading periodic generally available product releases. When applicable, we announce the availability of new releases on the web and through email.

## Contacts

### Web support page

[www.veeam.com/support.html](http://www.veeam.com/support.html)

### Veeam Licensing Policy

<https://www.veeam.com/licensing-policy.html>

## Phone numbers

Region	Phone number	Region	Phone number
<b>North America</b>		<b>Middle East/Africa</b>	
 <b>Canada</b>	+1 647 694 0922	 <b>Egypt Toll-Free</b>	0 800 000 9562
 <b>United States</b>	+1 614 339 82 52	 <b>Israel</b>	+972 2 372 4351
 <b>United States Federal Government</b>	+1 240 399 50 82	 <b>Saudi Arabia Toll-Free</b>	800 814 6659
 <b>United States Toll-Free</b>	1 800 913 1940	 <b>South Africa</b>	+27 11 062 3011
 <b>United States Toll-Free</b>	1 800 774 5124	 <b>UAE Toll-Free</b>	8000 3570 3954
<b>Europe</b>		<b>Asia Pacific</b>	
 <b>Belgium</b>	+32 78 48 02 54	 <b>Australia</b>	+61 2 6108 4305
		 <b>Australia</b>	+61 2 8014 4545





	<b>Czech Republic Toll-Free</b>	800 022 924
	<b>Denmark</b>	+45 78 77 54 76
	<b>France</b>	+33 1 70 61 83 74
	<b>Germany</b>	+49 89 2109 4962
	<b>Ireland Toll-Free</b>	1 800 818 910
	<b>Israel</b>	+972 2 372 4351
	<b>Italy</b>	+39 042 6047505
	<b>Netherlands</b>	+31 8 58880655
	<b>Norway</b>	+47 854 04 385
	<b>Poland</b>	00 800 112 51 01
	<b>Russia</b>	+7 495 646 77 06
	<b>Spain</b>	+34 911 829 760
	<b>Sweden</b>	+46 10 199 25 77
	<b>Switzerland</b>	+41 22 533 11 49
	<b>Turkey</b>	+90 212 975 01 75
	<b>UK Toll-Free</b>	0 800 051 89 36

**Latin America**

	<b>Argentina</b>	+54 11 5984 2088
	<b>Brazil</b>	+55 11 3958 7370
	<b>Brazil Toll-Free</b>	0 800 761 2311
	<b>Chile</b>	+56 22570 8684
	<b>Colombia</b>	+57 1 381 0636
	<b>Mexico</b>	+52 55 4741 1493
	<b>Peru Toll-Free</b>	0 800 70 008

	<b>Australia Toll-Free</b>	1 800 648 604
	<b>China</b>	+86 10 5643 8383
	<b>China Toll-Free</b>	400 990 9444
	<b>Hong Kong</b>	+852 5808 2870
	<b>India Toll-Free</b>	000 800 100 8769
	<b>Indonesia</b>	+62 855 7467 0334
	<b>Japan Toll-Free</b>	0120 922 345
	<b>Malaysia Toll-Free</b>	1 800 818 147
	<b>New Zealand</b>	+64 9 974 9594
	<b>New Zealand Toll-Free</b>	0 800 456140
	<b>Philippines</b>	+63282312112
	<b>Singapore</b>	+65 3158 2239
	<b>South Korea Toll-Free</b>	00798 14 203 0092
	<b>Taiwan Toll-Free</b>	0 800 868 280
	<b>Thailand Toll-Free</b>	1 800 294 298
	<b>Vietnam</b>	+84 23 6445 8069



**VERIATO****4440 PGA BOULEVARD SUITE 500  
PALM BEACH GARDENS FL 33410****EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **Veriato** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
  - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
  - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the \_\_\_\_\_ Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 *et seq.*) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
1. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**VERIATO**

## VERIATO LICENSE, WARRANTY AND SUPPORT TERMS

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Details of the software licensed and Maintenance (defined below) should be provided on an order. Usage rights and other terms are defined in Exhibit A – Product Guides. The software, updates, documentation, and license serial number (Software) provided under an order, are licensed and are not sold.

**1. TRIAL LICENSE.** If the Software is provided without the payment of a license fee, then it is provided under a trial license. Veriato grants Ordering Activity a non-exclusive term license to operate the Software for the sole purposes of deciding whether it wants to purchase a license. The Software is provided AS IS, with no warranty during this time period.

**2. LICENSE GRANT.** Subject to the other terms of this agreement, Veriato grants Ordering Activity, under an order, a non-exclusive and non-transferable perpetual license up to the license capacity purchased to: operate the Software in its business operations and make one copy of the Software for archival and backup purposes.

**3. RESTRICTIONS AND OWNERSHIP.** Ordering Activity cannot:

- Sublicense, rent or lease the Software or use it as a service provider or as part of a service;
- Reverse engineer (except to the extent expressly permitted by applicable law despite this limitation), decompile, or disassemble the Software; or
- Copy any features, functions or graphics of the Software to develop a competitive product.
- Utilize the software for the purposes of competitive analysis or for any other purpose outside of Ordering Activity's normal business operations.

Ordering Activity is entitled only to those rights as are expressly granted by this agreement. Veriato retains all ownership and intellectual property rights in and to the Software.

**4. RESERVED.**

**5. RESERVED.**

**6. WARRANTY DISCLAIMER.** THE SOFTWARE IS PROVIDED 'AS IS.' VERIATO DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**7. RESERVED.**

**8. RESERVED.**

**9. ANNUAL MAINTENANCE.** If Ordering Activity purchases the Software technical support and update service for a fee (Maintenance), then the following will apply. Details on the Maintenance programs are located <http://www.Veriato.com/support/> FOR INFORMATIONAL PURPOSES ONLY.

**10. RESERVED.**

**11. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. government or any agency thereof is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 C.F.R. 52.227-19, as applicable. manufacturer is: Veriato Corporation, 1555 Indian River Blvd., Building B-210, Vero Beach, FL 32960.

**12. RESERVED.**

**13. EXPORT LAWS.** Ordering Activity agrees not to import, export, re-export, or transfer, directly or indirectly, any part of the Software or any underlying information or technology except in full compliance with all United States, foreign and other applicable laws and regulations.

**14. RESERVED.**

### Exhibit A - Product Guide

This Product Guide states the usage rights and other terms associated with each Veriato product that Ordering Activity has purchased (the "Product Terms").

Here is how you find the Product Terms for Ordering Activity's products:

1. Determine the License Duration. It can be found in the Description field on the Quote, Order Form, or other Agreement. For Online Purchases, the license type is found in the Product Name. The License Duration will either be:
  - Perpetual
  - Term
  - Subscription

For more information about License Duration, see the License Duration table below.

2. Determine the License Category. It can be found in the Description field on the Quote, Order Form, or other Agreement. For Online Purchases, the license type is found in the Product Name. An example is Spector360 Per Monitored End Point. The License Category is Monitored End Point.

For more information about License Category, see the License Category table below.

**License Duration Table**

<b>License Duration</b>	<b>Description</b>
Perpetual	The license will never expire. The Product can be upgraded to the latest version within the active maintenance period.
Term	The license is granted for a fixed period of time and may not be moved from computer to computer except in cases where a currently licensed computer or device is taken out of service. When the license expires at the end of the time period, recording will cease unless a new license is applied.
Subscription	The license is granted for a fixed period of time. When the license expires at the end of the time period, the product will cease to operate, and access to data or reporting will no longer be available.

**License Category Table**

<b>License Category</b>	<b>Description</b>
Monitored End Point	Each computer or device to be monitored. These licenses may not be moved from computer to computer except in cases where a currently licensed computer or device is taken out of service.
Session Host	Each server or machine hosting thin client computing sessions and/or virtual desktops (for example, by using Citrix, Microsoft, VMware or similar visualization software products or service) to be monitored. These licenses may not be moved from Session Host to Session Host, except in cases where the initially licensed Session Host is taken out of service.
Node	Each unique IP address and/or hostname that is monitored, scanned, or otherwise managed by the Software.
Host	Each server or desktop computer that has an instance of the Software installed on it.
Floating	Once client software has been installed on a computer, the license may be transferred to another computer, as long as the total count of licenses for client computers does not exceed the number of floating licenses purchased.
Device	Each PC, Mac, Tablet, or Smartphone the Software is installed on. These licenses may not be moved from Device to Device, except in cases where the device is taken out of service.

Ordering Activity is hereby notified that the Software may collect certain information from the Ordering Activity and transmit such information back to Veriato. Such information may include, without limitation, statistics relating to how often the Software and tools are started and completed, the duration of use of the Software, performance metrics relating to the Software, and Software configuration settings.

In addition, Ordering Activity is hereby notified that (1) the Software may require a registration process whereby machine specific identifiers (that have been encrypted and are unique but anonymous) such as the username and email address for the user are transmitted to Veriato's licensing server to allow Veriato to generate a unique key that is bound to the specific computer on which the Software may be used, (2) the Software may communicate with Veriato's servers and allow Ordering Activity to download updates when they are available, (3) the Software may provide a 'Feedback' facility that allows Ordering Activity to send suggestions and ideas for improving the Software ("Feedback"), (4) the Software may include a mechanism to transmit information to Veriato regarding unhandled exceptions, and (5) the Software may make connections to Veriato servers to verify license validity.

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**Virsec Systems, Inc.****EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Virsec Systems, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.



- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



VIRSEC SYSTEM INC.  
END USER SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS END USER SOFTWARE LICENSE AGREEMENT (“AGREEMENT”). BY VIRSEC SOFTWARE (DEFINED BELOW), THE ORDERING ACTIVITY UNDER GSA SCHEDULE CONTRACTS IDENTIFIED IN THE PURCHASE ORDER (“LICENSEE”) AGREE TO BE BOUND BY THIS AGREEMENT WITH VIRSEC SYSTEMS INC. (“VIRSEC”). IF LICENSEE DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN DO NOT DOWNLOAD, INSTALL OR USE THE VIRSEC SOFTWARE.

This Agreement governs Licensee’s use of the Virsec Software unless the particular Virsec Software is subject to a separate written agreement that does not refer to these terms between Virsec and Licensee that is signed by Virsec.

**1. DEFINITIONS**

1.1. “Authorized Modules” means those modules of the Virsec Software identified by Virsec in writing designated as authorized for Licensee’s use and for which Licensee has paid the applicable fees. If no separate Authorized Modules are specified in accordance with the foregoing, Authorized Modules means the Virsec Software.

1.2. “Documentation” means the then-current printed, online, and/or electronic documentation, if any, that is provided by Virsec to Licensee describing the use of the Virsec Software. “Documentation” does not include any sales or marketing materials.

1.3. “Evaluation Software” means any Virsec Software provided to Licensee for evaluation purposes or otherwise designated by Virsec as evaluation software.

1.4. “Improvements” means modifications, improvements, derivative works and the like.

1.5. “Intellectual Property Rights” means all intellectual property and proprietary rights throughout the world, including patents, trade secrets, copyrights and trademarks.

1.6. “Location” means Licensee’s primary location or otherwise, if specified therein, the location(s) specified on Virsec’s order form or agreement that references this Agreement.

1.7. “Virsec Software” means the Virsec software provided by Virsec for which Virsec references this Agreement including Virsec software identified in Virsec’s order form or agreement that references this Agreement and including any updates Virsec provides to Licensee to such software for use in connection with it.

**2. LICENSE GRANT AND INTELLECTUAL PROPERTY RIGHTS**

2.1. License. For the term of this Agreement, subject to the terms and conditions of this Agreement, including, without limitation, payment and Section 2.3 (License Restrictions), Virsec grants Licensee a non-exclusive, non-transferable, non-assignable, non-sublicensable and limited license, only in object code form, to (a) install one (1) copy of the Virsec Software on Licensee’s own computer system, and (b) use the Authorized Modules of such installed Virsec Software for which Licensee has paid the applicable fees in accordance with the Documentation solely for Licensee’s internal business purposes at the Location.

2.2. Evaluation License. All terms and provisions of this Agreement shall apply to Evaluation Software, subject to the following modifications: (a) the license of Section 2.1 (License) shall be limited to Licensee’s evaluation of the Evaluation Software only, (b) Virsec shall have the right at any time in its sole discretion to terminate this Agreement and any license to Evaluation Software upon written notice to Licensee, and (c) the provision of Section 5 (Limited Warranty) shall not apply with respect to Evaluation Software and all Evaluation Software is provided “as is,” without any warranties whatsoever, express or implied.

2.3. License Restrictions. The licenses under Section 2 (License Grant and Intellectual Property Rights) are conditioned on Licensee’s compliance with, and Licensee agrees to, the following: (i) Licensee shall not use the Virsec Software outside of the scope of the license granted hereunder; (ii) Licensee shall not sublicense, distribute, disclose, market, rent, lease or transfer to any third party of the Virsec Software or the Documentation, including through any dial-up, remote access, interactive, Internet-based, service bureau or other on-line service; (iii) Licensee shall not remove or cause to be removed from any copies of the Virsec Software and Documentation, any copyright, licensed trademark, patent or other proprietary notices on the Virsec Software or Documentation, or any portion thereof; (iv) Licensee shall not modify, alter, adapt, translate, reverse-engineer, decompile, disassemble or attempt to discover the source code, underlying ideas, algorithms, file formats or programming interfaces of the Virsec Software, Documentation, or any portion thereof in any way, without the prior written consent of Virsec; (v) Licensee shall not export or re-export the Virsec Software, either directly or indirectly, without Virsec’s written consent or in violation of the laws of the United States or other jurisdiction; and (vi) Licensee shall not use any aspects of the Virsec Software other than the Authorized Modules, and without limiting the foregoing, Licensee shall use the Virsec Software only in accordance with the respective Documentation, license key and any usage limitations and/or requirements provided in the Documentation, license file from Virsec or Virsec’s order form or agreement that references this Agreement (including without limitation regarding territory, location, server, users including number of users or other requirements and/or limitations), and only within the scope for which Licensee is paying the required fees. Licensee agrees that the Virsec Software may use or contain a license key mechanism limiting its use, and Licensee shall not use or enable the use of the Virsec Software other than in accordance with the intended limitations of any license key provided by Virsec (in addition to any contractual limitations). Licensee agrees that, without limitation, any breach of this Section 2.3 (License Restrictions) or unauthorized use of the Virsec Software or Documentation is a material breach of this Agreement.

2.4. Ownership by Virsec. Virsec retains all Intellectual Property Rights covering or embodied in the Virsec Software and any Improvements to any Virsec Software. In the event that Licensee acquires any rights in or to any Improvements or Intellectual Property Rights covering or embodying Improvements or the Virsec Software, Licensee shall assign, and hereby assigns, all right, title and interest in such Improvements and Intellectual Property Rights to Virsec. In any event, Virsec shall have the right to integrate and use all Improvements and associated Intellectual Property Rights in Virsec’s products and services without restriction.

2.5. License Only. The Virsec Software is licensed, not sold, to Licensee. This Agreement does not transfer any right, title, or interest in or to any such Virsec Software regardless of any use of the terms “purchase,” “acquire,” “sale” or similar language herein or in any agreement between Licensee and any third party.

2.6. Third Party Software. The Virsec Software may use or rely on software that is subject to open source or commercial license terms as identified by Virsec in writing on its website or connection with Licensee's order and/or receipt of the Virsec Software ("Third Party Software"). Any Third Party Software Virsec provides to Licensee is for convenience only, and is not part of the Virsec Software and is not licensed or subject to Virsec warranties or other obligations hereunder. Licensee is solely responsible for procuring and complying with any necessary license rights if it chooses to use any Third Party Software.

2.7. No Other Rights. All Intellectual Property Rights of Virsec not expressly granted to Licensee in this Agreement are expressly reserved by Virsec. Without limitation, Licensee receives no right or license, by implication, estoppel or otherwise, to any software, technology or Intellectual Property Rights not embodied in the Virsec Software, even if such other software, technology or Intellectual Property Rights are useful or necessary in connection with the Virsec Software.

### 3. PAYMENT

3.1. Payment. Unless otherwise specified by Virsec or its Authorized Reseller if applicable, Licensee shall pay all amounts for the Virsec Software in U.S. dollars by bank wire transfer in immediately available funds to a bank account designated by Virsec. If not otherwise provided in the respective schedule or other documentation from Virsec, Licensee shall pay amounts due within thirty (30) days of invoice receipt date.

3.2. Records and Audit Rights. Licensee shall keep and maintain books and records in sufficient detail to permit the verification of Licensee's obligations hereunder. Virsec shall have the right to inspect or appoint an auditor to inspect Licensee's systems, books and records relevant to this Agreement and other materials as may be required to verify or determine Licensee's compliance with its obligations hereunder during regular business hours, wherever they are normally kept by Licensee, upon not less than one (1) week's prior written notice. The cost of any such audit shall be paid for by Virsec.

3.3. Late Payment. All late payments shall be subject to interest calculated at the rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.. This Section 3.3 (Late Payment) shall in no way limit any other rights or remedies that may otherwise be available to Virsec. Licensee agrees to pay all expenses associated with collection, including reasonable attorneys' fees.

3.4. Taxes. Virsec or its authorized reseller as applicable shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k). In the event that Licensee is required to withhold taxes, Licensee shall provide to Virsec official receipts issued by the appropriate taxing authority or other evidence to establish that such taxes have been paid.

3.5. Reserved.

4. Confidential Information 4.1. General. "Confidential Information" shall mean information disclosed by one party ("Disclosing Party") to the other party or its affiliates ("Receiving Party") pursuant to this Agreement, which, if disclosed in tangible form, is marked "Confidential" or with other similar designation to indicate its confidential or proprietary nature, or, if disclosed orally, is indicated orally to be confidential or proprietary by the Disclosing Party at the time of such disclosure or is confirmed in writing as confidential or proprietary by the Disclosing Party within a reasonable time after such disclosure. Notwithstanding anything to the contrary, the source code and other non-public aspects of the Virsec Software are the Confidential Information of Virsec, regardless of whether or not marked.

4.2. Exceptions. Notwithstanding the foregoing, Confidential Information shall not include information that, in each case as demonstrated by written documentation: (a) was already known to the Receiving Party, other than under an obligation of confidentiality, at the time of disclosure; (b) was generally available to the public or otherwise part of public knowledge at the time of its disclosure to the Receiving Party; (c) became generally available to the public or otherwise part of public knowledge after its disclosure and other than through any act or omission of the Receiving Party in breach of any confidentiality obligations; (d) was subsequently lawfully disclosed to the Receiving Party by a person other than a party without an obligation of confidentiality; or (e) was independently developed by the Receiving Party without reference to or use of any Confidential Information disclosed by the Disclosing Party.

4.3. Non-Use and Non-Disclosure. The Receiving Party may use or disclose the Disclosing Party's Confidential Information solely to the extent such use or disclosure is reasonably necessary for exercising its rights or performing its obligations under this Agreements.

4.4. Maintenance of Confidentiality. The Receiving Party agrees that it shall use the same degree of care to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the Disclosing Party that it uses to protect its own confidential information of similar importance, but no less than reasonable care. The Receiving Party shall reproduce the Disclosing Party's proprietary rights notices on all copies of Confidential Information, in the same manner in which such notices were set forth in or on the original. Each party shall immediately notify the other party in the event of any unauthorized use or disclosure of the other party's Confidential Information.

4.5. Reserved.

4.6. Authorized Disclosures. Notwithstanding anything to the contrary, the Receiving Party may disclose such Confidential Information of the Disclosing Party as required to be disclosed by law or pursuant to a valid order of a court or other government body provided that the Receiving Party promptly provides, in compliance with law, prior written notice to the Disclosing Party of any planned disclosure based on such legal requirement or order and cooperates with Disclosing Party to obtain such confidential treatment or protective orders as may be available under applicable law. Virsec recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

### 5. LIMITED WARRANTY

5.1. Software Warranty. Unless otherwise specified in Virsec's order form or agreement that references this Agreement, Virsec warrants to Licensee that, for a period of ninety (90) days following the delivery of the initial Virsec Software to Licensee (the "Software Warranty Period"), the Virsec Software will substantially conform to the Documentation when maintained and operated in accordance with the Documentation ("Software Warranty"). Following the Software Warranty Period, Virsec may provide maintenance and support, to the extent provided under the terms of a separate maintenance agreement and subject to Licensee's payment and compliance with the applicable terms of this Agreement and any separate maintenance agreement.

5.2. Remedy. Licensee shall provide Virsec notice during the Software Warranty Period identifying any non-conformity to Software Warranty and shall provide detail as requested by Virsec to identify the nature of the non-conformity and conditions under which it appears. Virsec, at its sole option, shall use commercially reasonable efforts to repair or to deliver a replacement copy of the Virsec Software. All warranty repairs by Virsec shall be made at Virsec's

premises, unless Virsec otherwise agrees. Licensee's sole remedy and Virsec's sole liability with respect to any warranty regarding the Virsec Software shall be for Virsec to use such commercially reasonable efforts to provide the above a correction during the Warranty Period.

5.3. Exclusions. Virsec provides no warranty for the following or any liability or claim arising from any of the following: (i) software and equipment of Licensee or any third party (including any Third Party Software); (ii) directions, designs, plans or specifications furnished by or on behalf of Licensee; (iii) unauthorized use, or use of the Virsec Software in violation of this Agreement or other terms with Virsec, including any copies of the Virsec Software not made in accordance with the terms of this Agreement and the limitations of the licenses granted hereunder; (iv) Licensee's failure to comply with applicable law, or failure to obtain any authorizations, consents, releases or permissions that are necessary for Licensee's use of the Virsec Software or any service provided by Virsec; (v) any data provided by Licensee or third party; (vi) any activities of Licensee or third party through the use of the Virsec Software; (vii) modification of the Virsec Software made other than by Virsec; (viii) the combination, operation or use by Licensee of the Virsec Software with equipment, devices or software not supplied by Virsec; (ix) failure of Licensee to use an updated or modified Virsec Software provided by Virsec, including those provided to avoid error or infringement; or (x) Licensee's use of the Virsec Software after termination of this Agreement (collectively, "Exclusions").

5.4. Warranty Disclaimer. THE FOREGOING LIMITED WARRANTIES AND REMEDIES PROVIDED BY VIRSEC ARE THE SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH ABOVE, VIRSEC DISCLAIMS ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE VIRSEC SOFTWARE OR ANY SUPPORT RELATED THERETO, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF (i) MERCHANTABILITY, (ii) FITNESS FOR A PARTICULAR PURPOSE, (iii) NON-INFRINGEMENT, (iv) NON-INTERFERENCE, (v) ACCURACY OF DATA, (vi) OPERATION WITHOUT INTERRUPTION OR ERROR, (vii) FREEDOM FROM VULNERABILITY TO INTRUSION OR ATTACK, (viii) INTEROPERABILITY WITH ANY HARDWARE, SOFTWARE, SYSTEMS, OR DATA NOT PROVIDED BY VIRSEC, AND (ix) WARRANTIES ARISING FROM A COURSE OF DEALING, AND ALL SUCH WARRANTIES ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 6. Indemnification.

6.1. Indemnification by Virsec. Virsec agrees to have the right to intervene to defend at its own expense any action brought against Licensee that the Virsec Software infringes a third-party Intellectual Property Right, and Virsec shall pay any costs and damages finally awarded against Licensee in any such actions that are attributable to such claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. Notwithstanding the foregoing, this Section 6.1 (Indemnification by Virsec) shall not apply to, and Virsec shall have no liability for, any claim arising out of or relating to any Exclusions. Virsec's sole liability and Licensee's sole remedy for infringement claims shall be to obtain indemnity under the provisions of this Section 6.1 (Indemnification by Virsec). Virsec's obligation under this Section 6 (Indemnification) is subject to, and Licensee shall, (i) promptly notify Virsec in writing of any such claim, and provide Virsec with control of the defense of such claim and all negotiations for any settlement or compromise, and (ii) provide all information and assistance reasonably requested by Virsec for the defense and settlement of such claim.

6.2. Infringement; Injunctions. If Licensee's use of the Virsec Software hereunder is, or in Virsec's opinion is likely to be, enjoined as an infringement or misappropriation of any third party intellectual property right under the laws of the United States, Virsec shall have the right, at Virsec's sole option and expense, either: (a) to procure for Licensee the right to continue to use the Virsec Software under the terms of this Agreement; or (b) replace or modify the Virsec Software so that it is non-infringing.

6.3. Sole Remedy. The foregoing provisions of this Section 6 (Indemnification) set forth Virsec's sole and exclusive obligations, and customer's sole and exclusive remedies, with respect to infringement of Intellectual Property Rights of any kind.

## 6.4. Reserved.

## 7. Limitation of Liability.

7.1. Limitation of Liability. VIRSEC SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOSS OF INFORMATION, RELATING TO THIS AGREEMENT OR IN ANY WAY RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER VIRSEC WAS ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING. IN NO EVENT SHALL THE TOTAL COLLECTIVE LIABILITY OF VIRSEC FOR ALL CLAIMS HEREUNDER OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE GREATER OF: (i) THE AMOUNTS PAID OR PAYABLE BY LICENSEE FOR THE RESPECTIVE VIRSEC SOFTWARE GIVING RISE TO THE CLAIM IN THE LAST TWELVE (12) MONTHS UNDER THIS AGREEMENT BEFORE THE EARLIER OF THE MAKING OF THE CLAIM OR TERMINATION OR END OF THE TERM OF THIS AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

7.2. Allocation of Risk. The warranty disclaimer and limitations of liability set forth in this Agreement shall apply irrespective of any failure of the essential purpose of any limited remedy. Licensee and Virsec each acknowledge and agree that the limitation of liability provisions of this Agreement reflect an informed, voluntary allocation between them of the risk associated with the exercise of Licensee's rights regarding the Virsec Software and, but for these provisions, Virsec would not have made the Virsec Software available to Licensee under the terms contemplated under this Agreement.

7.3. Applicable Law. The warranty disclaimer and limitations of liability set forth in this Agreement shall not apply to the extent prohibited by law, in which case the disclaimer or limitation shall be modified to disclaim and/or limit in accordance with applicable law. Without limiting the foregoing, to the extent required by law, the foregoing limitations shall not apply to claims due to fraud, bodily injury or death.

## 8. TERM AND TERMINATION

8.1. Term. Unless terminated earlier as set forth below, this Agreement shall continue for the license term identified in Virsec's order form or agreement that references this Agreement.

8.2. Termination for Cause. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Virsec shall proceed

diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

8.3. Termination for Bankruptcy. If either party (a) becomes insolvent or bankrupt, (b) dissolves or ceases to conduct business in the ordinary course, (c) makes an assignment for the benefit of its creditors, (d) commences any insolvency, receivership, bankruptcy or other similar proceeding for the settlement of its debts or (e) has commenced against it any insolvency, receivership, bankruptcy or other similar proceeding for the settlement of its debts that is not dismissed within thirty (30) days after notice of such proceeding, then the other party may terminate this Agreement immediately upon written notice to such party.

8.4. Return or Destruction of Virsec Software. Within fifteen (15) days after termination of this Agreement, Licensee will certify in writing to Virsec that all copies of the Virsec Software and Documentation in any form, including partial copies, have been destroyed or returned to Virsec.

8.5. Effect of Termination. If this Agreement is terminated for any reason, all rights granted hereunder to Licensee shall terminate. The provisions of Sections 1 (Definitions), 2.3 (License Restrictions), 2.4 (Ownership by Virsec), 3 (Payment), 4 (Confidential Information), 5.3 (Exclusions), 5.4 (Warranty Disclaimer), 6.4 (Indemnification by Licensee), 7 (Limitation of Liability), 8 (Term and Termination) and 9 (Miscellaneous) shall survive termination of this Agreement.

**9. MISCELLANEOUS**

9.1. Relationship of Parties. The parties to this Agreement are independent contractors and this Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

9.2. Assignment. Licensee shall not have the right to assign this Agreement, in whole or in part, without Virsec's prior written consent. . Any attempt to assign this Agreement, other than as permitted above, shall be null and void.

9.3. Force Majeure. Excusable delays shall be governed by FAR 552.212-4(f) .

9.4. Federal Acquisition. This provision applies to all acquisitions of the Virsec Software by or for the Federal Government, whether by any prime contractor or subcontractor and whether under any procurement contract, grant, cooperative agreement, or other activity by or with the Federal Government. By accepting delivery of the Virsec Software, the Government agrees the Virsec Software qualifies as "commercial" computer software within the meaning of the acquisition regulations applicable to this procurement. The terms and conditions of this Agreement shall pertain to the Government's use and disclosure of the software, and shall supersede any conflicting contractual terms or conditions. If this Agreement fails to meet the Government's needs or is inconsistent in any respect with Federal law, the Government agrees to return the Virsec Software, unused, to Virsec.

9.5. Governing Law. This Agreement shall be governed by, and construed in accordance with, the Federal laws of the, U.S.A., applicable to contracts made in and fully performed in the State of California, U.S.A., without reference to conflict of law or choice of law principles that would cause the application of laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sales of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act shall not apply to this Agreement.

9.6. Language of Agreement. This Agreement is in the English language only, and the English language version shall control in all respects. In the event that this Agreement is translated into another language, such translation shall not be binding upon the parties.

9.7. Severability. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, a valid provision that most closely matches the intent of the original shall be substituted, and the remaining provisions of this Agreement shall be interpreted so as best to reasonably effect its original intent.

9.8. Waiver. The failure by either party to enforce any provision of this Agreement shall not constitute a waiver of future enforcement of that or any other provision.

9.9. Notices. All notices required or permitted under this Agreement shall be in writing and delivered by courier, overnight delivery service, or by certified mail, and in each instance shall be deemed given upon receipt. All notices shall be sent to the addresses set forth in Virsec's order form or agreement that references this Agreement. Either party may change its address for notices under this Agreement by giving written notice to the other party by the means specified in this Section 9.9 (Notices).

9.10. Effect of Purchase Orders and Other Documents. This Agreement is intended by Virsec and Licensee to operate as a basic set of operating conditions regarding the license of the Virsec Software and related services. Purchase orders may be used for convenience to identify the order information, and any other terms of purchase orders are hereby rejected. This Agreement shall prevail over any conflicting or additional terms or conditions of any purchase order, acknowledgement or other document exchanged in connection with the ordering of the Virsec Software and related services. Any conflicting or additional terms in any such documents of Licensee are hereby deemed to be material alterations and notice of objection to and rejection of them is hereby given.

9.11. Entire Agreement. This Agreement contains the complete understanding and agreement of the parties and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter herein. Any waiver, modification, or amendment of any provision of this Agreement shall be effective only if in writing and signed by duly authorized representatives of the parties.

AGREED TO AND ACCEPTED:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Virsec Systems Inc. ("Virsec")

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**X1 DISCOVERY, INC.**  
**130 W UNION STREET**  
**PASADENA, CA 91103**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached **X1 Discovery, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
  - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
  - k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is

triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**



**X1 DISCOVERY, INC.****X1 DISCOVERY, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

These terms correspond to the X1D Search 8 software product ("Software").

1. License. Subject to Ordering Activity compliance with the terms and conditions of this License and payment of any applicable license fees, Contractor grants to Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable license to download, install and use a single copy of the Software: (i.) on one primary computer, and (ii.) on one other computer used primarily by Ordering Activity (e.g., a portable computer), provided that the Software is not in concurrent use on more than one device at all times. "Software" includes object code form of the software program, accompanying documentation, related components provided with the Software, and any updates and maintenance releases provided to Ordering Activity. Ordering Activity shall not use the Software to provide any service bureau, rental service, subscription service, litigation support or other consulting service where Ordering Activity sell output or results from the Software. Ordering Activity understand that the Software is not designed to preserve data as evidence for court purposes or data retention and X1P expressly disclaims any liability for data loss or alteration. This Software is licensed, not sold, and Contractor grants Ordering Activity only the specific rights expressly set forth in this paragraph. Contractor reserves all other rights.

2. Restrictions. Ordering Activity agree not to (i) alter any copyright, trademark, patent, or other proprietary legends on or in the Software; (ii) decompile, reverse engineer, disassemble or otherwise reproduce the Software, or modify or create derivative works based on the Software; (iii) publish, rent, lease, sublicense, distribute, transfer or assign the Software; (iv) use the Software in any manner that could damage, disable, burden, or impair Contractor's servers; or (v) merge the Software into another program. The Software may contain software licensed from third parties ("Licensed Software") and Ordering Activity may not access any Licensed Software made available in connection with or through the Software (e.g., an integrated file viewer) without the presence and execution of the Software. Ordering Activity agree that the owners of such Licensed Software may enforce their rights against Ordering Activity directly in their own name.

3. Support. The terms of this License will also govern all updates or upgrades provided by Contractor through X1D which replace or supplement the Software, unless such update or upgrade is accompanied by a separate license, in which case the terms of that license will govern. Ordering Activity are not entitled to any updates, enhancements, upgrades or modifications to the Software or any support or maintenance services unless Ordering Activity have entered into an agreement for such support or maintenance services and are in good standing under such agreement. Contractor does not guarantee that any future updates or upgrades of Software will be made available to Ordering Activity or will be available free of charge. Additionally, Contractor may automatically download and install updates or other changes to the Software. Without limiting the generality of the foregoing, Contractor may cease offering support of any kind pertaining to the usage of older releases of Software whenever a new release, whether for free or for pay, of Software becomes available.

4. Third Party Services. Contractor through X1D may enable access to third party software, services, content and web sites (collectively, "Third Party Services") from within or through the Software. Ordering Activity acknowledge and agree that Contractor nor X1D is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Services. Use of the Third Party Services may require Internet access, subscription to a service, and acceptance of terms for such Third Party Services. To the extent Ordering Activity choose to access such Third Party Services, Ordering Activity are responsible for compliance with all fees, terms of service and all applicable laws with respect to such Third Party Services. Ordering Activity hereby waive any legal claim Ordering Activity might have against Contractor with respect to such Third Party Services.

5. Changes. X1D products and services are constantly evolving and Contractor may change or discontinue the Software or impose new or additional rules, policies, terms or conditions on Ordering Activity's use of the Software and all or part of the terms of this License, without notice or liability to Ordering Activity. ORDERING ACTIVITY'S CONTINUED USE OF THE SOFTWARE FOLLOWING CONTRACTOR THROUGH X1D'S POSTING OF ANY CHANGED TERMS WILL CONSTITUTE ORDERING ACTIVITY'S ACCEPTANCE OF THE CHANGED TERMS.

6. Termination. This License is effective until terminated. Ordering Activity may terminate this License at any time. If Ordering Activity licensed the Software under a term license, the License shall terminate upon the expiration of the stated license term. Upon termination, Ordering Activity must uninstall, remove, and delete all copies and installations of the Software.

7. Data Collection and Privacy. Use of the Software is subject to our Privacy Policy.

**INFORMATION COLLECTED**

**Automatic Collection:** Like most other websites, we use common internet technologies such as cookies and Web beacons to keep track of users' interactions with the Site and the Services. This may include your internet protocol (IP) address, Referring website addresses, browser type and access times and mobile carrier or internet access provider.

**Volunteered:** If you register with us, subscribe to or use downloadable software or web-based applications, fill out a profile page, purchase products or services, send us an email, or share personal information with us in any other way, we will collect and store whatever information you share. This obviously depends on what information you choose to provide but it may include your name, email address, credit card information or other billing information. The collection of this information is part of regular business practices and is necessary in order to complete transactions and properly run and administer these services. You do not have to share this information with us, but without it you may not be able to access certain content or features or participate in certain areas of the Site.

**Publicly Posted:** If you post information on public areas of the Site (or elsewhere on the internet) that information may be collected, stored and used by anyone, including us. We strongly recommend that you do not post any information that allows strangers to identify or locate you. Posting such information may result in unsolicited messages or contact from others, to say the least.

**Installation Numbers.** X1 software products may use a system of authentication and identification during installation of the software and on an ongoing basis to confirm that the user of the X1 software products is an authorized licensee. This phone home functionality is used to authenticate the server or device utilizing the X1 Services.

**Support.** X1 Services do not transmit results of any searches conducted by the user back to X1. To be clear, your case related information or other content is not provided back to X1. However, if you experience an error, the X1 Services will send log information to X1 for service and support purposes and such log data may include information about a user's profile, computer or device, and search history.

**Credit Card Security.** Providing you with a secure ordering experience is a high priority. When you submit an order through the Site, the order information is encrypted when it is transmitted for credit card processing to X1 (and its credit card services provider). Encryption is a process by which we use software to scramble information in transit. The Site is also registered with site identification authorities to enable your browser to confirm X1's identity before any transmission is sent. The identity of our site is automatically confirmed behind the scenes prior to the transmission of any customer information requested to complete an online order so that your data reaches your intended target. When confirming an order to you by email, we reveal only the last four digits of your credit card numbers. Of course, we transmit the entire credit card number to the appropriate credit card company during order processing.

**HOW DO WE USE THE INFORMATION WE COLLECT**

We use this information to provide you with better service. It also helps our advertisers and partners provide you with more relevant offers, which in turn helps cover the cost of our services to you. Among other things, the information we collect enables X1 to: customize the content you see fulfill your requests for products and services and validate your user rights improve services contact and communicate with you conduct research and analysis provide anonymous reporting for internal and external clients provide you with additional information we think is of interest to you.

#### WHEN DO WE SHARE OR DISCLOSE YOUR INFORMATION?

**Anonymous Information.** Anonymous information is information that does not identify you personally, like your IP address and Referring website addresses. We may share anonymous information with others, such as advertisers, sponsors and business partners.

**All Information (Both Anonymous and Personally Identifiable).** In certain circumstances, we may share information we have collected, including personally identifiable information. For example:

We might share your personally identifiable information during due diligence or in preparation for or after a sale, merger, consolidation, change in control, transfer of substantial assets, reorganization or liquidation.

If you give us permission, we may share your personally identifiable information with third parties who might send you marketing and promotional information. Your personal information may be transferred to anyone who is helping us make the Site and Services available and functional, like technical agents, payment processing vendors, other subcontractors, and our affiliates and consultants.

As in any transaction, if you provide your credit card information to us for purchases, your credit card company will be provided with all relevant information about us, item(s) purchased, cost and other information necessary to process the transaction.

We may disclose your personal information if permitted or required by law or is necessary to comply with the law enforcement or in response to a search warrant, subpoena or other legal process or where we believe such action is necessary in order to protect or defend our interests or the interests of our users or business partners.

#### CHILDREN UNDER 13

The Site is not intended for children under age 13, or for anyone under age 18 without involvement of a parent or guardian. The Site includes unmonitored content posted by users and sourced from other third parties and as you can imagine, such content may be unsuitable for children. We do not knowingly collect or distribute information from or about children under 13.

#### THIRD PARTIES

Like most other websites, we may engage third parties to directly gather non-personally identifiable information from users of the Site through automated means such as cookies. For example, we may engage a third party to help us track and analyze anonymous information from users who visit the Site or use the Services. This Privacy Policy does not cover how third parties use cookies or other technologies or any information they gather through such technologies. The Sites and Services may contain links to websites or other properties and content operated by third parties over which X1 has no control. Their privacy policies may be different from our Privacy Policy, and you access such linked websites or third-party content at your own risk.

#### SECURITY

Information that X1 collects is stored on servers that X1 manages, using standard security procedures and practices appropriate to the nature of the information. Please be aware that no data transmission over the Internet can be guaranteed to be 100% secure. As a result, X1 cannot guarantee or warrant the security of any information you transmit on or through the Sites or Services and you do so at your own risk.

#### FOREIGN COUNTRIES

Your personal information may be transferred to and maintained on servers or databases located outside your state or country or to a jurisdiction where the privacy laws may not be as protective as those in your location. If you are located outside of the United States, please be advised that X1 processes and stores information in the United States and your use of our Site or Services constitutes your consent to and understanding of this processing.

#### CHANGES TO PRIVACY POLICY

X1 reserves the right to change this Privacy Policy at any time, and will do so by posting changes to this Privacy Policy on the Site.

8. **DISCLAIMER OF WARRANTY. THE SOFTWARE IS PROVIDED "AS IS," WITH NO WARRANTIES WHATSOEVER. CONTRACTOR EXPRESSLY DISCLAIMS ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. CONTRACTOR DISCLAIMS ANY WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SOFTWARE. ORDERING ACTIVITY UNDERSTAND AND AGREE THAT ORDERING ACTIVITY DOWNLOAD, INSTALL, AND/OR USE THE SOFTWARE AT ORDERING ACTIVITYR OWN DISCRETION AND RISK AND THAT ORDERING ACTIVITY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO ORDERING ACTIVITYR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD, INSTALLATION, OR USE OF THE SOFTWARE. CONTRACTOR DISCLAIMS ANY RESPONSIBILITY FOR ANY HARM RESULTING FROM ORDERING ACTIVITYR DOWNLOAD, INSTALLATION, OR USE OF THE SOFTWARE.**

#### 9. RESERVED.

#### 10. Ordering Activity CONTRACTOR

11. **Export Control; Government End Users.** The Software is subject to United States export laws and regulations. Ordering Activity must comply with all domestic and international export laws and regulations that apply to the Software, which may include restrictions on destinations, end users and usage. If the Software is supplied to or on behalf of the United States Government, then the Software is deemed to be "commercial software" as that term is used in the Federal Acquisition Regulation system. Rights of the United States shall not exceed the minimum rights set forth in FAR 52.227-19 for "restricted computer software." All other terms and conditions of this License apply.

#### 12. Reserved.

#### 13. Reserved.

#### 14. Miscellaneous.

**Changes.** We are constantly developing our Site and Services. This means that we may change or discontinue either or both without notice or liability to you. In addition, we may change all or part of the Agreement at any time, including these terms. We may make changes by posting the changed terms on the Site. **YOUR CONTINUED USE OF THE SITE AND/OR OUR SERVICES WILL CONSTITUTE ACCEPTANCE OF THE CHANGED TERMS.**

**Third Party Content and Links.** Contractor through X1 provides Services that allow you to view content on third party services. X1 is not a content provider and does not control the content or websites of such third party services. You acknowledge and agree that any third-party products or services are not the responsibility of Contractor or X1 and are subject to the terms of such third-party at its sole discretion. Furthermore, you acknowledge and agree that nothing herein is a grant of license to (i) the third-party products or services; (ii) any products, processes or technology described in or offered by the third-party products or services; or (iii) any copyright, trademark, patent or other intellectual property right in the third-party products or services. We disclaim any responsibility for any harm resulting with respect to viewing or using of any third-party content or third-party products or services.

Things You Cannot Do.

Give false or misleading information to us or anyone else in connection with your use of the Site or the Services, including giving false information in your account registration. You are entirely responsible for all content that you upload, post or otherwise transmit via the Site.

Upload, post or otherwise transmit via the Site any content that: (i) is harmful, obscene, indecent, pornographic, defamatory, racist, violent, offensive, threatening, harassing, or otherwise objectionable to Evolution or other users of the Site; (ii) includes unauthorized disclosure of personal information; (iii) violates or infringes anyone's intellectual property rights; or (iv) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment. X1 reserves the right to edit or remove content that violates this Agreement.

Do anything that smacks of bad online citizenship, such as use our Services for spam or attempt to reverse engineer or hack into our systems.

Access or scrape the Site or the Services by any automated means unless you are a search engine crawling the Site for the sole purpose of creating a publicly accessible search index; or bypass any technical protections or throttling that we institute.

Copy, modify, create derivative works from or distribute any content from the Site (whether the content has been posted by us or a third party); copy, display or use our trademarks in any way; or use the Site for any purpose not explicitly authorized in the Agreement.

Link to the Site using any HTML techniques that display the Site within a frame, partial window, popup, pop-under, or any other non-standard linking method, or present or redistribute content from the Services, except as provided authorized by X1.

Anything we ask you not to do.

**Third Party Applications.** Contractor through X1 may offer its Services utilizing application program interfaces available from other third party providers ("API"). Such APIs may also offer to display content provided by other third-party products and services (a) through APIs, "feeds" or other mechanisms provided by such third-party products and services, or (b) by accessing your accounts with such third-party products and services as authorized by you during your use of the Services ("User Content"). As to User Content we access through the APIs, you hereby authorize X1 to access your account for the purpose of obtaining and using such User Content. The use of such APIs made available by third parties is subject to the terms and conditions provided by those providers for application developers such as X1. We make no representations or warranties regarding the performance of such third-party services, their compliance with applicable laws and regulations, or any other aspect of such third-party services. Your use of third-party services is at your own risk. You acknowledge and agree that the third-party services and any related third-party terms of service are subject to change by the applicable third-party at its sole discretion and without any notice.

**Third Party Trademarks and Content.** Use of any third party trademark or third party content on the Site does not constitute affiliation with or endorsement of these third parties. Aside from any explicit grants in the Agreement, nothing in the Agreement grants you any license to third party trademarks or content. All trademarks are the property of their respective owners.

**X1's Rights.** X1 retains all right, title and interest in the Site and the Services, including all technology and processes, enhancements or modifications thereto, trademarks, service marks, logos, site design, text, graphics, logos, images and icons, as well as the arrangement thereof. You agree that the Services contain proprietary content, information and material that is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary content, information, or materials in any way whatsoever except for permitted uses of the Services. Except for rights expressly granted in the Agreement, nothing in the Agreement grants you any right, title or license. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or licensee.

X1 PROVIDES THIS SITE AND THE SERVICES "AS IS" AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED, OR STATUTORY. X1 SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT, AND NON-INFRINGEMENT. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THIS SITE AND SERVICES. X1 MAKES NO WARRANTY THAT THE SITE OR SERVICES WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, NOR DOES X1 MAKE ANY WARRANTY AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SITE OR THE SERVICES OR THAT ANY DEFECTS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM X1 SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. THIS DISCLAIMER IS MADE TO THE FULLEST EXTENT PERMITTED BY LAW. SOME STATES AND COUNTRIES DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMER MAY NOT APPLY TO YOU.

XIRRUS  
440 N WOLFE ROAD  
SUNNYVALE, CA 94085

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Xirrus ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - w) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - aa) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - ee) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
  - ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
  - gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.



- hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- ll) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

Xirrus

**XIRRUS LICENSE, WARRANTY AND SUPPORT TERMS**

**Attachment A - Xirrus  
Software License and Warranty Agreement**

## 1.0 DEFINITIONS

1.1 "Documentation" means the user manuals and all other all documentation, instructions or other similar materials in whatever media or format as provided or made available by Xirrus accompanying or associated with the Software covering the installation, application, and use thereof.

1.2 "Licensor" means XIRRUS and its suppliers.

1.3 "Product" means an access point or high density access point containing one or more distinct radios.

1.4 "Software" means, collectively, each of the application and embedded software programs delivered to Ordering Activity in connection with this Agreement. For purposes of this Agreement, the term Software shall be deemed to include any and all Documentation and Updates provided with or for the Software.

1.5 "Updates" means any bug-fix, maintenance or version release to the Software that may be provided to Ordering Activity from Licensor pursuant to this Agreement or pursuant to any separate maintenance and support agreement entered into by and between Licensor and Ordering Activity.

## 2.0 GRANT OF RIGHTS

2.1 Software. Subject to the terms and conditions of this Agreement and the applicable ordering document (Purchase Order), together with the underlying GSA Schedule Contract and Schedule Pricelist, Licensor hereby grants to Ordering Activity a perpetual, non-exclusive, non-sublicenseable, non-transferable right and license to use the Software solely as installed on the Product in accordance with the accompanying Documentation and for no other purpose.

2.2 Ownership. The license granted under Sections 2.1 above with respect to the Software does not constitute a transfer or sale of Licensor's or its suppliers' ownership interest in or to the Software, which is solely licensed to Ordering Activity. The Software is protected by both national and international intellectual property laws and treaties. Except for the express licenses granted to the Software, Licensor and its suppliers retain all rights, title and interest in and to the Software, including (i) any and all trade secrets, copyrights, patents and other proprietary rights therein or thereto or (ii) any Marks (as defined in Section 2.3 below) used in connection therewith. In no event shall Ordering Activity remove, efface or otherwise obscure any Marks contained on or in the Software. All rights and licenses not expressly granted herein are reserved by Licensor.

2.3 Copies. Ordering Activity shall not make any copies of the Software but shall be permitted to make a reasonable number of copies of the related Documentation. Whenever Ordering Activity copies or reproduces all or any part of the Documentation, Ordering Activity shall reproduce all and not efface alter, or remove any titles, trademark symbols, copyright symbols and legends, and other proprietary markings or similar indicia of origin ("Marks") on or in the Documentation.

2.4 Restrictions. Ordering Activity shall not itself, or through any parent, subsidiary, affiliate, agent or other third party (i) sell, rent, lease, license or sublicense, assign or otherwise transfer the Software, or any of Ordering Activity's rights and obligations under this Agreement except as expressly permitted herein; (ii) decompile, disassemble, or reverse engineer the Software, in whole or in part; (iii) allow access to the Software by any user other than by Ordering Activity's employees and contractors who are bound in writing to confidentiality and non-use restrictions at least as protective as those set forth herein; (iv) except as expressly set forth herein, write or develop any derivative software or any other software program based upon the Software; (v) use any computer software or hardware which is designated to defeat any copy protection or other use limiting device, including any device intended to limit the number of users or devices accessing the Product; (vi) disclose information about the performance or operation of the Product or Software to any third party without the prior written consent of Licensor; or (vii) engage a third party to perform benchmark or functionality testing of the Product or Software.

## 3.0 LIMITED WARRANTY AND LIMITATION OF LIABILITY

3.1 Limited Warranty & Exclusions. Licensor warrants that the Software will perform in substantial accordance with the specifications therefore set forth in the Documentation for a period of ninety [90] days after Ordering Activity's acceptance of the terms of this Agreement with respect to the Software ("Warranty Period"). If during the Warranty Period the Software does not perform as warranted, Licensor shall, at its option, correct the relevant Product and/or Software giving rise to such breach of performance or replace such Product and/or Software free of charge. THE FOREGOING ARE ORDERING ACTIVITY'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF OR NONCOMPLIANCE WITH THE FOREGOING WARRANTY. THE WARRANTY SET FORTH ABOVE IS MADE TO AND FOR THE BENEFIT OF ORDERING ACTIVITY ONLY. The warranty will apply only if (i) the Software has been used at all times and in accordance with the instructions for use set forth in the Documentation and this Agreement; (ii) no modification, alteration or addition has been made to the Software by persons other than Licensor or Licensor's authorized representative; and (iii) the Software or Product on which the Software is installed has not been subject to any unusual electrical charge.

3.3 DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 3, ALL ADDITIONAL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, AGAINST INFRINGEMENT OF ANY FORM OR NATURE OF INTELLECTUAL PROPERTY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY DISCLAIMED BY LICENSOR AND ITS SUPPLIERS. THIS DISCLAIMER SHALL APPLY EVEN IF ANY EXPRESS WARRANTY AND LIMITED REMEDY OFFERED BY LICENSOR FAILS OF ITS ESSENTIAL PURPOSE.

3.4 HAZARDOUS APPLICATIONS. THE SOFTWARE IS NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF A NUCLEAR FACILITY, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROLS OR OTHER DEVICES OR SYSTEMS IN WHICH A MALFUNCTION OF THE SOFTWARE WOULD RESULT IN FORSEEABLE RISK OF INJURY OR DEATH TO THE OPERATOR OF THE DEVICE OR SYSTEM OR TO OTHERS ("HAZARDOUS APPLICATIONS"). ORDERING ACTIVITY ASSUMES ANY AND ALL RISKS, INJURIES, LOSSES, CLAIMS AND ANY OTHER LIABILITIES ARISING OUT OF THE USE OF THE SOFTWARE IN ANY HAZARDOUS APPLICATIONS.

THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

3.5 Reserved.

**4.0 RESERVED****5.0 RESERVED****6. COMMERCIAL COMPUTER SOFTWARE**

The Software and Documentation furnished and licensed under and pursuant to this Agreement are a "commercial item", and is "commercial computer software" and "commercial computer software documentation" as those terms are defined and used in applicable U.S. federal government and comparable U.S. department and agency acquisition statutes and regulations. If Ordering Activity is the U.S. government or a department or agency thereof, Ordering Activity shall only acquire the rights and licenses as are contained in this Agreement, unless otherwise expressly agreed to in writing by Licensor in a separate written addendum to this Agreement. **7. MISCELLANEOUS**

During the course of use of the Software, Licensor may collect information on your use thereof; you hereby authorize Licensor to use such information to improve its products and services, and to disclose the same to third parties provided it does not contain any personally identifiable information. Ordering Activity may not export or re-export the Software or Documentation (or other materials) without appropriate United States government licenses or in violation of the United States' Export Administration Act and Ordering Activity shall comply with all national laws governing the Software.

**LIMITED HARDWARE WARRANTY**

Xirrus warrants that for the lifetime of the product (Xirrus Access Points) or a period of five years (Xirrus Arrays) or one year (all other Xirrus hardware products) from the date of purchase by the original purchaser ("Ordering Activity"): (i) the Xirrus Equipment ("Equipment") will be free of defects in materials and workmanship under normal use; and (ii) the Equipment substantially conforms to its published specifications. Except for the foregoing, the Equipment is provided AS IS. This limited warranty extends only to Ordering Activity as the original purchaser. Ordering Activity's exclusive remedy and the entire liability of Xirrus and its suppliers under this limited warranty will be, at Xirrus' option, repair, replacement, or refund of the Equipment if reported (or, upon request, returned) to the party supplying the Equipment to Ordering Activity. In no event does Xirrus warrant that the Equipment is error free or that Ordering Activity will be able to operate the Equipment without problems or interruptions.

This warranty does not apply if the Equipment (a) has been altered, except by Xirrus, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Xirrus, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (d) is used in ultra-hazardous activities.

EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.

IN NO EVENT WILL XIRRUS OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE EQUIPMENT EVEN IF XIRRUS OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Ordering Activity agrees the Equipment and related documentation shall not be used in life support systems, human implantation, nuclear facilities or systems, or any other application where failure could lead to a loss of life or catastrophic property damage or cause or permit any third party to do any of the foregoing.

Equipment including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Ordering Activity agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Equipment.



**RECSOLU, Inc., DBA Yello**  
55 E. MONROE, SUITE 3600  
CHICAGO, ILLINOIS 60603

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached RECSOLU, Inc., DBA Yello (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
  
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

- h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



## YELLO END-USER LICENSE AGREEMENT

This End-User License Agreement (this “Agreement”) is a legal contract between Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (the “Customer” or “Ordering Activity”

) and the GSA Multiple Award Schedule Contractor acting by and through its supplier, RECSOLU, Inc., DBA Yello, a Delaware corporation with its principal offices at 55 E. Monroe Street, Suite 3600, Chicago, Illinois 60603 (“Yello”). Each of Yello and Customer may hereinafter be referred to as a “Party” and collectively as the “Parties.”

This Agreement describes your rights and the conditions upon which Customer may use the Yello Services and System. By accepting this Agreement, Customer agrees to all of these terms. If Customer does not accept and comply with these terms, then Customer may not use the Services or System.

1) **Definitions.** The following terms used in this Agreement shall have the meanings stated below:

- a) “Admin User” means seats having full read, write and edit functionality with respect to the Services.
- b) “Authorized User” means any individual that is authorized by Customer to access and use the System on behalf of Customer in accordance with an Order.
- c) “Business Day(s)” means Monday through Friday, 8:00 AM to 6:00 PM U.S. Central Time, excluding all U.S. Federal holidays.
- d) “Cloud Services” means the software-as-a-service provided by Yello pursuant to any Order from, or for the benefit of, Customer.
- e) “Confidential Information” means any and all non-public, proprietary or confidential information, including, without limitation, trade secrets, know-how and proprietary information, firmware, software, source code, object code, data, designs, schematics, techniques, plans or any other information relating to any research project, work in process, future development, scientific, engineering, manufacturing, marketing or business plans or financial or personnel matters relating to either Party or its products, sales, suppliers, customers, employees, investors or affiliates. Confidential Information includes (i) the terms and conditions of this Agreement, any Order attached hereto and any purchase orders issued hereunder; (ii) information disclosed in a written or other tangible form which is clearly marked with a “confidential” or “proprietary” legend or other comparable legend; (iii) information disclosed orally or visually which is identified as confidential at the time of disclosure; and (iv) any other information which a reasonable person would deem confidential under the context of disclosure or due to the nature of the information itself, provided that “Confidential Information” shall not include the items listed in Section 5(b).
- f) “Customer Data” means the information and data that is submitted by or on behalf of the Customer to be processed by the System.
- g) “Disclosing Party” means the Party disclosing, supplying or otherwise making available its Confidential Information to the other Party.
- h) “Error” means a material failure of the System to conform to the Service Levels or other requirements of this Agreement or any Order, provided that notwithstanding the foregoing, “Error” shall not include, and Yello shall not be liable for or have any obligation to remedy any related issues, caused by (i) any use of the System by Customer or its Authorized Users which is not in accordance with the terms and conditions of this Agreement or any Order, (ii) any occurrence that is attributable to an interface or link, or attempted interface or link, by Customer, its Authorized Users or anyone acting on their behalf between the System and any telecommunications hardware, software or connections not provided by Yello hereunder, (iii) any misuse or improper or illegal use of the System, (iv) any malfunction of any telecommunications hardware, software or connections not provided by Yello hereunder or (v) any issue that can be resolved by

restarting a system or allowing for momentary systems or internet browser load spikes to pass.

- i) "Indemnified Party" means the Party seeking indemnification pursuant to Section 7(a) or 7(b).
- j) "Indemnifying Party" means the Party responsible for indemnification pursuant to Section 7(a) or 7(b).
- k) "IP Rights" means, on a worldwide basis, all patents (including originals, divisionals, continuations, continuations-in-part, extensions, foreign applications, utility models, and re-issues), patent applications, copyrights (including all registrations and applications therefor), trade secrets, service marks, trademarks, trade names, trade dress,

trademark applications, moral rights, and any and all other proprietary and intellectual property rights, and any goodwill relating to any of the foregoing.

- l) "Modification" means any enhancement, modification, update, upgrade, improvement, new release or other change to the System.
- m) "Order" means a document mutually executed by the Parties pursuant to which Customer procures specific Services from Yello, which document shall specify, among other things, a description of the Services to be provided, any Service Levels, the compensation for such Services, the term of the Order, and any other details specifically related to such Services.
- n) "Other Services" means any services described in an Order that do not constitute Cloud Services, including professional services or consulting services.
- o) "Receiving Party" means the Party receiving or otherwise being provided access to the Confidential Information from the other Party.
- p) "Reports" means any reports that incorporate Customer Data generated by or through the Cloud Services or System, or for the benefit of, Customer.
- q) "Service Levels" means any service level agreement with respect to Services as stated in an applicable Order.
- r) "Services" means any Cloud Services and/or Other Services.
- s) "Spin Off" means the creation of a separate entity through the sale or distribution of shares of an existing entity or the division of a parent entity. This includes a divestiture and a split-up resulting from a dissolution.
- t) "Staff" means seats having read-only functionality with respect to the Services.
- u) "System" means Yello's cloud-based software, data, and related materials (in each case, including any modifications, corrections, enhancements or upgrades, whether made pursuant to this Agreement, any Order or otherwise) made available to Customer as part of any Cloud Services described in an Order.

## 2) SERVICES

- a) Yello shall provide Customer with a limited, non-transferable (except to a permitted assignee as set forth in Section 12(c) below) license to use the Services in accordance with the terms and conditions of any applicable Order, including, if applicable, providing access for Authorized Users to the System. The terms of each Order are incorporated into this Agreement by reference and shall be binding upon the Parties. In the event of a conflict or ambiguity between any provision of this Agreement and an Order, the provision of the Order shall govern, but only with respect to the subject matter and scope of such Order.
- b) Yello shall provide the implementation and support services described in an Order to provide Customer with access to the System. Customer will work with Yello to set an accommodating schedule to integrate and implement the System to maximize its usage by the Customer.
- c) The portion of the System used by Customer will be password protected. Yello will utilize at least industry standard protections to limit access to such portion of the System to Authorized Users who have the requisite access codes, and to Yello's administrators who have a need to access the System. Yello will grant access codes to the Authorized Users designated in writing by Customer and will use reasonable efforts to assist Customer in promptly disabling access codes for any Authorized User upon Customer's written request. Customer is solely responsible for maintaining the confidentiality of its passwords.
- d) Yello shall cause its agents and personnel to comply with all of the terms and conditions of this Agreement and any Order. Customer consents to Yello's use of subcontractors and cookies in the provisioning of the Services.
- e) Yello shall provide at least five (5) Business Days' notice of any preventive maintenance which will render the System temporarily unavailable and any such preventive maintenance will be conducted outside of Business Day hours. In the event of emergency maintenance or repairs which will render the System temporarily unavailable are necessary, Yello shall use its commercially reasonable efforts to (i) provide at least four (4) hours' notice prior to its performance of such emergency maintenance or repairs; (ii) perform



such emergency maintenance or repairs outside of Business Day hours; and (iii) minimize the period of time required for the performance of such emergency maintenance or repairs.

- f) Yello shall maintain commercially reasonable controls and safeguards that are designed to mitigate security risks to the System and to protect any Customer Data that is processed by Yello.
- g) Yello will maintain commercially reasonable safeguards that are designed to protect against the destruction or loss of Customer Data in Yello's possession, including commercially reasonable backup procedures.
- h) Customer shall notify Yello of the existence of any Errors promptly upon discovering and verifying the same. Yello shall provide written notice to Customer upon resolution of any Error identified by Customer and reproducible by

Yello, which resolution shall be implemented without additional cost to Customer. Customer shall reasonably assist Yello in identifying and attempting to resolve Errors.

- i) Customer shall not introduce any viruses, Trojan horses, worms or other “malware” into the System.
- j) Customer agrees to use the System solely for the legitimate business purposes of Customer’s talent recruitment efforts, and to not operate the System for the benefit of any other person or entity, such as a time sharing, service bureau, hosting, service provider or like purposes. Customer is solely responsible for any misuse of the System, including any hijacking of the System, that is attributable to Customer.
- k) Customer hereby acknowledges and agrees that it is not authorized to submit health data, financial data, or social security information into the System or Services ("Unauthorized Information"). Yello disclaims all liability in connection with, and Customer agrees to indemnify and hold Yello harmless for, any and all Losses (as defined below) resulting from, Customer's or Customers' candidate's insertion of Unauthorized Information into the System or Services.
- l) Customer shall be responsible for the following:
  - i) Managing user authentication and authorization to the Services and System, including user provisioning procedures;
  - ii) Adopting strong operating system and application password management procedures, including using passwords that cannot be easily compromised;
  - iii) Reporting any issues or bugs to Yello via an email to infosec@yello.co or directly to a representative of Yello, within twenty-four (24) hours following discovery;
  - iv) Ensuring the legality of data that Customer inputs into the Services or System and the means by which Customer acquired such data;
  - v) Using commercially reasonable efforts to protect its local IT systems against corruption by possible viruses, Trojans or similar malware;
  - vi) Using commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Yello within twenty-four (24) hours following any discovery of such unauthorized access or use;
  - vii) Ensuring that Authorized Users are aware of their responsibilities and obligations under this Agreement, and comply with them;
  - viii) Using the Services only in accordance with the applicable documentation and applicable laws and government regulations;
  - ix) Ensuring that, upon termination of any Authorized User’s contract of employment or engagement, such terminated Authorized User’s access to the Services is revoked within twenty-four (24) hours of such termination;
  - x) Complying with and causing its employees, agents, representatives, contractors, and subcontractors to comply with all applicable laws and regulations related to receipt and use of the Services; and
  - xi) Complying with and causing its employees, agents, representatives, contractors and subcontractors to comply with all personnel, facility, safety and security policies, rules and regulations and other reasonable instructions of Yello, when performing work at a Yello facility or accessing any Yello systems or Services, and conducting its work at Yello facilities or on Yello systems or Services in such a manner as to avoid endangering the safety, or interfering with the convenience or efficiency of, Yello’s representatives or customers.

### 3) PAYMENT AND TAXES

- a) Customer will pay the GSA Schedule Contractor on behalf of Yello the applicable fees associated with the Services as set forth in an Order in accordance with the GSA Schedule Pricelist. All fees and dollar amounts referred to under this Agreement or any Order are in United States Dollars (“USD”). Yello will invoice Customer for such fees at the times set forth in the applicable Order.
- b) If any payment for Services is more than thirty (30) days past due of the invoicing and payment terms designated on the applicable Order, then such payments shall be subject to a finance fee as indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

- c) Customer agrees to be responsible for and pay and discharge when due any and all federal, state and local sales, use or other similar taxes that may be levied, assessed, imposed or charged in connection with the performance of this Agreement (other than taxes based upon the income or revenue of Yello). If Customer has an applicable tax exemption certificate, Customer shall provide Yello with evidence of such exemption within five (5) days of mutual execution of the respective Order.
- d) Purchases through Resellers. In the event Customer purchases the Services through a reseller, the invoicing and payment terms agreed between Customer and such reseller shall apply in lieu of the payment terms set forth herein.

#### 4) REPRESENTATIONS AND WARRANTIES

- a) Yello hereby makes the following representations and warranties:
- i) Yello is validly existing and in good standing under the laws of the jurisdiction of its formation.
  - ii) Yello has all requisite company power and authority to execute and deliver this Agreement and any Order and to carry out and perform its obligations under the terms of this Agreement and any such Order.
  - iii) Any Services shall be performed by Yello in a professional, competent and workmanlike manner in accordance with general industry standards. Yello shall ensure that all of its personnel have the proper skills and training necessary to perform the applicable Services. Customer's sole and exclusive remedy for a breach of this subsection is the proper re-performance of the Services affected by such breach.
  - iv) Yello shall comply in all material respects with applicable federal, state and local laws, rules and regulations applicable to its provision of the Services. Yello will ensure that it has the permits and licenses necessary to perform the Services.
  - v) Yello is not aware of any facts that indicate the System infringes on any third party's IP Rights.
  - vi) Yello is not aware of any viruses, Trojan horses, worms or other "malware" in the System, and Yello has taken commercially reasonable steps to protect the System against any such "malware."
- b) Customer hereby makes the following representations and warranties:
- i) Customer is validly existing and in good standing under the laws of the jurisdiction of its formation.
  - ii) Customer has all requisite power and authority to execute and deliver this Agreement and any Order and to carry out and perform its obligations under the terms of this Agreement and any such Order.
  - iii) Customer is not aware of any facts that indicate the Customer Data infringes on any third party's IP Rights.
  - iv) Customer shall comply with all applicable federal, state, and local laws, rules, and regulations.
- c) EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY ORDER, NEITHER PARTY MAKES ANY, AND EACH PARTY HEREBY DISCLAIMS ALL, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

#### 5) CONFIDENTIALITY

- a) Each Receiving Party agrees to keep confidential the Disclosing Party's Confidential Information subject to the terms and conditions of this Section 5. The Receiving Party will safeguard the Confidential Information of the Disclosing Party using the same degree of care as it uses to safeguard its own Confidential Information, but in no case less than a reasonable degree of care. The Receiving Party will limit (i) access to the Disclosing Party's Confidential Information to those of its personnel and agents with a need to know such Confidential Information for the performance of obligations under this Agreement and (ii) use of the Disclosing Party's Confidential Information to the exclusive purposes set forth in this Agreement. Unless otherwise agreed to by the Parties in writing, the Confidential Information of the Disclosing Party is and will remain the sole and exclusive property of the Disclosing Party, and the Receiving Party will have no right in or to the Disclosing Party's Confidential Information.
- b) Confidential Information will not include information to the extent that the Receiving Party can show that (i) such information is or became publicly available other than through any act or omission of the Receiving Party in breach of this Agreement; (ii) such information was received by the Receiving Party from a third party, which third party, to the Receiving Party's knowledge, had no obligation of confidentiality to the Disclosing Party; (iii) such information was in the possession of the Receiving Party at the time of the disclosure; or (iv) such information was independently developed by the Receiving Party without reference

to the Disclosing Party's Confidential Information.

- c) Notwithstanding the foregoing, in the event a subpoena or other legal process is served upon the Receiving Party that, pursuant to the requirement of a governmental agency or law with jurisdiction over the Receiving Party, compels disclosure of the Disclosing Party's Confidential Information, the Receiving Party may disclose such portion of the Disclosing Party's Confidential Information required to be disclosed, provided that the Receiving Party notifies the Disclosing Party promptly of such request (unless such notice is prohibited by law, rule or regulation), and cooperates with the Disclosing Party, at the Disclosing Party's expense, in the Disclosing Party's efforts to contest the legal validity or scope of such subpoena or other legal process.
- d) Each Party acknowledges that it would be difficult to fully compensate for damages that may result from the breach or threatened breach of the provisions of this Section 5 and, accordingly, the other Party shall be entitled to seek injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, to

enforce such provisions. This provision with respect to injunctive relief will not, however, diminish a Party's right to seek other legal, contractual or equitable remedies, or to claim and recover damages in the event of a breach of this Section 5.

- e) Except when disclosure is permitted pursuant to this Section 5 or as may otherwise be required pursuant to the requirement of a governmental agency or law with jurisdiction over the Receiving Party, neither Party will disclose the economic terms of this Agreement to any third party without prior written approval from the other Party, provided that Yello may note in its marketing materials that Customer is a client (but may disclose no other terms or conditions of the relationship) during the term of this Agreement to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.
- f) In the event Yello becomes aware of any security breach that compromises Customer's Confidential Information, Yello will promptly notify Customer, investigate, and use its commercially reasonable efforts to remedy said breach.

6) **INTELLECTUAL PROPERTY**

- a) Yello agrees that, as between Yello and Customer, Customer owns the Customer Data and all Reports generated with such Customer Data. During the term of this Agreement, Customer may provide Yello with Customer Data for use in the provision of the Services. Customer hereby grants to Yello a non-exclusive, non-transferable (except to a permitted assignee in connection with an assignment pursuant to Section 12(c) below) license to use the Customer Data solely in the provision of the Services. In addition, Yello may also use statistics generated from the provision of the Services to Customer in an aggregated form for purposes of benchmarking system performance, system metrics and other business purposes but only if all personally identifiable information and any relationship to or association with Customer has been removed from, and Customer is not identifiable as a result of, such statistics (for example, using the number of QR Code scans made by Customer at a particular conference, without attribution to Customer, in preparing aggregate conference statistics).
- b) Except for (i) the limited rights to access the System pursuant to the terms and conditions set forth herein or any Order and (ii) Customer's rights in the Customer Data, Customer agrees that, as between Customer and Yello, Yello owns all, and Customer is not granted any rights in, to, or with respect to (A) the System and all IP Rights therein or (B) any other IP Rights of Yello, and all such rights therein are reserved for Yello. Customer agrees to use the System and the Cloud Services solely for the legitimate business purposes for which they are intended and to not operate the System or the Cloud Services for the benefit of any other person or entity. Customer further agrees not to modify, adapt, translate, disassemble or reverse engineer any aspect or portion of the System.

7) **INDEMNIFICATION**

- a) Yello shall indemnify and hold Customer harmless from any and all losses, damages, costs (including reasonable attorneys' fees), settlements and liabilities (collectively, "Losses") resulting from third party claims, suits, actions or proceedings arising from or relating to (i) the infringement, misappropriation or other violation by Yello of any United States IP Rights of any third party and (ii) the gross negligence or willful misconduct of Yello or its personnel or agents; provided that notwithstanding the foregoing, Yello shall not be liable for any Losses relating to any alleged infringement, misappropriation or other violation of any IP Rights of any third party to the extent based upon Customer's use of the Cloud Services or System: (i) in combination with other products or services if such Losses would have been avoided but for such combination; or (ii) in violation of this Agreement.
- b) Customer shall indemnify and hold Yello harmless for any and all Losses resulting from third party claims,

suits, actions or proceedings arising from or relating to (i) the use by Customer or the Authorized Users of the Cloud Services or the System other than in accordance with this Agreement and any Order (including using the Cloud Services or System for illegal purposes) or (ii) the gross negligence, willful misconduct, or a violation of law of Customer or its personnel or agents in connection with this Agreement or the Cloud Services.

- c) Upon becoming aware of events giving rise to an indemnification claim under Section 7(a) or 7(b) above, the Indemnified Party shall provide prompt written notice of such claim, including a reasonable description of the basis thereof, to the Indemnifying Party and allow the Indemnifying Party to control the defense of such third party claim at the Indemnifying Party's expense. The Indemnifying Party shall not settle any claim without the Indemnified Party's written consent (which consent shall not be unreasonably withheld, conditioned or delayed) if such settlement would result in injunctive relief against, a monetary contribution from, or admission of wrongdoing by, the Indemnified Party. If the Indemnifying Party elects to control the defense of such third-party claim, the Indemnified Party shall have the right to participate in such defense at its own expense. The Indemnified Party



shall provide reasonable non-monetary assistance to the Indemnifying Party in connection with the defense and/or settlement of any third-party claim.

- d) If a third party claim alleging infringement of any IP Rights with respect to the Cloud Services or System is successful against Yello or Customer, Yello may, at its option and expense, either (i) procure from such third party the right for Customer to continue using the System and receiving the Cloud Services or (ii) modify the System and Cloud Services to make them non-infringing, but functionally substantially equivalent. If Yello determines that neither of these alternatives is reasonably available, either Party may terminate this Agreement and Customer will receive a refund of any prepaid but unused fees. THIS SECTION STATES YELLO'S ENTIRE OBLIGATION TO CUSTOMER WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

8) **LIMITATIONS ON LIABILITY**

- a) THE AGGREGATE LIABILITY OF YELLO FOR ALL CLAIMS OR LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING PRODUCT LIABILITY), STRICT LIABILITY, INFRINGEMENT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT, ANY ORDER OR THE SERVICES OR SYSTEM SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO YELLO UNDER THE APPLICABLE ORDER(S). THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.
- b) NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, EXCEPT IN THE EVENT OF WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS OR REVENUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY ORDER OR THE SERVICES OR SYSTEM, EVEN IF THE PARTIES HAD KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

9) **INSURANCE REQUIREMENTS**

- a) During the Term of this Agreement, Yello shall maintain commercially reasonable levels of insurance coverage to secure the performance of its obligations under this Agreement, including, but not limited to, comprehensive general liability, automobile/umbrella liability, and worker's compensation.
- b) Upon written request, Yello will provide Customer with written evidence of the coverage described in Section 9(a).

10) **INDEPENDENT CONTRACTOR RELATIONSHIP**

- a) In connection with this Agreement, the Parties acknowledge that they are independent contractors. Neither this Agreement nor any Order shall create a relationship of employment, agency, or partnership between the Parties, nor shall they give either Party any authority to bind or commit the other Party.
- b) Neither Yello nor any of its personnel or agents shall be entitled to any benefits provided by Customer to its employees. Yello shall be solely responsible for payment of all employment related and compensation related charges to its personnel and agents in connection with the performance of the Services.
- c) This Agreement shall not be deemed to be an exclusive contract. Subject to the Parties' obligations in

Section 5, Customer may utilize any other vendor to provide similar services, and Yello may provide similar services to any other customer.

11) **TERMINATION**

- a) This Agreement shall commence on the Effective Date of the respective Order, and shall continue in full force and effect until terminated pursuant to the provisions of this Section 11.
- b) This Agreement may be terminated at any time upon the mutual written agreement of the Parties.
- c) Either Party may terminate this Agreement or any Order if the other Party materially breaches any provision of this Agreement or any Order, as applicable, and such breach is not cured within thirty (30) days following written notice, where such written notice provides a reasonable description of such breach.

- d) Yello may immediately terminate this Agreement or any Order if Customer materially breaches either Section 5 (Confidentiality) or Section 6 (Intellectual Property) of this Agreement.
- e) Sections 1, 3, 5, 6, 7, 8, 10, 12, and this Section 11(e), and any other provisions of this Agreement which expressly provide that they survive shall survive the expiration or termination of this Agreement. Other than with respect to the provisions of this Agreement which survive expiration or termination, neither Party will be liable to the other Party for damages in connection with this Agreement following expiration or termination of this Agreement or any Order except for those arising due to a material breach by a Party of this Agreement or any Order prior to such expiration or termination. Both Parties waive any right it may have to receive compensation or reparation under the law of any jurisdiction in the event of such an expiration or termination other than as a result of a material breach of this Agreement or any Order arising prior to such expiration or termination.

## 12) GENERAL PROVISIONS

- a) Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).
- b) Notice. Any notices required or permitted under this Agreement must be in writing and delivered in person or sent by U.S. Postal Service or other delivery service requiring acknowledgment of receipt by signature to the following applicable address: (i) if to Yello: RECSOLU, Inc., DBA Yello, 55 E. Monroe, Suite 3600, Chicago, IL 60603, Attn: Legal Dept, [contracts@yello.co](mailto:contracts@yello.co); and (ii) if to Customer: the address set forth in the Order.
- c) Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that either Party may assign this Agreement, without the other Party's written consent, to (i) an affiliate; (ii) a successor in interest resulting from merger or consolidation with such assigning Party or to any person or entity which acquires all or substantially all of the assets of such Party's business to which this Agreement relates; and (iii) its financing sources as collateral subject to 31 USC 3727 and FAR clause at 52.212-4(b). Any assignment in violation of this Section 12(c) shall be null and void and of no force and effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- d) If any phrase, clause or provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction or arbiter, such phrase, clause or provision shall be deemed severed from this Agreement, but will not affect any other provision of this Agreement, which shall otherwise remain in full force and effect.
- e) Yello and Customer intend that this Agreement shall not benefit or create any right or cause of action in favor of or for the benefit of any person or entity other than the Parties.
- f) This Agreement, and any Order entered into in connection with this Agreement, shall be governed by and construed in accordance with the Federal laws of the United States. EACH PARTY HERETO HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR ANY ADDENDUM, ORDER OR OTHER AGREEMENT WHICH, IN ANY WAY, ARISES OUT OF OR RELATES TO THIS AGREEMENT.
- g) Reserved.
- h) The headings assigned to the Sections and subsections of this Agreement are for convenience only and shall not limit the scope and applicability of the Sections and subsections.
- i) Neither Party shall be deemed to be the drafter of this Agreement and if this Agreement is construed in any court or arbitration proceeding, said court or arbiter shall not construe this Agreement or any provision hereof against either Party as the drafter hereof.
- j) This Agreement, together with the Order(s) being entered into in connection herewith, the

underlying GSA Schedule Contract, and Schedule Pricelist, sets forth the entire understanding and agreement of the Parties, and supersedes all prior agreements, arrangements and communications, whether oral or written, between the Parties with respect to the subject matter hereof. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein.

- k) No amendment, change, or modification of this Agreement or any Order shall be effective unless it is made in writing, is signed by an authorized representative of each Party, and expressly states that it amends this Agreement or a respective Order. No waiver of any breach of this Agreement or any Order shall be effective unless made in writing and signed by an authorized representative of the waiving Party.
- l) No terms or conditions of either Party's invoice, purchase order, or other administrative document (unless signed by both parties) will be effective as a modification of the terms and conditions of this Agreement, regardless of the other Party's failure to object to such.

**YUBICO INC.  
420 FLORENCE STREET, SUITE 200  
PALO ALTO, CA 94301**

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached Yubico Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

- h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential

Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
  - v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

### YUBICO

#### YUBICO LICENSE, WARRANTY AND SUPPORT TERMS

The terms & conditions of this Attachment shall be incorporated into each contract between Yubico and Ordering Activity for the purchase and sale of the Product, and shall govern each such purchase and sale and the use of the Product and Service.

As used herein, "**Yubico**" means the Yubico entity, Yubico, Inc., that supplied the Product to Ordering Activity, "**Product**" means YubiKey or YubiHSM, as applicable, and "**Service**" means the YubiCloud one-time password validation service.

- A. Limited Warranty.** Yubico warrants that the Product will be free from defects in material and workmanship for a period of one (1) year from the date of delivery to the original purchaser (the "**Warranty Period**"). If a defect in material or workmanship arises within the Product during the Warranty Period and the Product is returned to Yubico within the Warranty Period, Yubico will, at its sole option and subject to applicable laws: (a) repair or replace any defective Product with a new or refurbished product; or (b) refund the original purchase price of the Product. The Warranty Period for any repaired or replacement Product will persist for the longer of the remainder of the original one (1) year Warranty Period or ninety (90) days from the date the repaired or replacement product is shipped to the user. This Paragraph A sets forth Yubico's sole obligation and Ordering Activity's sole remedy for any breach of the Limited Warranty.
- B. Restrictions.** The Limited Warranty extends only to the original purchaser of the Product and is non-transferrable. The Limited Warranty does NOT apply to a Product that: (a) is altered or modified, other than by Yubico; (b) is not maintained in a normal and customary fashion or is operated outside of Yubico's recommended guidelines; (c) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident; (d) has had its original serial number altered or removed, other than as a result of normal wear and tear; or (e) Yubico has provided free of charge. In no event does Yubico warrant that the Product is error free, will operate properly or at all in all computer environments and configurations, or that Ordering Activity will be able to operate the Product without problems or interruptions. Yubico does not warrant that the Product or any equipment, system or network on which the Product is used will be free of vulnerability to intrusion or attack.
- C. Grant of License.** The Product may contain certain object code software deployed onto its secure hardware prior to delivery to the user ("**Firmware**") and/or provided separately for use with the Product ("**Driver Code**") ("collectively, "**Software**"). Yubico grants Ordering Activity a personal, nonexclusive, non-sublicensable, non-assignable and non-transferable license to use the Software solely as part of Ordering Activity's use of the Product and in accordance with the terms and conditions of this Attachment. Ordering Activity may use the Firmware only as originally deployed onto the Product. Ordering Activity may not separate the Firmware from the remainder of Product or use the Software on another device. Ordering Activity may not distribute, license, sell, rent, or otherwise provide the Software to third parties. Ordering Activity acknowledges that the Software may have bugs or security vulnerabilities and that in no event does Yubico warrant that the Software is error-free or that the Software or the Product as a whole is free of all possible security vulnerabilities.
- D. Rights Protection.** The Software is licensed not sold. All title to the Software and other Yubico intellectual property rights related to the Software such as, but not limited to, copyright, trade secrets, patents, trademarks and service marks, shall at all times remain with Yubico and its licensors as applicable. Ordering Activity agrees that the techniques, ideas, algorithms, design, concepts, code, and processes contained or enabled in the Product constitute Yubico's intellectual property rights and are subject to confidentiality protection. As such, Ordering Activity agrees not to reverse engineer, disassemble or decompile, or otherwise attempt to derive the source code for, or perform cryptographic analysis upon, the Product to the extent this restriction is permitted by law.
- E. Compliance with Laws.** In connection with the use and transport of the Product, including the Software, Ordering Activity shall comply with all applicable export, import, and other relevant laws. Determination of the applicable law is Ordering Activity's responsibility. Ordering Activity acknowledges and understand that the Product, including the Software, is cryptographic in nature and that it therefore is highly regulated. Ordering Activity is strictly prohibited from exporting, reexporting or importing the Product and/or Software, regardless of method, without first complying with all



applicable government use, import, and export laws, rules, regulations, and orders, and obtaining any necessary approvals or permits. Obtaining any necessary export or import approval for the Product is Ordering Activity's responsibility.

**F. Warranty Disclaimer.** THE SERVICE IS PROVIDED FREE OF CHARGE AND "AS IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER. WITH RESPECT TO THE PRODUCT, INCLUDING THE SOFTWARE, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED TO THE DURATION OF THE APPLICABLE EXPRESS LIMITED WARRANTY. ALL OTHER STATUTORY AND IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, ARE DISCLAIMED. Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Ordering Activity. The Limited Warranty gives Ordering Activity specific legal rights, and Ordering Activity may also have other rights which vary by jurisdiction.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL YUBICO OR ITS AFFILIATES BE LIABLE FOR ANY LOST DATA OR UNAUTHORIZED ACCESS TO COMPUTER SYSTEMS, DATA OR OTHER INFORMATION.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, YUBICO PROVIDES THE PRODUCT "AS IS." BY USING THE PRODUCT, THE USER ASSUMES ALL RESPONSIBILITY FOR AND RISK OF USE OF THE PRODUCT. WITHOUT LIMITING THE SCOPE OF THE FOREGOING, YUBICO DOES NOT WARRANT THAT THE

PRODUCT OR THE SERVICE WILL FUNCTION WITHOUT DEFECTS OR THAT THE PRODUCT OR THE SERVICE IS OR WILL BE FREE OF VIRUSES OR OTHER HARMFUL MECHANISMS OR THAT ALL PROGRAMMING ERRORS CAN BE FOUND IN ORDER TO BE CORRECTED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND CONSISTENT WITH THIS ATTACHMENT, YUBICO DISCLAIMS ANY LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, ERRORS, OMISSIONS, COMPLETENESS, OR USEFULNESS OF THE PRODUCT, THE SERVICE, AND ANY SOFTWARE, PROCEDURE, METHOD, APPARATUS, TECHNICAL SUPPORT OR PROCESS PROVIDED TO ORDERING ACTIVITY IN ASSOCIATION WITH THIS ATTACHMENT. YUBICO, ITS AFFILIATES, LICENSORS, EMPLOYEES, DISTRIBUTORS AND RESELLERS DO NOT ASSUME ANY RESPONSIBILITY FOR LOSS OR DAMAGES RESULTING FROM THE USE OF THE PRODUCT, THE SERVICE OR ANY INFORMATION CONTAINED IN ANY DOCUMENTATION PROVIDED TO USER.

THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.2124(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

## ENTERPRISE MAINTENANCE AND SUPPORT SERVICES AGREEMENT

THIS ENTERPRISE MAINTENANCE AND SUPPORT SERVICES AGREEMENT is by and between the Ordering Activity under the GSA Schedule ("**Ordering Activity**" or "**Customer**"), and Yubico, Inc., a Delaware corporation having a place of business at 530 Lytton Avenue, Suite 301, Palo Alto, CA 94301 ("**Yubico**"). In this Agreement, "**Party**" means, individually, Customer or Yubico as the context requires and "**Parties**" means, collectively, Customer and Yubico.

### BACKGROUND OF THE AGREEMENT

- A. Customer has entered into or is currently entering into an agreement(s) with Yubico: (i) for the purchase of YubiKey and/or YubiHSM products; and/or (ii) to license Yubico's Software (as defined below);
  - B. Customer desires Yubico to provide it with enterprise-wide maintenance and support services for the YubiKey, YubiHSM and/or Software products that it has or will acquire from Yubico;
  - C. Customer may obtain maintenance and support services for additional YubiKey, YubiHSM and/or Software products by entering into one or more additional Order Schedules; such additional Order Schedules shall be subject to and become part of this Agreement; and
  - D. Yubico is willing to provide Customer with maintenance and support services pursuant to the terms and conditions of this Agreement.
- NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### 1. DEFINITIONS A

- 1.1. "**Agreement**" means this Enterprise Maintenance and Support Services Agreement, including all attached exhibits and Order Schedules that reference this Agreement.
- 1.2. "**Customer Support Contact(s)**" means individuals designated by Customer who are trained on the use of the Product and/or Software and authorized by Yubico to report Problems to Yubico Support Contacts. Customer Support Contacts, and their contact information, are listed on one or more Order Schedules.
- 1.3. "**Documentation**" means Yubico's written materials which it makes accessible to customers and potential customers describing the technical features and functions of the Software and/or Product.
- 1.4. "**End User**" means Customer's employees and consultants authorized by Customer to use the Product and/or Software.
- 1.5. "**Error**" means any material error or defect in the Software that causes the Software not to substantially conform in all material respects with its Documentation.

- 1.6. **"Error Corrections"** means patches and bug fixes developed by Yubico to correct Errors.
- 1.7. **"Order Schedule"** means a purchase order issued by Customer and accepted by Yubico, for the Product Maintenance Services and Software Support Services described in this Agreement.
- 1.8. **"Problem"** means a problem or error encountered in the reasonable and authorized use of the Software or Product that (i) degrades the performance of the Software or Product as compared to Yubico's Documentation applicable to such Software or Product, or (ii) renders one or more features of the Software or Product wholly or partly inoperable.
- 1.9. **"Problem Report"** means a reasonable description of a Problem encountered by Customer or its End Users, including: the End User who encountered the Problem, the date and time the Problem was encountered, the operating environment the problem occurred in, the functions the End User was attempting, the steps taken by the Customer Support Contact to resolve the problem prior to submitting a Problem Report and a reproducible test case.
- 1.10. **"Product"** means the YubiKey or YubiHSM, as applicable.
- 1.11. **"Severity 1 Problem"** means multiple users cannot access software of critical importance to the Customer's business with no possible Workaround or a failure with multiple users affected per site, multiple sites affected and no possible Workaround. The resulting situation is critical to the operation of the Customer's business.
- 1.12. **"Severity 2 Problem"** means multiple users cannot access software of high importance to the Customer's business with no practical or easily implementable Workaround or a failure which affects several users in a single site. The resulting situation has moderate impact on the operation of the Customer's business.
- 1.13. **"Severity 3 Problem"** means multiple users cannot access software of low importance to the Customer's business and a practical Workaround exists or a failure which affects a single user. The resulting situation has some minimal impact on the operation of the Customer's business.
- 1.14. **"Severity 4 Problem"** includes requests for new or enhanced features, general questions relating to the Software or Product and all other Problems that are not Severity 1-3 Problems. The resulting situation does not affect the daily business of the Customer.
- 1.15. **"Service"** means Product Maintenance Services and Software Support Services.
- 1.16. **"Software"** means one or more of Yubico's: (i) YubiKey Smart Card Minidriver; (ii) Yubico PIV Tool; (iii) YubiKey PIV Manager; and (iv) YubiHSM Key Storage Provider (KSP)
- 1.17. **"Updated Product"** means a replacement Product designed to correct an identified critical security issue in an existing Product.
- 1.18. **"Updates"** means Error Corrections, minor enhancements and patches and other minor changes to the Software that are generally made available by Yubico to its Customers at no additional cost pursuant to Enterprise Maintenance and Support Services Agreements. Updates do not include enhancements to or new versions of Software that provide substantial new, enhanced or different features, functions or performance.
- 1.19. **"Workaround"** means a change in the procedures recommended by Yubico or data supplied by Customer to avoid a Problem without substantially impairing Customer's use of the Software or Product.
- 1.20. **"Yubico Support Contacts"** are those individuals designated by Yubico to assist Customer with Problems. Customer Support Contacts shall communicate with Yubico Support Contacts in order to report and resolve a Problem. Contact information for the Yubico Support Contacts is listed in one or more Order Schedules.

## 2. PRODUCT MAINTENANCE SERVICES

- 2.1. Scope of Services. Product Maintenance Services comprise the provision of Updated Products when Yubico has become aware of a critical security vulnerability with a previous version of a Product that could materially adversely affect the security of Customer's data. The determination of whether a critical security vulnerability exists that could materially adversely affect a Customer's data shall be made by Yubico in its sole discretion.
- 2.2. Updated Products. Yubico will notify Customer when Updated Products are available that address a critical security vulnerability, and Yubico will provide such Updated Products to Customer without additional charge.
- 2.3. Prompt Replacement of Existing Products. Customer agrees to use commercially reasonable efforts to promptly replace the compromised existing Products with the Upgraded Products and provide evidence of the destruction of the compromised Products to Yubico if requested.

## 3. SOFTWARE SUPPORT SERVICES.

- 3.1. Scope of Services. Software Support Services comprise the following services:
  - a. The provision of Updates as such Updates become available; and

- b. Depending upon the Service Level selected and purchased by Customer, Yubico will work to correct Problems with the Software by e-mail, telephone or electronically from Yubico's remote support center, or provide onsite support for an additional fee in accordance with the GSA pricelist.
- 3.2. Updates. As permanent solutions are developed for known Errors in the Software, they will be incorporated from time to time in planned Updates. Yubico will provide Customer, free of additional charge, with such Updates as they are released. Yubico will provide documentation that Yubico considers reasonably necessary to assist in a smooth transition for mitigating the errors. In the event Yubico decides in its sole discretion to update the associated Documentation, Yubico will provide a copy of the same to Customer at no additional charge.
- 3.3. Installation of Updates. All Updates will be made available to Customer electronically via secure download from Yubico's designated site. Customer agrees to use commercially reasonable efforts to promptly download and install all Updates supplied hereunder in order to maintain the Software at the most current revision level. Yubico is obligated hereunder to provide Software Support Services only (i) for the current revision level of the Software, and (ii) for the pre-updated version of the Software for six (6) months following the release of an Update. Customer is solely responsible for all costs of installation of Updates.

#### 4. PROBLEM REPORTING

- 4.1. Customer Obligations. Prior to submitting a Problem Report, Customer shall make all reasonable efforts to resolve the Problem without assistance from Yubico. Customer Support Contacts shall attempt to reproduce any problems reported to them by Customer's End Users and only report reproducible Problems to Yubico. For Problems that Customer is unable to resolve itself, Customer Support Contacts shall report the Problem to Yubico by submitting a Problem Report to Customer's designated Yubico Support Contact. Customer Support Contacts and Yubico Support Contacts will be set forth in the applicable Order Schedule. All communications concerning Problem identification and resolution shall occur between Customer Support Contacts and Yubico Support Contacts. Valid Problem Reports must be submitted to Yubico in English or languages on Yubico's Supported Languages List, which will be made available upon request.
- 4.2. Problem Resolution. Yubico shall address reported Problems in accordance with the severity level assigned to such Problem by Yubico, the Service Level selected and paid for by Customer, and as otherwise set forth in Exhibit B ("**Technical Response Schedule**") attached hereto. Yubico shall exert good faith, commercially reasonable efforts to achieve the response times set forth in Exhibit B. However, Customer acknowledges and agrees that Yubico may not be able to achieve the response times set forth in Exhibit B at all times and under all circumstances.

## 5. EXCLUSION FROM PRODUCT MAINTENANCE AND SOFTWARE SUPPORT SERVICES

- 5.1. Customer Errors. Yubico will have no obligation of any kind to provide Product Maintenance Services or Software Support Services of any kind for problems in the operation or performance of Products or Software to the extent caused by any of the following (each, a “**Customer-Generated Error**”): (a) non-Yubico software or hardware products or use of the Software or Product in conjunction therewith; (b) modifications to the Software or Product made by any party other than Yubico without Yubico’s express prior written authorization; (c) Customer’s use of the Software or Product other than in a reasonable manner and as authorized by Yubico; and (d) Customer’s use of other than the most current Product and the most current version of the Software or any Error Corrections or Updates provided by Yubico (or pre-updated version of the Software for six (6) months following the release of an Update).

## 6. FEES

- 6.1. Maintenance and Support Services Fees. Customer will pay Yubico the total fees for all Services (“**Service Fees**”) as specified in all accepted Order Schedules, in accordance with the GSA pricelist. For clarity, if Customer chooses to purchase Services then Customer must select a single level of Service (i.e., Gold or Silver) for all of the Products and Software it has acquired. Yubico cannot provide Services for only a subset of Customer’s Products and Software, nor can Yubico provide Customer with different service levels for different Products and Software.

## 7. WARRANTY AND DISCLAIMER OF WARRANTIES

- 7.1. Updated Product Warranty. Updated Products are warranted under the original Product warranty and, accordingly, the warranty for any Updated Product shall persist for the longer of the remaining period of the original one (1) year Product warranty or ninety (90) days from the date Yubico ships the Updated Product to Customer.
- 7.2. Software Support Services Warranty. Yubico warrants that the Software Support Services will be performed in a workmanlike manner by qualified personnel familiar with the Software and its operations. This warranty will be in effect for a period of thirty (30) days from completion of Yubico’s performance of the affected Software Support Service.
- 7.3. Sole Remedy. As Customer’s sole and exclusive remedy and Yubico’s entire liability for any breach of the warranty set forth in Section 7.2 regarding Yubico’s provision of Software Support Services, Yubico will, at its option: (a) promptly re-perform the service in an attempt to correct any Errors; or (b) provide Customer with a reasonable procedure to circumvent the nonconformity; or (c) refund to Customer an equitable portion of the fees paid if the Problem cannot be resolved.
- 7.4. Disclaimer. Yubico does not warrant that the Updated Products, Updates, Error Corrections, Workarounds and Services provided pursuant to this Agreement will meet Customer’s requirements, or that the Updated Products, Updates, Error Corrections and Workarounds will work in the combinations that Customer may select, or that the operation of the Updated Products, Updates, Error Corrections, Workarounds and Services will be error-free or that all errors in the Products and/or Software will be corrected. Yubico will have no obligation or liability for any Customer-Generated Errors.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, (I) ALL UPDATED PRODUCTS ARE SUBJECT TO THE SAME TERMS AND CONDITIONS THE PARTIES AGREED TO WITH RESPECT TO THE ORIGINAL PRODUCTS THAT ARE REPLACED BY THE UPDATED PRODUCTS, AND (II) ALL UPDATES ARE SUBJECT TO THE SAME TERMS AND CONDITIONS THE PARTIES AGREED TO WITH RESPECT TO THE SOFTWARE MODIFIED OR REPLACED BY THE UPDATES.

BY USING THE UPDATED PRODUCTS, UPDATES, ERROR CORRECTIONS, WORKAROUNDS AND THE SERVICE, CUSTOMER ASSUMES ALL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM SUCH USE, INCLUDING WITHOUT LIMITATION LOSS OR CORRUPTION OF DATA OR SOFTWARE PROGRAMS, OR UNAUTHORIZED ACCESS TO DATA, SOFTWARE PROGRAMS AND/OR COMPUTER SYSTEMS.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM YUBICO OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YUBICO DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

## 8. RESERVED

## 9. TERM AND TERMINATION

- 9.1. Term. The initial term (“**Initial Term**”) of this Agreement is from the date of shipment and for 12 months as set forth in the applicable Order Schedule.

- 9.2. Reinstating Expired or Terminated Agreement. Once expired or terminated, Customer may only reinstate this Agreement upon payment of the then-applicable GSA Service Fees, plus an additional amount equivalent to the Service Fees that would have been due for the period of time from the termination or expiration date of the Agreement until the date the Agreement is reinstated.
- 9.3. Survival. Sections 1, 6.1, 7, 9.2, 10 and this Section 9.3 will survive any termination or expiration of this Agreement.

## 10. GENERAL

- 10.1. Assignment. This Agreement is not assignable or transferable by either Party, in whole or in part, by operation of law or otherwise, without the other Party's express prior written consent, which consent may be withheld for any reason. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party's permitted successors, assignees and transferees.
- 10.2. Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the Federal laws of the United States. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.
- 10.3. Nonexclusive Remedy. Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.
- 10.4. Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.
- 10.5. Waiver. The failure by either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.
- 10.6. Export Control. Customer agrees to comply fully with all relevant export laws and regulations of the United States and other countries ("**Export Laws**") to ensure that the Software, Updated Product, Updates, Workarounds and Error Corrections, or any direct or derivative products thereof, are not: (a) exported or re-exported directly or indirectly in violation of Export Laws; or (b) used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.
- 10.7. Entire Agreement. This Agreement, including the attached Exhibits, the underlying GSA Schedule Contract, Schedule Pricelist, and all accepted Order Schedules constitute the complete and exclusive understanding and agreement between the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both Parties.

### Yubico Support Contacts:

E-mail: [enterprise-support@yubico.com](mailto:enterprise-support@yubico.com)

Web: [yubi.co/support](http://yubi.co/support)

Phone: 1-(844) 876-5300

**EXHIBIT B**  
**TECHNICAL RESPONSE SCHEDULE**

**SILVER AND GOLD SUPPORT SERVICES.**

<b><i>Service Components</i></b>	<b><i>Silver Support Services</i></b>	<b><i>Gold Support Services</i></b>
<i>Hours of Coverage</i>	Monday – Friday (excluding holidays): 5am to 5pm (US Pacific Time)	24 hours per day, 7 days per week, 365 days per year for Severity 1 problems. Business hours: Monday – Friday (excluding holidays): 5am to 5pm (US Pacific Time) Severity 2 – 4.
<i>Problem Reporting</i>	E-mail Problem Reporting only. If e-mail report of a Problem is sent outside of the hours of coverage, then it will be deemed to be received by Yubico Support Contacts upon the next start of the Hours of Coverage.	Unlimited Problem Reporting, seven (7) days a week, twenty-four (24) hours a day web and toll free telephone access to at least one Yubico Support Contact.
<i>Response Targets</i>		

<p>Severity 1 Problem</p>	<p><u>Response time:</u> One (1) business day.</p>	<p><u>Response time:</u> One (1) hour. A Severity 1 Problem requires you to have dedicated resources available to work on the issue with Yubico on an ongoing basis during your contractual hours, as required. Severity 1 Problems will have priority over Severity 2 - 4 Problems and Severity 1 Problems of Gold Support Services customers will have priority over Severity 1 Problems of Silver Support Services.</p>
<p>Severity 2 Problem</p>	<p><u>Response time:</u> One (1) business day.</p> <p>Severity 1 Problems will have priority over Severity 2 Problems.</p>	<p><u>Response time:</u> Eight (8) business hours. Severity 1 Problems will have priority over Severity 2 Problems and Severity 1 Problems of Gold Support Services customers will have priority over Severity 1 Problems of Silver Support Services customers.</p>



<p>Severity 3 Problem</p>	<p><u>Response time:</u> Three (3) business days.</p> <p>Severity 1 Problems and Severity 2 Problems will have priority over Severity 3 Problems.</p>	<p><u>Response time:</u> One (1) business day.</p> <p>Severity 1 Problems and Severity 2 Problems will have priority over Severity 3 Problems.</p>
<p>Severity 4 Problem</p>	<p><u>Response time:</u> Five (5) business day.</p> <p>All other Problems will have priority over Severity 4 Problems.</p>	<p><u>Response time:</u> Three (3) business days.</p> <p>All other Problems will have priority over Severity 4 Problems.</p>

ZEROFOX, INC.  
1834 S CHARLES STREET  
BALTIMORE, MD 21224

**EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached ZeroFox, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
  - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS  
ZEROFOX, INC.**

**ZEROFOX, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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**1. ORDER FORMS.**

Subject to the terms and conditions of this Agreement, ZeroFOX agrees to sell the Services that are identified in a mutually executed Purchase Order. Upon mutual execution of the Purchase Order, this agreement shall be considered an integral part of this Agreement.

**2. USE OF APPLICATION SERVICES.**

**2.1 Right to Use Application Services.**

(a) ZeroFOX agrees to provide access to Application Services within the scope of the Access Rights purchased by Ordering Activity pursuant to a mutually executed Purchase Order. Ordering Activity acknowledges that the Access Rights may be used only by Ordering Activity's Authorized End Users for Ordering Activity's internal business purposes, and only during the Access Term.

(b) Ordering Activity acknowledges (i) that it is responsible for procuring and operating all computer systems, software, and telecommunications services required to meet the minimum technical specifications necessary for Ordering Activity's Authorized End Users to access and use the Application Services, and Ordering Activity may be unable to access or utilize some or all aspects of the Application Services unless such minimum technical specifications are met, and (ii) nothing in this Agreement may be interpreted as an implied license or to require ZeroFOX to deliver a copy of any software or other product utilized by ZeroFOX to provide the Application Services.

**2.2 Authorized End Users.** Ordering Activity shall be fully responsible for compliance with this Agreement by, as well as the acts and omissions of, all users who access the Application Services under its Authorized End User login credentials. Ordering Activity shall not authorize access to or permit use of the Application Services by persons other than Authorized End Users. ZeroFOX will issue to Ordering Activity the number of unique sets of login credentials (each consisting of a user name and password) set forth on the applicable Purchase Order for the Application Services and, unless otherwise approved in writing by ZeroFOX in its sole discretion, Ordering Activity will ensure that no more than one Authorized End User will have access to or will use each set of login credentials.

**2.3 Documentation License.** Subject to the terms and conditions of the Purchase Order, ZeroFOX hereby grants to Ordering Activity a nonexclusive, non-transferable, non-sublicenseable right and license during the Term to reproduce copies of the Documentation solely for use by Ordering Activity in connection with the exercise of rights granted in this Agreement. Ordering Activity acknowledges that no right is granted to distribute, publish, modify, adapt, translate or create derivative works of the Documentation. Ordering Activity acknowledges that the Documentation is ZeroFOX's Confidential Information, and hereby agrees to accurately reproduce all proprietary notices, including any copyright notices, trademark notices or confidentiality notices, that are contained within any copies of the Documentation. ZeroFOX recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

**3. RESERVATION OF RIGHTS AND RESTRICTIONS.**

**3.1 Proprietary Rights; No Implied Licenses.** Ordering Activity acknowledges that, as between the Parties, ZeroFOX owns all Intellectual Property Rights and other proprietary interests that are embodied in, or practiced by, the Application Services, the ZeroFOX Products and Platform, and the Documentation. To be clear, however, the preceding sentence does not constitute a representation or warranty regarding ownership of any intellectual property rights or other proprietary interests.

**3.2 Compliance with Laws.** Ordering Activity represents and warrants that it shall use the Application Services and Reports only for lawful purposes and in compliance with all applicable laws, rules and regulations issued by governing authorities, including without limitation the National Labor Relations Act, the Family Medical Leave Act, the Stored Communications Act, the Computer Fraud and Abuse Act and any federal, state or local laws regarding employee privacy, off-duty conduct or discrimination.

**3.3 General Restrictions on Use.** Ordering Activity agrees not to act outside the scope of the rights that are expressly granted by ZeroFOX in this Agreement. Ordering Activity will not (a) make the Application Services available to anyone other than Ordering Activity and its Authorized End Users; (b) sell, resell, license, sublicense, rent, lease or distribute the Application Services or any Reports, or include any Application Services or Reports or any derivative works thereof in a service bureau or outsourcing offering; (c) copy, modify or make derivative works based upon the Application Services; (d) "frame" or "mirror" any Reports contained in, or accessible from, the Application Services on any other website, server, wireless or Internet-based device; or (e) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component underlying the Application Services is compiled or interpreted, and Ordering Activity hereby acknowledges that nothing in this Agreement shall be construed to grant Ordering Activity any right to obtain or use such source code. Ordering Activity acknowledges and agrees that compliance with the restrictions set forth in this Article 3 is an essential basis of this Agreement.

**4. TREATMENT OF CONTENT.**

**4.1 Selection of Ordering Activity Content and Third Party Content.** Ordering Activity understands that the Application Services are capable of processing Ordering Activity Content that is uploaded by Ordering Activity to ZeroFOX's servers. Ordering Activity further understands that the Application Services may include features that enable Ordering Activity to specify Third Party Content to be retrieved via the Application Services automated functionality from a variety of third-party websites and other third-party resources, including Social Media Sites. As between the Parties, Ordering Activity alone is responsible for selection of all Ordering Activity Content and Third Party Content, and ZeroFOX disclaims all risks associated with the content, accuracy, completeness, consistency, integrity, legality, reliability and appropriateness of Ordering Activity Content and Third Party Content and the use of all such content by Ordering Activity and by ZeroFOX in connection with providing the Services contemplated by this Agreement as set forth on any mutually executed Order Form.

**4.2 Rights in Content.**

(a) **Ordering Activity Content.** Ordering Activity hereby grants to ZeroFOX a non-exclusive license to use, store, process, analyze and display in Reports all Ordering Activity Content during the Term for the limited purposes of performing ZeroFOX's obligations under this Agreement. Prior to uploading Ordering Activity Content, Ordering Activity shall, at its own expense, obtain all licenses, consents or other permissions from appropriate third parties as

may be necessary for Ordering Activity's use of the relevant Ordering Activity Content as necessary to enable Ordering Activity to grant the rights granted by this Section 4.2.

(b) **Third Party Content.** Ordering Activity acknowledges that the Content may contain or be accompanied by third-party software, data or other materials that are subject to and provided in accordance with terms that are in addition to or different from the terms set forth in this Agreement.

(c) **Employee Generated Content.** Ordering Activity acknowledges that Ordering Activity Content and Third Party Content may include content generated by its employees and that Ordering Activity's collection, monitoring and use of such content may be restricted by federal and state employment laws. Ordering Activity shall, at its own expense, obtain all consents or permissions required to lawfully use employee-generated content as contemplated by this Agreement and Ordering Activity shall only use such content in compliance with applicable law.

#### 4.3. Content Disclaimers.

(a) ZeroFOX shall have no obligation to preview, verify, modify, filter or remove any Third Party Content (although ZeroFOX may do so in at its sole discretion), and ZeroFOX shall not be responsible for any failure to remove, or for any delay in removing, harmful, inaccurate, unlawful or otherwise objectionable Third Party Content.

(b) Ordering Activity acknowledges that, as between the Parties, Ordering Activity is responsible for backup and archiving of any content processed by the Application Services, including all Ordering Activity Content and Third Party Content. ZeroFOX shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Ordering Activity Content or Third Party Content.

(c) Ordering Activity acknowledges that, in the event the relevant third party provider of any particular Third Party Content ceases to make the same available for use as contemplated in this Agreement on terms acceptable to ZeroFOX, ZeroFOX shall have the right to discontinue provision of any tools to retrieve or access such Third Party Content, and/or may discontinue the processing, analysis, storage or provision of access to any such Third Party Content, without thereby entitling Ordering Activity to any refund, credit, or other compensation, other than a refund of the unearned portion of any fee that was paid to ZeroFOX, if any, for actually supplying the access to such Third Party Content.

(d) ZeroFOX does not provide any warranty or support under this Agreement for any non-ZeroFOX products or services, including without limitation, Ordering Activity Content and/or Third Party Content.

**4.4 Appointment as Agent.** Ordering Activity acknowledges and agrees that in order to provide certain features of the Application Services, ZeroFOX may need to access and collect certain information from Social Media Sites on Ordering Activity's behalf and contact the owners of such sites for social risk management matters. As such, during the Access Term, Ordering Activity hereby appoints ZeroFOX as Ordering Activity's agent to act on Ordering Activity's behalf with regards to Social Media Sites designated by Ordering Activity, for the sole purpose of assisting Ordering Activity in making requests, complaints or claims to such designated Social Media Sites related to protecting Ordering Activity's Intellectual Property Rights (including without limitation claims of impersonation, privacy violations, and copyright or trademark violations), and only in accordance with Ordering Activity's express instructions in each separate instance, which instructions shall be in writing or communicated to ZeroFOX through the applicable features of the Application Services (e.g., takedown request button/menu option). Ordering Activity represents and warrants that Ordering Activity has full right and authority to grant the licenses under this Section 4.4.

#### 5. SUPPORT SERVICES.

**5.1 Silver Support.** During the Access Term, ZeroFOX agrees to provide the Silver Support Services, as set forth in **Exhibit 2**.

**5.2 Platinum Support.** If Ordering Activity elects to purchase Platinum Fully Managed Services pursuant to an Order Form, such services are subject to the ZeroFOX Platinum Fully Managed Services Agreement, which is incorporated herein as Exhibit 3.

**6. PROFESSIONAL SERVICES; STATEMENTS OF WORK.** Ordering Activity may request that ZeroFOX provide certain Professional Services related to Ordering Activity's use of the Application Services. Any Professional Services to be provided will be included in a Purchase Order. ZeroFOX shall be under no obligation to perform Professional Services until a Purchase Order in relation thereto has been mutually executed.

#### 7. RESERVED.

#### 8. TERM AND TERMINATION.

**8.1 Duration of Agreement.** This Agreement will remain in effect for the term of service agreed upon in the Purchase Order. .

**8.2 Reserved.**

**8.3 Reserved.**

**8.4 General consequences of termination.** Effective immediately upon expiration or termination of this Agreement, (i) Ordering Activity shall cease, and shall direct its users to cease, use of the Application Services, (ii) all licenses granted under this Agreement will become void, and (iii) neither Party will have continuing rights to use any Confidential Information of the other Party or to exercise any Intellectual Property Rights having been licensed under this Agreement. As soon as practicable after termination or expiration of this Agreement, each Party will discontinue its use and will return the Confidential Information and proprietary materials of the other Party.

**8.5 Reserved.**

#### 9. RESERVED.

#### 10. REPRESENTATIONS AND WARRANTIES.

**10.1 Reserved.**

**10.2 Service Warranty.** During the Term, the Application Service offerings will meet the Service Levels specified in **Exhibit 1**. If the applicable Application Service fails to achieve the Service Levels so specified, then Ordering Activity will be entitled, as its sole and exclusive remedy, to a credit for the applicable Service in accordance with the terms set forth in **Exhibit 1**, provided, however that Ordering Activity notifies ZeroFOX in writing of any such service failures within fifteen (15) days.

**10.3 Ordering Activity Representations and Warranties.** Ordering Activity represents and warrants that it will not, nor will it permit or authorize anyone else to, upload, post, store, view, transmit, distribute or otherwise publish any Ordering Activity Content that (i) is unlawful, fraudulent, , invasive of another's privacy, or otherwise tortious; ; (ii) violates or infringes the rights of third parties, including, but not limited to, Intellectual Property Rights, rights of privacy or publicity or any other proprietary rights; or (iii) contains any viruses, Trojan horses, worms, time bombs, cancelbots, or other harmful components that are intended to damage, detrimentally interfere with, surreptitiously intercept or misappropriate any system, data or personal information.

**10.4 Disclaimers.** EXCEPT AS OTHERWISE EXPRESSLY REPRESENTED OR WARRANTED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLICATION SERVICES, PROFESSIONAL SERVICES, THE DOCUMENTATION, AND ANY OTHER PRODUCTS OR SERVICES PROVIDED BY ZEROFOX ARE PROVIDED "AS IS," AND ZEROFOX DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT

LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERFERENCE, SYSTEM INTEGRATION AND/OR DATA ACCURACY. ZEROFOX DOES NOT WARRANT THAT THE APPLICATION SERVICES OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY ZEROFOX WILL MEET ORDERING ACTIVITY'S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. NO WARRANTY IS MADE ON THE BASIS OF COURSE OF PERFORMANCE, COURSE OF DEALING, OR TRADE USAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR

(3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

11. RESERVED.

12. RESERVED.

### 13. GLOSSARY OF DEFINED WORDS AND PHRASES.

For purposes of this Agreement, certain capitalized words and phrases will have the meanings set forth or cross-referenced below.

**"Access Rights"** are contractual rights to access and use the Application Services according to the technical procedures and protocols established according to this Agreement. The scope of any particular Access Rights may be defined by the terms of the applicable Order Form, including the Access Term, number of Social Entities, Authorized Sources or other use restrictions.

**"Access Term"** shall have the meaning given such term in the Order Form.

**"Application Services"** means the limited online data processing and analysis functionality of the ZeroFOX Products and all related features ordered by Ordering Activity, operated by ZeroFOX and made available to Ordering Activity via the ZeroFOX Platform.

**"Authorized End Users"** are individual persons for whom Ordering Activity has purchased Access Rights, and may include only employees or agents of Ordering Activity who are acting on Ordering Activity's behalf in the internal operation of Ordering Activity's business.

**"Authorized Sources"** are the third-party websites or other online sources to the extent identified in an Order Form, from which content may be retrieved by Ordering Activity or at Ordering Activity's direction using the automated tools within the Application Services. If no such sources are specifically identified, then subject to the obligations and restrictions set forth in Sections 4 and 10.3 of this Agreement and applicable laws any sources shall be deemed authorized.

**"Confidential Information"** means: any information or data (including information or data received by the disclosing party from a third party and as to which the disclosing party has confidentiality obligations) provided or disclosed by disclosing party or its agents to receiving party that is: (i) fixed in a tangible medium and marked as the confidential or proprietary information of the disclosing party; (ii) otherwise provided or disclosed by or on behalf of the disclosing party marked as proprietary at the time the information is provided; or (iii) not falling within any of the prior clauses of this sentence, but which, a reasonable person would conclude is of a confidential nature given the facts and circumstances of such disclosure or (iv) the ZeroFOX Products, the Application Services, the Services and the Documentation.

**"Ordering Activity Content"** means the data, media and content (structured and unstructured) generated, collected or recorded by the Ordering Activity or by any supplier or licensor to Ordering Activity, including without limitation, any social media data, as well as any other data that is provided to ZeroFOX from Ordering Activity, that is uploaded, stored, analyzed and made available to and through the Application Services. **"Documentation"** means the documentation provided by ZeroFOX relating to the Application Services and/or the ZeroFOX Products.

**"Intellectual Property Rights"** are the exclusive rights held by the owner of a copyright, patent, trademark, or trade secret, including (i) the rights to copy, publicly perform, public display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter; (ii) the right to exclude another from using, making, having made, selling, offering to sell, and importing patented subject matter and from practicing patented methods, (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, endorsement, or sponsorship; and (iv) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual Property Rights also include any and all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including enforceable privacy rights and any rights in databases recognized by applicable law.

**"Purchase Order"** means a document signed by both Parties whereby the Ordering Activity orders one or more of the following: (i) access to the Application Services, (ii) Professional Services, or (iii) any other products or services to be offered by ZeroFOX pursuant to this Agreement.

**"Platinum Fully Managed Services"** means those support and monitoring services more fully described in the Platinum Fully Managed Services Agreement.

**"Professional Services"** means the installation, configuration and/or training services as specified in an Order Form.

**"Reports"** means any reports, summaries, analyses, data, information or other items of output, whether in textual or graphical form, produced by or derived from the Services, including any reports on or representations of the Ordering Activity Content, Third Party Content or other content after processing or transformation in any manner by or pursuant to the Services.

**"Services"** means collectively or individually, the Application Services, the Support Services and/or the Professional Services.

**"Silver Support Services"** means those application support services more fully described in **Exhibit 2**.

**"Social Entities"** means the social entities identified by Ordering Activity in an Order Form for monitoring by the Application Services, which may include people, organizations or brands, keywords or data, or hashtags.

**"Social Media Sites"** means a social media website owned or operated by a third party, including without limitation Twitter, Facebook and LinkedIn.

**"Support Services"** means, as applicable, the Silver Support Services or the Platinum Fully Managed Services.

**"Term"** has the meaning given such term in Section 8.1.

**"Third Party Content"** means all data, social media content, posts, blogs, surveys, ratings, reviews, feedback or any other information collected or otherwise obtained from any website, including content obtained through Social Media Sites.

**"Use Restrictions"** means any use restriction that is specifically agreed to in an Order Form, which may include maximum annual Ordering Activity Content, authorized sources or maximum through-put.

**"ZeroFOX Products"** means the object code version of ZeroFOX proprietary software applications including all updates, upgrades, bug fixes and components as identified on the applicable Order Form.

**"ZeroFOX Platform"** means the applications accessible at the URLs <https://cloud.zerofox.com> or <https://recon.zerofox.com>, as applicable.

**EXHIBIT 1 SERVICE LEVEL AGREEMENT**

This **Exhibit 1** sets forth **Service Levels** governing the contractual relationship between ZeroFOX and the Ordering Activity. **SERVICE LEVEL STANDARDS:** The following defines service level standards for the Services:

Service/Activity	Service Level	Service Level Credit	Service Level Credit
Availability of the Services	The Services will be available to users for normal use 98.00% of the time each month, not including scheduled downtime. Scheduled downtime shall be for regular maintenance and upgrades, and will be communicated with at least 24 hours of notice. Any downtime that might require more than 2 hours will be scheduled at least 7 days in advance.	5% of the recurring monthly fee for the Services for the month of the failure.	Credit to be remitted to Customer following the agreed upon dispute date
Restore Time	In the event of unscheduled downtime the system shall be restored to a fully operational state within 48 hours.	5% of the recurring monthly fee for the Services for the month of the failure.	Credit to be remitted to Customer following the agreed upon dispute date
Resolution of Critical Malfunction	Failure to comply with the requirements with respect to Critical malfunctions in a month. Critical Malfunction shall mean a failure of the Software which severely impacts Customer's ability to provide service and which cannot be temporarily eliminated through the use of a "Bypass" or "Work Around."	5% of the recurring monthly fee for the Services for the month of the failure.	Credit to be remitted to Customer following the agreed upon dispute date

**EXHIBIT 2 SILVER SUPPORT SERVICES AGREEMENT**

1. This **Silver Support Services Agreement** (the "**Agreement**") is hereby incorporated into this Attachment A. **SILVER SUPPORT SERVICES.** During the Access Term, ZeroFOX agrees to perform for Ordering Activity the following support services (the "**Silver Support Services**"):
 

Phone or Email Support	Monday-Friday 9:00AM - 6:00PM
Annual Takedown Limit	Per Sales Order
Platform QuickStart (Setup & Onboarding)	Per Sales Order
Support Response Time	2 Days
Weekly Reporting	Included
Monthly Reporting	Included
Product Upgrades	Included
Additional FoxScript Development	\$1000/per FoxScript



Support Phone Number:  
[support@zerofox.com](mailto:support@zerofox.com)

1-855-ZFOX-FOX (1-855-9369369), Option 2

Support Email Address:

2. **“Social Entities”** which are identified by Customer, to represent people, organizations or brands, keywords or data, or hashtags, may not be changed without the prior written consent of ZeroFOX.
  
3. **Additional Professional Services.** Silver Support Services do not include managed services, on-site support, training, senior incident management support and technical analysis, implementation or documentation services (collectively, **“Professional Services”**). Any Professional Services to be provided will be included in an Order Form, with additional terms set forth in a Statement of Work. ZeroFOX shall be under no obligation to perform Professional Services until an Order Form and Statement of Work in relation thereto has been mutually executed.

**EXHIBIT 3 PLATINUM FULLY-MANAGED SERVICES AGREEMENT**

This **Platinum Fully-Managed Services Agreement** (the **“Agreement”**) is hereby incorporated into this Attachment A.

1. **PLATINUM FULLY-MANAGED SERVICES.** During the Access Term, ZeroFOX agrees to perform for Ordering Activity the following services (the **“Managed Services”**) if Ordering Activity has purchased such Managed Services:
  - a. ZeroFOX will monitor alerts provided by the Application Services for social entities that are identified by Ordering Activity, such as people, organizations or brands, keywords or data, or hashtags (each, a **“Social Entity”**). Ordering Activity will initially designate the specific Social Entities to be monitored by ZeroFOX, up to the number of Social Entities designated on the applicable Order Form. Social Entities may not be changed without the prior written consent of ZeroFOX. As part of the Managed Services, ZeroFOX will:
    - i. monitor the Social Entities defined in the Order Form;
    - ii. create FoxScript rules based on criteria established by Ordering Activity or ZeroFOX, as applicable;
    - iii. monitor alerts identified by the Application Services, and investigate and analyze such alerts;
    - iv. create an automated takedown process based on guidelines established by Ordering Activity;
    - v. submit takedowns to social media networks on behalf of Ordering Activity;
    - vi. make provision for token refreshing as needed; and
  - b. All Managed Services will be performed remotely unless otherwise set forth on an Order Form. ZeroFOX is under no obligation to perform on-site services as part of this Agreement.
  - c. ZeroFOX will provide commercially reasonable telephone and / or email support for problem determination and resolution during normal business days.
  - d. Summary of services are:

Phone or Email Support	Monday-Friday 8:00AM - 8:00PM EST
Dedicated Customer Success Expert	12 Hours/Quarter
Annual Takedown Limit	Per Sales Order
Platform QuickStart (Setup & Onboarding)	Per Sales Order
Support Response Time	Less Than 24 Hours
Weekly Reporting	Included
Monthly Executive Reporting	Included
Annual Personalized Training	Included
Annual Optimization & Tuning	Included

Data Export	Included
Product Upgrades	Included
FoxScript Development	1 Per Quarter

Support Phone Number:  
[support@zerofox.com](mailto:support@zerofox.com)

1-855-ZFOX-FOX (1-855-9369369), Option 2

Support Email Address:

**ZOOMINFO**  
**805 BROADWAY ST, SUITE 900**  
**VANCOUVER, WA 98660**

### **ZoomInfo License Terms and Conditions**

BY AGREEING TO A DOCUMENT INCORPORATING THESE ZOOMINFO LICENSE TERMS AND CONDITIONS ("THE TERMS") (AN "ORDERING DOCUMENT") ZOOMINFO AND LICENSEE AGREE THAT THESE TERMS SHALL GOVERN THE RELATIONSHIP BETWEEN THE PARTIES AS TO ANY ZOOMINFO PRODUCTS OR SERVICES PROVIDED OR TO BE PROVIDED TO LICENSEE AS SET FORTH IN SUCH ORDERING DOCUMENT. THESE TERMS CONSTITUTE THE AGREEMENT OF THE PARTIES AS TO THE SUBJECT MATTER HEROF AND ARE REFERRED TO COLLECTIVELY HEREIN AS THE "AGREEMENT."

Licensee and ZoomInfo agree as follows:

"ZoomInfo" means ZoomInfo Technologies LLC or one of its affiliates, as set forth in the Ordering Document.

"Licensee" means the party to whom ZoomInfo is to provide products or services pursuant to the Ordering Document (whether identified as "licensee", "customer", "client" or similar designation in the Ordering Document). If "Licensee" includes more than one legal person, the obligations imposed upon each shall be joint and several. The act of, notice from or to, or signature of any one or more of the persons included within "Licensee" shall be binding on all such persons with respect to all rights and obligations under this Agreement, including but not limited to any renewal, extension, termination or modification of this Agreement.

#### **1. SUBSCRIBED SERVICES, GRANT OF LICENSE**

- 1.1** ZoomInfo, directly or through an affiliate, agrees to provide to Licensee the products and/or services set forth in the Ordering Document (the "Services"). The Services may include information (the "Licensed Materials"), access to and/or use of software or other technology (the "ZoomInfo Technology"), or other services including premium support. Specific Services may be defined by and are subject to the Services Definitions and Service-Specific Terms and Conditions included with the Ordering Document. ZoomInfo will make the Services available to the Licensee via password-protected online access accessible by Licensee with usernames and passwords, via an application programmer interface ("API"), or as otherwise mutually agreed by the parties. Subject to the terms and conditions herein, ZoomInfo grants to Licensee a nonexclusive, non-transferrable license to access and use the Services in accordance with this Agreement and during the Term of this Agreement.
- 1.2** The Services will be provided as they exist and are updated and amended throughout the Term. Information provided as part of any Licensed Materials may be updated on an ongoing basis and provided according to the criteria used to define the scope of the subscribed Services. Licensee understands and acknowledges that the contents of Licensed Materials will change over time as the data is updated, and that at any given time it has a right to access and use the data to which it is subscribed as it exists at that time. Features and functions of the ZoomInfo Technology are provided "as is". ZoomInfo shall have no liability to Licensee for any modification to any Service, provided that the product or service provided substantially conforms to the description in the Ordering Document.
- 1.3** Ownership. Licensee acknowledges and agrees that, as between Licensee and ZoomInfo, the Licensed Materials, the ZoomInfo Technology, and any related documentation (including, without limitation, the content, layout, functions, design, appearance, trademarks, service marks, copyrights, patents, and other intellectual property comprising the Licensed Materials or ZoomInfo Technology) are the property of ZoomInfo, whether or not they are trademarked, copyrighted, or patented. Licensee acknowledges and agrees that this Agreement does not transfer any ownership, right, title, or interest in the Licensed Materials or ZoomInfo Technology, nor any part thereof, except the limited license provided hereunder, and Licensee expressly disclaims and waives any and all claims to any ownership interest in any such information or materials. This includes, without limitation, any Licensed Materials that Licensee downloads, prints, saves, or incorporates into other materials. Licensee further acknowledges and agrees that the Licensed Materials, in whole or in part, are unique, special, and valuable. Subject to the limited rights expressly granted hereunder, ZoomInfo, its affiliates and/or its licensors reserve all right, title, and interest in and to the Licensed Materials and ZoomInfo Technology, including all related intellectual property rights. No rights are granted to Licensee hereunder other than as expressly set forth herein.
- 1.4** Third-Party Applications. "Third-Party Applications" means computer software programs and other technology that are provided or made available to Licensee or Authorized Users by third parties, including those with which the ZoomInfo Technology may interoperate, including, for example, Licensee's CRM, marketing automation software, or sales enablement software, if any. ZoomInfo is not responsible for and does not endorse any Third-Party Applications or websites linked to by ZoomInfo Technology.

- 1.5 Quality Guarantee, Availability. A "Licensed Materials Contact" means a record regarding a natural person, consisting of at a minimum such person's name and company affiliation, contained in ZoomInfo's database and made available to Licensee as part of any of the Services. If at any time during the Term more than 5% of the Licensed Materials Contacts are not employed by (or similarly affiliated with) the specified company, then upon notice from the Licensee, ZoomInfo shall have 30 days to correct the Licensed Materials in order to make them at least 95% accurate.
- 1.6 Support. ZoomInfo will provide reasonable assistance and ongoing support to assist Licensee and Authorized Users in accessing the Licensed Materials. ZoomInfo will make its personnel available by email, online chat, or phone for feedback, problem solving, or general questions between the hours of 5:00 a.m. and 5:00 p.m. Pacific Time (Monday – Friday) and will make reasonable efforts to acknowledge support requests within 24 business hours. Premium support services are subject to any service-specific terms and conditions included with the Ordering Document.

## 2. AUTHORIZED USE OF LICENSED MATERIALS AND ZOOMINFO TECHNOLOGY, RESTRICTIONS

- 2.1 Authorized Users. Licensee shall be entitled to designate persons as Authorized Users up to the number of Authorized Users subscribed as stated in the Ordering Document. Each Authorized User will be provided a unique username and password. Such usernames and passwords may not be shared and may not under any circumstances be used by anyone who is not an Authorized User. If any Authorized User's login credentials are disclosed to any person who is not an Authorized User but who would satisfy the qualification requirements of Section 2.2 hereof, ZoomInfo may, upon notice to Licensee, deem such sharing to be Licensee's subscription to the number of additional Authorized Users equal to the number of persons to whom such credentials were disclosed. Licensee shall be responsible for compliance with the terms of this Agreement by all Authorized Users, including, without limitation, the restrictions on use and transfer of Licensed Materials set forth herein. Licensee acknowledges and agrees that Authorized Users must provide ZoomInfo with certain identifying information, including their name and a business email address.
- 2.2 Qualification of Authorized Users. Licensee shall not designate any person as an Authorized User unless such person is: (1) a natural person and (2) an employee of Licensee. Licensee may designate a non-employee (i.e., an independent contractor) as an Authorized User provided Licensee takes reasonable steps to ensure such non-employee uses the Services only as permitted under this Agreement. If the employment of any Authorized User that was in effect as of the date such person was designated as an Authorized User terminates, such person's authorization to access the Services shall be revoked automatically without any further action by ZoomInfo. In the event of a termination as described in the previous sentence, Licensee shall promptly notify ZoomInfo and take all reasonable steps to ensure that such person ceases accessing the Services. Licensee may reassign Authorized User designations at any time subject to the foregoing qualification requirements.
- 2.3 Authorized Uses, Restrictions. Licensee shall not access or use the Services for any purpose except the business-to-business sales, marketing, recruiting, or business development activities of Licensee. Licensee shall not access or use the Licensed Materials for the benefit of or on behalf of any person or entity except Licensee. Subject to Licensee's compliance with all applicable laws, rules, and regulations, Licensee may use the Services to: (i) view the Licensed Materials; (ii) communicate with any Licensed Materials Contact in a manner that relates to such person's profession, business, or employment; and (iii) identify prospective sales opportunities, research Licensee's existing customers and prospects, and otherwise analyze the Licensed Materials in a manner relating to Licensee's business-to-business sales, marketing, recruiting, and business development activities. Licensee shall not permit anyone who is not an Authorized User to access or use the Services, including any Licensed Materials or any Authorized User login credentials. Licensee shall not distribute, sublicense, transfer, sell, offer for sale, disclose, or make available any of the Licensed Materials or any part of the Services to any third party. Licensee shall not incorporate any portion of the Services or Licensed Materials into Licensee's own products or services. Upon expiration or termination of this Agreement for any reason, Licensee shall cease accessing the Services and shall cease using the Licensed Materials in any way. Notwithstanding the foregoing, where Licensee has, through using the Licensed Materials in a manner permissible under this Agreement, received responsive communication from a Licensed Materials Contact, Licensee shall not be required to delete such Licensed Materials Contact record upon expiration or termination hereof, and may continue to use such information in a manner otherwise consistent with this Agreement. Licensee is solely responsible for any communications between Licensee or any Authorized User and any Licensed Materials Contact.
- 2.4 Permitted Use of ZoomInfo Technology, Restrictions. Licensee is permitted to use the ZoomInfo Technology solely for the purpose of accessing and using the Licensed Materials as permitted by this Agreement. Licensee will not (i) reverse assemble, reverse engineer, decompile, or otherwise attempt to derive source code from any of the ZoomInfo Technology; (ii) reproduce, modify, create, or prepare derivative works of any of the ZoomInfo Technology or related documentation; (iii) distribute or display any of the ZoomInfo Technology or related documentation other than to Authorized Users; (iv) share, sell, rent, or lease or otherwise distribute access to the ZoomInfo Technology, or use the ZoomInfo Technology to operate any timesharing, service bureau, or similar business; (v) create any security interest in the ZoomInfo Technology; (vi) alter, destroy, or otherwise remove any proprietary notices or labels on or embedded within or on the ZoomInfo Technology or related documentation; (vii) disclose the results of any ZoomInfo Technology or program benchmark tests to any third parties without ZoomInfo's prior written consent; or (viii) use automated means, such as bots or crawlers, to access any

ZoomInfo Technology or extract information therefrom (except such means as are included within the ZoomInfo Technology, such as Integration Tools, or such other means as are expressly approved in advance in writing by ZoomInfo). Licensee may use ZoomInfo Technology only in accordance with this Agreement and not for the benefit of any third party, except with ZoomInfo's express prior written permission.

- 2.5 Limitations on Use of the Services. Licensee shall use the Services in a responsible and professional manner consistent with the intended and permissible uses herein and consistent with standard industry practice. Licensee shall not override or circumvent, or attempt to override or circumvent, any security feature, control, or use limits of the ZoomInfo Technology. Licensee will not use the Licensed Materials or ZoomInfo Technology for commercial purposes not permitted under this Agreement and shall not designate any person as an Authorized User if Licensee has reason to believe such person is likely to use the Services on behalf of a third party or otherwise in violation of this Agreement. ZoomInfo uses technological means to place reasonable use limits to prohibit excessive use, including excessive downloads or screen views that indicate a violation of this Agreement, such as sharing with third parties or attempting to circumvent limitations to purchased credits (if applicable).
- 2.6 Identification of Licensed Materials. Licensee shall not integrate Licensed Materials into any CRM, marketing automation, or sales enablement system for the purpose of allowing persons who are not Authorized Users to access or use the Licensed Materials. Any Licensed Materials that are downloaded and/or integrated into any CRM system must be maintained with identifying information indicating that such materials originated with ZoomInfo by, for example, maintaining a lead source of "ZoomInfo."
- 2.7 Reserved.

### 3. TERM AND TERMINATION

- 3.1 Term. The Initial Term of the Agreement is that which is set forth in the Ordering Document (together with any period of extension under Section 3.2 hereof, the "Term"). The Agreement shall remain in effect until it expires or is earlier terminated according to its terms or the terms and conditions of the GSA Multiple Award Schedule (MAS) Contract, as applicable.
- 3.2 Automatic Extension of the Term. Reserved.
- 3.3 Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the dispute clause of the GSA MAS Contract. During any dispute, ZoomInfo shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
- 3.4 Effect of Termination.
  - 3.4.1 Expiration or Termination for any Reason. Upon expiration or termination of this Agreement for any reason, Licensee acknowledges and agrees that its access to the Licensed Materials may be automatically terminated, all passwords and individual accounts removed, and all information that has been uploaded into ZoomInfo's systems by Licensee destroyed. Upon expiration or termination of this Agreement for any reason, unless otherwise provided herein, Licensee agrees to destroy any and all copies of Licensed Materials and any information it has obtained from the Licensed Materials, whether in hard copy or electronic form.
  - 3.4.2 Termination by ZoomInfo. Reserved.
  - 3.4.3 Termination by Licensee. If this Agreement is terminated by Licensee, ZoomInfo shall promptly refund the pro-rata amount of any pre-paid Subscription Fees attributable to periods after the date of such termination.

### 4. FEES AND TAXES

- 4.1 All undisputed amounts payable by Licensee under this Agreement will be paid to ZoomInfo without setoff or counterclaim, and without any deduction or withholding. ZoomInfo's acceptance of partial payment or any payment of less than the full amount payable at any given time shall not constitute a waiver or release of ZoomInfo's right to unpaid amounts.
- 4.2 Reserved.

- 4.3 The GSA MAS Contractor shall state separately on the quote and invoice taxes excluded from the fees and the Licensee agrees either to pay the amount of the taxes or provide evidence necessary to sustain an exemption in accordance with GSAR 552.212-4(k).

## 5. DATA PROTECTION AND CONFIDENTIALITY

- 5.1 Licensee acknowledges and agrees that ZoomInfo will operate in accordance with its published Privacy Policy (available at [ZoomInfo.com/privacy-policy/](https://ZoomInfo.com/privacy-policy/) or as ZoomInfo may otherwise indicate), which is attached hereto.
- 5.2 "Confidential Information" of a party means such party's (or its affiliate's): inventions, discoveries, improvements, and copyrightable material not yet patented, published, or copyrighted; special processes and methods, whether for production purposes or otherwise, and special apparatus and equipment not generally available or known to the public; current engineering research, development, design projects, research and development data, technical specifications, plans, drawings and sketches; business information such as product costs, vendor and customer lists, lists of approved components and sources, and sales and profit or loss information not yet announced or not disclosed in any other way to the public; and any other information or knowledge not generally available to the public. "Confidential Information" does not include the Licensed Materials (which are subject to other restrictions under this Agreement) nor otherwise include business contact or firmographic information regarding third parties. All business terms of this Agreement, including, but not limited to, pricing and access, shall be considered Confidential Information of ZoomInfo.
- 5.3 Each party shall keep in confidence all Confidential Information of the other party obtained prior to or during the Term of this Agreement, and shall protect the confidentiality of such information in a manner consistent with the manner in which such party treats its own confidential material, but in no event with less than reasonable care. Without the prior written consent of the other party, a party shall not disclose or make available any portion of the other party's Confidential Information to any person, firm, association, or corporation, or use such Confidential Information, directly or indirectly, except for the performance of this Agreement. The foregoing restrictions shall not apply to Confidential Information that: (a) was known to such party (as evidenced by its written record) or was in the public domain prior to the time obtained by such party; (b) was lawfully disclosed to such party by a third party who did not receive it directly or indirectly from such party and who is under no obligation of secrecy with respect to the Confidential Information; or (c) became generally available to the public, by publication or otherwise, through no fault of such party. The parties shall take all necessary and appropriate steps in order to ensure that its employees and subcontractors adhere to the provisions of this section. All Confidential Information shall be returned to the disclosing party or destroyed upon receipt by the receiving party of a written request from the disclosing party. ZoomInfo recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by ZoomInfo provided that prior to any such release or disclosure ZoomInfo will be notified and allowed to object or narrow the scope of the disclosure.
- 5.4 Personal Information. To the extent that either party transmits or receives personal information under this Agreement, such party shall comply with all applicable laws, rules, and regulations regarding privacy and the lawful processing of personal information. To the extent that personal data obtained by Licensee under this Agreement is subject to the E.U. General Data Protection Regulation (the "GDPR"), each party agrees that it is a "controller" with respect to such data as defined in the GDPR and agrees to comply with all applicable provisions. Within the ZoomInfo Technology, ZoomInfo may publish a list of persons who have requested that their personal information be removed from ZoomInfo's database. Licensee agrees to review such list on a regular basis (no less frequently than once per month) and to remove from its possession any Licensed Materials Contact records relating to such persons in its possession, unless Licensee has established an independent lawful basis to process such person's personal information.
- 5.5 Data Cleansing, Matching, and Related Requests. Licensee acknowledges that, through the use of Integration Tools or otherwise, Licensee may have the opportunity to transmit business contact information to ZoomInfo for purposes of matching, cleansing, or updating records with information from ZoomInfo's database. In the event such information is transmitted to ZoomInfo, ZoomInfo will make commercially reasonable efforts consistent with its research protocols and priorities, to respond to match and clean and append requests by researching and/or verifying business contact information so submitted and supplementing ZoomInfo's commercial database with information ZoomInfo is able to verify.

## 6. REPRESENTATIONS AND WARRANTIES

- 6.1 Each party represents and warrants that: (1) it is duly organized and validly existing and authorized to do business in the jurisdictions where it operates; and (2) it has the requisite power and authority to enter this Agreement and entering and complying with its obligations under this Agreement does not violate any legal obligation by which such party is bound.
- 6.2 Licensee represents and warrants, and covenants that it will not, in connection with this Agreement, including its use of or access to the Services, engage in, encourage, or permit conduct that violates or would violate any applicable law, rule, or regulation or any right of any third party.

## 7. REMEDIES

7.1 Remedies not Exclusive. No remedy provided in this Agreement shall be deemed exclusive of any other remedy that a party may have at law or in equity unless it is expressly stated herein that such remedy is exclusive.

7.2 Provisional Remedies. Each party recognizes that the unauthorized disclosure of Confidential Information or, as to Licensee, Licensed Materials, may cause irreparable harm to the other party for which monetary damages may be insufficient, and in the event of such disclosure, such other party shall be entitled to seek an injunction, temporary restraining order, or other provisional remedy as appropriate without being required to post bond or other security.

7.3 Reserved.

8. Reserved.

## 9. INDEMNIFICATION

9.1 Reserved.

9.2 ZoomInfo shall indemnify Licensee for any damages finally awarded by any court of competent jurisdiction against Licensee in, or for amounts paid by Licensee under a settlement approved by ZoomInfo in writing of, any legal proceeding brought by a third party alleging that the Licensed Materials or ZoomInfo Technology infringes upon or violates the intellectual property rights of any such third party. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

9.3 As a condition to any right to indemnification under this agreement, the indemnified party must (a) promptly give the indemnifying party written notice of the claim or proceeding, (b) give the indemnifying party sole control of the defense and settlement of the claim or proceeding (except that the indemnifying party may not settle any claim or proceeding unless it unconditionally releases the indemnified party of all liability), and (c) give the indemnifying party all reasonable assistance, at the indemnifying party's expense. This section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any claim or proceeding subject to indemnification hereunder.

## 10. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR INSTANCES OF A PARTY'S OR ITS AGENT'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, EXEMPLARY, MULTIPLE, INDIRECT, CONSEQUENTIAL, SPECIAL, OR LOST PROFITS DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ZOOMINFO'S MAXIMUM LIABILITY TO LICENSEE SHALL BE THE AMOUNTS ACTUALLY PAID TO ZOOMINFO BY LICENSEE UNDER THIS AGREEMENT. EXCEPTING LIABILITY ARISING FROM LICENSEE'S OR ITS AGENT'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OR LICENSEE'S INDEMNIFICATION OBLIGATIONS HEREUNDER, LICENSEE'S MAXIMUM LIABILITY TO ZOOMINFO HEREUNDER SHALL BE TWO TIMES (2X) THE AMOUNT OF THE SUBSCRIPTION FEE. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from ZoomInfo's gross negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## 11. DISCLAIMER AND EXPRESS WARRANTIES

ZOOMINFO WARRANTS THAT THE SERVICES, LICENSED MATERIALS, AND THE ZOOMINFO TECHNOLOGY WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR ACCEPTANCE, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE SERVICES, LICENSED MATERIALS, AND THE ZOOMINFO TECHNOLOGY WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT FOR ANY EXPRESS REPRESENTATIONS AND WARRANTIES STATED HEREIN, THE LICENSED MATERIALS, ZOOMINFO TECHNOLOGY, AND ANY OTHER SERVICES ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, AND NEITHER PARTY MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER AND EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. NEITHER PARTY WILL HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF THE OTHER PARTY TO ANY THIRD PARTY.

## 12. AUDIT



During the Term of this Agreement and for a period of two (2) years after its expiration or termination, Licensee shall maintain complete and accurate records of Licensee's use of the Licensed Materials and ZoomInfo Technology sufficient to verify compliance with this Agreement. Subject to Government security and other requirements, Licensee shall permit ZoomInfo and its auditors, upon reasonable advance notice and during normal business hours, to examine such records and any systems used by Licensee in connection with the Licensed Materials. The scope of any such audit will be limited to verification of Licensee's compliance with the terms of this Agreement. Any audit performed under this paragraph shall be at ZoomInfo's expense.

### 13. MISCELLANEOUS PROVISIONS

- 13.1 Marketing. To the extent permitted by the GSAR 552.203-71, Licensee hereby authorizes ZoomInfo to use Licensee's name for its marketing efforts unless and until such authorization is revoked in writing.
- 13.2 Assignment. No rights or obligations under this Agreement may be assigned or delegated without the prior written consent of the other party, and any assignment or delegation in violation of this section shall be void.
- 13.3 Notices. Licensee shall provide an email address for notices under this Agreement. All notices or other communications permitted or required to be given hereunder shall be sent by electronic mail to the email address provided by the other party for such purpose and shall be deemed given when sent. Notices to ZoomInfo shall be sent to legal@ZoomInfo.com. If Licensee fails to provide an email address for notices, ZoomInfo may provide notices hereunder by any means reasonably calculated to provide Licensee with actual notice thereof.
- 13.4 Governing Law, Jurisdiction. This Agreement shall be construed in accordance with and governed for all purposes by federal law.
- 13.5 Currency. Reserved.
- 13.6 Suggestions and Feedback. ZoomInfo shall have a royalty-free, worldwide, transferable, sub-licenseable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Licensee, including Authorized Users, relating to the operation of the Services.
- 13.7 Reserved.
- 13.8 Amendment. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of ZoomInfo and Licensee.
- 13.9 Force Majeure. Reserved.
- 13.10 Government Contracting. The Services were developed exclusively at private expense and no part of the Services were first produced in the performance of a United States Government ("Government") contract. Accordingly, all Services and any derivative work are "commercial items" as that term is defined in 48 C.F.R. 2.101. Government and Government Authorized Users may access and use the Services with only those rights set forth in this Agreement in accordance with 48 C.F.R. 12.212(b). Use of the Services is restricted in accordance with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, and 48 C.F.R. § 227.7102-2, as applicable. This Government rights clause is in lieu of, and supersedes, any Federal Acquisition Regulations ("FAR"), the Defense FAR Supplement ("DFARS"), or other clause or provision that addresses Government rights in computer software or technical data. In addition, no provisions or clauses of the FAR, the DFARS, any other Government Agency FAR supplement, or any state or local government contract, laws or regulations may be "flowed down" or deemed in any way to apply to the Services without ZoomInfo's prior written consent, which consent may be granted, withheld, or conditioned in ZoomInfo's sole discretion. Use for or on behalf of the Government is permitted only if the party acquiring or using the Services is properly authorized to do so by an appropriate Government official.

## ZOOMINFO PRIVACY POLICY

Updated: August 22, 2021

ZoomInfo understands that you care about how information about you is used. This Privacy Policy (the “**Policy**”) explains how we collect information pertaining to businesses and business people (“**Business Information**”) and all other types of information, including personal information, through our online services (the “**Services**”), website, and mobile applications (collectively with the Services, the “**Site**”); how we maintain, use, and share that information; and how you can manage the way information about you is handled.

“**ZoomInfo**” for purposes of this Privacy Policy includes DiscoverOrg Data, LLC, a Delaware limited liability company, and its affiliates, including Zoom Information, Inc.

For individuals residing in the EEA, the UK, or Switzerland, please [click here](#) to find out more information.

For residents of the State of California, please [click here](#) to find out more about your rights under the California Consumer Privacy Act of 2018 (“**CCPA**”).

### I. How we Collect Information

#### A. Where does ZoomInfo get the Business Information for its Business Profiles?

ZoomInfo creates profiles of business people and companies, which we call “**Business Profiles**,” from different sources. Once we have collected Business Information about a person or company, we combine multiple mentions of the same person or company into a Business Profile. The resulting directory of Business Profiles (the “**Directory**”) is then made available to the users of the Site and our customers and strategic partners. Business Information that may be provided in a Business Profile includes name, email address, job title and department, phone number, company name, postal address of company and business-related postal address of the person, employment history, and education history. Business Profiles may also include links to articles by, about, or quoting an individual and links to an individual’s social media profiles.

ZoomInfo obtains the data for its Business Profiles in several ways, including:

1. Our search technology scans the web and gathers publicly-available information.
2. We license information from other companies.
3. Users contribute Business Information about themselves or other people and companies. (See “ZoomInfo Community Edition,” below)
4. Through market research surveys and phone interviews conducted by our in-house research team.

ZoomInfo also makes certain limited Business Information from its Business Profiles publicly available in our directory pages on our Site (the “**Public Directory**”). The categories of Business Information that may be made available in the Public Directory include past or current name, company, company headquarters telephone number, office address, job title, and/or education information.

#### B. How does the ZoomInfo Community Edition and the ZoomInfo Contact Contributor Work?

ZoomInfo offers a service called ZoomInfo Community Edition (“**Community Edition**”). To subscribe to Community Edition, you are required to install software offered on the Site, known as the ZoomInfo Contact Contributor (the “**Software**”) or otherwise provide ZoomInfo with access to your email account. When you subscribe to Community Edition, you allow ZoomInfo to access certain Business Information stored by the application that your computer uses to manage your email and contacts, known as an “email client” (e.g., Microsoft Outlook) or stored by a provider of cloud services for email (e.g., Google Apps). If required to access this Business Information stored on your computer’s email and contact application(s), you may need to provide ZoomInfo with the necessary username and password information. We use this Business Information to improve the size and quality of our Directory. In exchange for allowing this access, you receive a subscription to Community Edition at no charge under specified terms and conditions (available at [/about-zoominfo/ce-terms-conditions](#)).

From the contacts within your email client and “signatures” within email messages, we collect the following Business Information, if available, for each person:

- Name
- Email address
- Job title and department
- Business phone numbers (general, direct, and fax)
- Company name
- Postal address of company
- Business related postal address of person
- Corporate website URLs
- Social Networking URLs

From the headers of your emails, we collect the following Business Information, if available:

- Metadata such as Internet Protocol addresses and the dates email messages are sent or received
- Email addresses, names, and job titles of recipients and senders

To ensure the integrity of the Directory, we take the following steps:

- Business Information Only – ZoomInfo only wants business-related information. Therefore, any contacts that have an address from a consumer-oriented service such as Gmail, Hotmail, or Yahoo are disregarded.
- Unattributed – We do not disclose who contributed particular information using the ZoomInfo Contact Contributor software or other contribution methods. (The only exceptions: See “Disclosures to Service Providers,” “Disclosures for Legal Reasons,” and “Disclosures to a Buyer of the Company,” below.)
- Opt Out – Anyone added to the Directory may request to be removed at any time, via email, web, or a toll-free number. We promptly honor such requests.

ZoomInfo does not “read” the body of your email messages; our technology automatically extracts only the data we describe in this Policy. We do not collect data from custom fields or notes in your email client.

Information from your email client will continue to be shared as described above as long as the Software remains installed. If you choose to stop sharing information from your email client with ZoomInfo, you can uninstall the Software at any time following the instructions at [/cefaq](#). You may not, however, retroactively “unshare” the Business Information you have already made available to ZoomInfo.

### C. Customer Information

**Customer Information Collected.** ZoomInfo may collect the following information from or regarding its customers: (1) personal contact information regarding users of the Services (“**User Information**”); (2) information uploaded to our system by a user of the Services (“**Uploaded Information**”); and (3) usage logs regarding the use of the Site and Services, including logins and other actions taken, time stamps, IP address, and other usage data (“**Usage Logs**”) (collectively, “**Customer Information**”).

You may be a user that has been provided access to the Site through your company license agreement. Your employer may require that one or more users have global rights to access any and all information of every user that has access through the company. If you have questions or concerns regarding the rights of other individuals in your company to access your User Information, Uploaded Information, or Usage Logs, you should raise those concerns with the appropriate person at your company.

**Use of Customer Information.** Customer Information may be used for ZoomInfo’s legitimate business interests in connection with your use of the Site, including to respond to user inquiries and fulfill user requests, complete transactions, provide customer service, send administrative information, and to personalize user experience with the Site. We may use Customer Information to better understand our users in general and to improve the content and functionality of the Site. We may use Customer Information to contact you in the future to tell you about services, promotions, opportunities, and other general information about ZoomInfo we believe will be of interest to you. We may use Customer Information to investigate and prosecute potential breaches of ZoomInfo’s security or license agreements.

ZoomInfo will not disclose Customer Information to any third party except in connection with a legitimate use as set forth herein, in connection with a bona fide legal dispute to which such information is relevant, in response to valid, compulsory legal process, or as otherwise required by law. ZoomInfo will, whenever possible, obtain confidentiality agreements from any person or entity to whom Customer Information is disclosed and ensure any recipients are committed to employing appropriate technological security measures.

ZoomInfo employs reasonable security and back-up procedures to protect Customer

Information. However, in the unlikely event there is a loss or corruption of Customer Information, ZoomInfo is not responsible or liable for such loss or corruption. We encourage our users to retain copies of all Uploaded Information on their own system. **D. How else does ZoomInfo Collect**

### Information?

**When you submit information through our Site.** Visitors to our Site may choose to submit their name, email address, phone number, and/or other information so that they can learn more about our Services, register to take part in a ZoomInfo-sponsored event, participate in a survey, contest, or sweepstakes, or apply to ZoomInfo’s open job positions, among other things. By accessing, using, and/or submitting information through the Site, you consent to the practices described in this Policy with regard to the information collected thereby as described herein. If you do not agree with this Policy, you should not submit any information through our Site and you must delete all cookies from your browser cache after visiting the Site and refrain from visiting or using the Site.

**When you manage your Business Profile.** ZoomInfo allows you to claim your Business Profile and to update the information listed about you in your Business Profile, including your name, job title, business email address, direct phone number, current and past employment information, and education history. We use the information you submit to update your Business Profile solely for purposes of verifying your identity, updating your Business Profile information, and honoring your privacy preferences. For additional information, see the “Your Choices” section below.

**When you use our Services.** In order to use certain ZoomInfo Services, you may be required to register as a user. From time to time, we may use your email address to send you information and keep you informed of products and services in which you might be interested. You will always be provided with an opportunity to opt out of receiving such emails. Your contact information may also be used to reach you regarding issues concerning your use of our Services or Site, including changes to this Policy. A more detailed description of how we may collect and use customer information can be found in the “Customer Information Collected” section above.

**When you provide information to our customers.** We receive information about our customers’ end-users from or on behalf of our customers. Because of the nature of our Services, this information may contain any type of data, but typically includes name, contact information, and company information, such as company name. We may also collect data about you automatically through your use of our Services, as described in the “Cookies and Similar Technologies” section below. If you are a visitor to or user of a website, application, or service on which a customer uses our Services, then any information that you provide through our Services is subject to the customer’s privacy policy and applicable terms. When we provide our Services to a customer, we act as a “data processor,” and the customer is considered to be the “data controller,” as further described in the “When ZoomInfo is a Controller” and “When ZoomInfo is a Processor” sections below.

**When you refer a friend.** If you choose to use our referral service to invite a friend to join ZoomInfo, we will ask you for your friend’s name and email address. We will automatically send your friend a one-time email inviting him or her to visit the Site. ZoomInfo will use this information for the sole purpose of sending this one-time email and will not store your friend’s name or email address.

**When you purchase our products and Services.** If you purchase one of our online subscriptionbased Services, you will need to provide credit card information. We will use that information solely for the purpose of fulfilling your ZoomInfo purchase request. We will store credit card information in an encrypted form and will not sell, share, or use it again without your prior consent. (The only exceptions are described in the sections below on “Disclosures to Service Providers,” “Disclosures for Legal Reasons,” and “Disclosures to a Buyer of the Company”).

**When you use Chorus.** Our data analytics tools and capabilities enable our customers to collect, store, analyze, and share the contents of audio, video, image, and text-based communications such as phone calls, video calls, emails, chats, webinars, and meetings, along with associated data and documentation. These recordings and analysis thereof may also contain Business Information or personal information, such as names, titles, and contact information. We may reproduce, analyze, summarize, and disclose these files, recordings, and any results of our Services with such customers and their relevant personnel and other team members, and customers may share this information with their personnel or others. We may collect biometric information of Chorus customers when such customers have provided us with their consent to do so. The collection and use of such biometric information are governed by our [Biometric Privacy Notice](#) in addition to this Policy.

**When you use our mobile applications.** When you download and use our mobile applications, we collect certain information from you including your device type, operating system, location, platform used, device ID, and the date you last used the app, among other non-personally identifiable information. We may also collect other information such as your name, email, company name, and information about your account with us. If you use our mobile app calendar integration, certain information will be collected from your calendar meetings, including meeting participants, meeting description, subject, and date and time of the meeting.

This information is collected to provide you with certain app features, such as meeting briefs with meeting and contact details within the app.

**When you use ZoomInfo Integrations.** As part of the Services, ZoomInfo may make available to its customers certain “Integrations.” In using ZoomInfo’s Integrations, such as ZoomInfo’s SFNA and web browser extensions, Business Information from customer’s CRM, MAT, or sales enablement software may be transmitted to ZoomInfo for purposes of matching or cleansing the customer’s data against ZoomInfo’s database as a feature of the Services. In that event, ZoomInfo may retain and store such Business Information for purposes of identifying potential contacts to supplement the Services, verifying the accuracy of such Business Information, removing out-of-date Business Information from the Services, or otherwise improving ZoomInfo’s research processes and the content provided through the Services. Information so received will not be attributable to the source. In the event that any customer wishes to opt out of ZoomInfo’s use of such information, they may do so by visiting the ‘Privacy Center’ within the ZoomInfo Salesforce Native Application and adjusting the appropriate controls.

**When you connect the Services to your email or calendar.** In order to provide certain Services,

ZoomInfo may require access to your email account and/or calendar (e.g., through G-Suite or Office 365). Depending on the specific Services being used, we may collect email header information, email subjects, email bodies and attachments, and calendar meeting information such as meeting participants, meeting description, subject, and date and time of the meeting. Customers have control over what data is collected, including which mailboxes are connected, whether message attachments or content is collected, and which emails or email domains should not be collected. ZoomInfo’s access to and use of information received from Google Accounts will adhere to the [Google API Services User Data Policy](#), including the Limited Use requirements.

**From third parties.** ZoomInfo may obtain information about you from third-party sources such as our service providers and strategic partners. We may use this information to enhance the information that we already maintain about you and to improve the accuracy of our records, in addition to other purposes described in this Policy.

**Creation of aggregated information.** ZoomInfo may aggregate collected information about our users in a form that does not allow users to be personally identified for the purpose of understanding our customer base and enhancing the Site and the Services that we and our strategic partners and customers can provide you.

**Creation of information from inferences.** We may use the information we already have about you in order to draw inferences about you or to produce scores or ratings such as the Likely to Listen score. We use scoring models and algorithms that evaluate selected data points to produce a score predicting the likeliness of a candidate to respond to a recruiter’s outreach efforts. We do not make any decisions about individuals, and we do not tell our customers whether to reach out to a particular candidate or not.

**Automated information collection.** We also collect information using cookies, as described below under the “Cookies and Similar Technologies” section.

## II. How we Use Information

In addition to the uses described in the above section, we may also use information for one or more of the following purposes:

- Provide, maintain, and improve the Site
- Verify, cleanse, update, and maintain Business Information and other information provided through the Site
- Provide and deliver the Services you request, process transactions, and send you related information, including communications and invoices
- Send you technical notices, updates, security alerts, and support and administrative messages
- Respond to your comments, questions, and requests, and provide customer support
- Create your ZoomInfo account and identify you when you sign in to your account
- Communicate with you about products, services, offers, promotions, rewards, and events offered by ZoomInfo and others, and provide news and information we think will be of interest to you
- Monitor and analyze trends, usage, and activities in connection with the Site
- Detect, investigate, and prevent fraud and other illegal activities
- Protect the rights and property of ZoomInfo, our customers, and others
- Personalize and improve the Site
- Notify you about important changes to the Site, including changes or updates to this Privacy Policy
- Facilitate contests, sweepstakes, and promotions, process entries, and deliver rewards
- Consider you for possible employment with ZoomInfo in connection with an application that you submit through the Site, and communicate with you about your application
- Create aggregated statistical data, inferred non-personal data, or anonymized or pseudonymized data (rendered non-personal and non-identifiable), which we or our business partners or customers may use to provide and improve our respective services
- Comply with our contractual and legal obligations, resolve disputes with users, and enforce our agreements
- Carry out any other purpose described to you at the time the information was collected

## III. How we Share Information

**Disclosures of Business Profiles.** We may make any Business Information that our users contribute for inclusion in our Directory, that we collect from public web sources, that we collect through market research surveys and phone interviews conducted by our in-house research team, or that we license from third parties available to users of the Site, to our strategic partners, and to our customers. If you provide information, including Business Information, in creating or updating your Business Profile, that information will be included in the Directory and thus can be viewed by third parties.

**Disclosures via Public Directory.** ZoomInfo makes certain limited Business Information from its

Business Profiles publicly available in our Public Directory on our Site. The categories of Business Information that may be made available in the Public Directory include past or current name, company, company headquarters telephone number, office address, job title, and/or education information. Information in the Public Directory is publicly available to visitors who visit our Public Directory webpages on our Site.

**Disclosures to Affiliates.** We may share Business Information with our affiliates who may act for us for any of the purposes set out in this Privacy Policy, including our current and future parents, subsidiaries, and other companies under common control and ownership with ZoomInfo.

**Disclosures to Service Providers.** ZoomInfo may from time to time disclose Business Information or other collected information to service providers, solely for providing functions related to our operation of the Site and for no other purpose. For example:

- ZoomInfo uses service providers to process credit card payments on our Site. When you use a credit card to pay for ZoomInfo Services, information such as your name, billing address, phone number, email address, and credit card information will be submitted to service providers for verification and to manage any recurring payments.
- ZoomInfo uses software hosted by a service provider to provide us with information regarding our visitors' activities on our Site. When you visit our Site, that service provider may set cookies on our behalf and may receive information about your browsing activity on our Site.

**Disclosures to Integration Partners.** In using ZoomInfo's Integrations, such as ZoomInfo's SFNA and web browser extensions, Business Information from ZoomInfo may be disclosed to a customer's CRM, MAT, or sales enablement software as requested or directed by our customers.

**Disclosures for Legal Reasons.** We may disclose collected information, including Business Information, to a third party if we believe in good faith that such disclosure is necessary or desirable: (i) to comply with lawful requests, subpoenas, search warrants, or orders by public authorities, including to meet national security or law enforcement requirements; (ii) to address a violation of the law; (iii) to protect the rights, property, or safety of ZoomInfo, its users, or the public; or (iv) to allow ZoomInfo to exercise its legal rights or respond to a legal claim.

**Disclosures to a Buyer of the Company.** If our company or substantially all of our assets are acquired, or in the event of a merger or bankruptcy, information about you and/or information you provide to ZoomInfo may be among the transferred assets. You will be notified via email and/or a prominent notice on our Site of any change in ownership or uses of your personal information, as well as any choices you may have regarding your personal information.

#### Other Disclosures

If you register for a ZoomInfo event with a third-party speaker, your information will generally be shared with the speaker and any third-party sponsors or partners of the event.

We post customer testimonials on our Site which may contain the customer's name. We always get consent from the customer prior to posting any testimonial. If you wish to update or delete your testimonial, you can contact us at [privacy@zoominfo.com](mailto:privacy@zoominfo.com).

Our Site offers publicly accessible blogs or community forums. You should be aware that any content you provide in these areas may be read, collected, and used by others who access them. You can request the removal of your personal information from our blog or community forum by contacting us at [privacy@zoominfo.com](mailto:privacy@zoominfo.com). In some cases, we may not be able to remove your personal information, in which case we will let you know if we are unable to do so and why.

## IV. Cookies and Similar Technologies

Most websites, including our Site, use a feature of your browser to set a small text file called a "cookie" on your computer. The site placing the cookie on your computer can then recognize the computer when you revisit the site to allow auto log in and track how you are using the site.

When you visit our Site, our servers and/or those of our service providers automatically record certain information that your web browser sends, such as your web request, Internet Protocol address, browser type, referring/exit pages and URLs, number of clicks, domain names, landing pages, pages viewed, time and date of use, and other information. We may link this information to information that you submit while on our Site, which does allow you to be personally identified.

You are free to decline cookies. You can configure your browser to accept all cookies, reject all cookies, erase cookies, or notify you when a cookie is set. Electing to reject or disable cookies may substantially limit your ability to use our Site.

ZoomInfo may adopt other technologies that serve similar functions as cookies. If we do so, we will disclose it in this Policy.

### A. Third Party Cookies

The use of cookies and similar technologies by our partners, affiliates, tracking utility company, and service providers is not covered by this Policy. We do not have access to or control over

these cookies. Our partners, affiliates, tracking utility company and service providers may use session ID cookies in order to:

- personalize your experience
- analyze which pages our visitors visit
- provide website features such as social sharing widgets
- measure advertising effectiveness
- track which areas of our site you visit; in order to remarket to you after you leave

To disable or reject third-party cookies generally, please refer to the third-party's relevant website. You can also reject third-party analytics cookies by clicking the "Close" button on the cookie banner when visiting our Site.

### B. Google Analytics

We use Google Analytics, a web analytics service provided by Google, Inc., on our Site. Google Analytics uses cookies or other tracking technologies to help us analyze how users interact with and use the Site, compile reports on the Site's activity, and provide other services related to Site activity and usage. The technologies used by Google may collect information such as your IP address, time of visit, whether you are a return visitor, and any referring website. The Site does not use Google Analytics to gather information that personally identifies you. The information generated by Google Analytics will be transmitted to and stored by Google and will be subject to Google's privacy policies. To learn more about Google's partner services and to learn how to opt out of tracking of analytics by Google click [here](#).

### C. Web Beacons

Our Site contains electronic images known as "web beacons" (sometimes called single-pixel gifs) and are used along with cookies to compile aggregated statistics to analyze how our site is used and may be used in some of our emails to let us know which emails and links have been opened by recipients. This allows us to gauge the effectiveness of our customer communications and marketing campaigns.

### D. Advertising Choices and Control

As described in this Privacy Policy, third parties on our Site may use cookies and similar tracking technologies to collect information and infer your interests for interest-based advertising purposes. If you would prefer to not receive personalized ads based on your browser or device usage, you may generally express your opt-out preference to no longer receive tailored advertisements. Please note that you will continue to see advertisements, but they will no longer be tailored to your interests.

To opt-out of interest-based advertising by participating companies in the following consumer choice mechanisms, please visit:



- Digital Advertising Alliance’s self-regulatory opt-out page (<http://optout.aboutads.info/>) and mobile application-based “AppChoices” download page (<https://youradchoices.com/appchoices>)
- European Interactive Digital Advertising Alliance’s consumer opt-out page (<http://yourolinechoices.eu>)
- Network Advertising Initiative’s self-regulatory opt-out page (<http://optout.networkadvertising.org/>).

## V. Your Choices

### A. How Can You Change or Delete Your Professional Information?

To find out if you are in the ZoomInfo database, [search for your first name and last name](#) on the ZoomInfo home page. If you have a common name, you can limit your search based on geographical location or companies where you have worked.

Once you have located one or more ZoomInfo profiles in your name, consider these options for managing your professional profile on ZoomInfo:

**Update Your Own Professional ZoomInfo Profile.** Make sure your ZoomInfo profile is up to date for recruiters and others who may want to reach you. Simply verify your ZoomInfo profile and you can update your work history, education history, and contact information. You can also consolidate multiple ZoomInfo profiles in your name to create a comprehensive snapshot of your professional background. Please [Click here](#) to view, verify, and update your ZoomInfo Directory profile.

**Remove Your ZoomInfo Profile Completely.** If you wish to completely remove your existing individual profile from the Directory, please visit [Remove Your Zoominfo Professional Profile](#) or email [remove@zoominfo.com](mailto:remove@zoominfo.com). If you make this choice, your name, employment history, education history, web references, and contact information (including email address) will be removed from our search results as soon as possible.

### B. How Can You Change or Delete Your Company Information?

To find out if your company is in the ZoomInfo database, [search for your organization](#) on the ZoomInfo home page. Once you have located the ZoomInfo profile, consider these options for managing your company profile on ZoomInfo:

**Update Your Company Profile on ZoomInfo.** Simply verify your ZoomInfo company profile to update your company description, industry, company location, and more. You can also consolidate multiple ZoomInfo profiles to create a comprehensive snapshot of your company. Please [click here](#) to view, verify, and update your ZoomInfo company profile.

**Remove Your Company ZoomInfo Profile Completely.** ZoomInfo is a specialized web search engine, similar to Google but focused on finding information about companies and professionals. We gather all information about companies from corporate web sites, press releases, and/or SEC documents filed with the US government. The company summaries are created automatically by ZoomInfo’s software based on the information we find on those documents.

*As a company policy, ZoomInfo does not remove company information from our search engine.* If any of the company information is incorrect, please update your company profile. **C. How Can You Opt-Out of Certain Uses of Your Information?**

ZoomInfo gives you the opportunity to “opt out” of having your information used for certain purposes.

If you no longer wish to receive our newsletter and promotional communications, you may optout of receiving them by following the instructions included in each newsletter or communication or by visiting [/unsubscribe](#). After we receive your request, we will send you an email message to confirm that you have been unsubscribed.

ZoomInfo will not share information about you that you submit when you register for our

Services with third parties for promotional uses unless you opt in to such sharing within your ZoomInfo account or ZoomInfo has separately acquired such information from other sources, in which case ZoomInfo will give you the opportunity to opt out via email.

If you have registered for a ZoomInfo account and opted in to share your information with ZoomInfo subscribers, you may opt out by signing in to your ZoomInfo account and changing your preferences by clicking “Edit” next to your contact information on the Profile page.

If you have subscribed to Community Edition and opted in to share your business contacts with ZoomInfo in exchange for free access to our premium services, you may opt out of any further sharing of business contacts by uninstalling the Software, as described on [/cefaq](#). If you uninstall the Software, your subscription to Community Edition will immediately expire and ZoomInfo will no longer collect Business Information from you through this method (however, you will not be able to ‘unshare’ the Business Information you have previously provided to ZoomInfo).

You may also communicate your opt-out request to ZoomInfo by telephone or postal mail by using the contact information at the bottom of this Policy.

### VI. How Do We Keep Your Information Secure?

The security of your information is important to us. When you enter sensitive information (such as a credit card number) on our registration forms, we encrypt that information using secure socket layer technology (SSL).

We follow generally accepted industry standards to protect the information submitted to us, both during transmission and once we receive it. However, no method of Internet transmission or electronic storage is 100% secure. Therefore, while we strive to use commercially acceptable means to protect your information, we cannot guarantee its absolute security.

### VII. Data Retention

We will retain your information for a period of time consistent with the original purpose(s) for which we collected it, as described in this Privacy Policy. We will retain your information (i) for as long as we have an ongoing relationship with you and as needed to provide you Services; (ii) as necessary to comply with our legal obligation(s); (iii) as necessary to resolve disputes or to protect ourselves from potential future disputes; or (iv) as necessary to enforce our agreements. Retention periods will be determined taking into account the amount, nature, and sensitivity of your information and the purpose(s) for which it was collected. After the retention period ends, we will delete your information. Where we are unable to do so, we will ensure that appropriate measures are put in place to prevent any further use of your information.

### VIII. Links to Other Sites

This Site contains links to other sites that are not owned or controlled by ZoomInfo. We are not responsible for the privacy practices of such other sites. When you leave our Site, we encourage you to be aware and to read the privacy statements of each and every website that collects personally identifiable information. This Policy applies only to information collected by this Site or in the method(s) otherwise discussed herein.

### IX. Social Media Widgets

Our Site includes social media features, such as the Facebook “Like” button and “Widgets,” such as the “Share” button or interactive mini-programs that run on our Site. These features may collect your IP address, which page you are visiting on our Site, and may set a cookie to enable the feature to function properly. Social media features and widgets are either hosted by a third party or hosted directly on our Site. Your interactions with these features are governed by the privacy policy of the company providing it.

### X. Information for Users in Europe and Elsewhere Outside the U.S.

If you use our Site outside of the United States, you understand that we may collect, process, and store your personal information in the United States and other countries in which we or our affiliates or subcontractors maintain facilities. The laws in the U.S. regarding personal information may be different from the laws of your state or country.

#### A. Users in the European Union (EEA), the UK, and Switzerland

If you are a resident of the EEA, the UK, or Switzerland, the following information applies.

**Purposes of processing and legal basis for processing:** As explained above, we process personal information in various ways depending upon your use of our Sites. We process personal information on the following legal bases:

1. with your consent;
2. as necessary to perform our agreement to provide Services;
3. as necessary for compliance with a legal obligation to which we are subject; and
4. as necessary for our legitimate interests in providing the Sites where those interests do not override your fundamental rights and freedom related to data privacy.

ZoomInfo’s collection of Business Information, and the creation and licensing of ZoomInfo’s Business Profiles and Directory, are within ZoomInfo’s legitimate interests to organize and make available business contact information given the limited impact of this data on an individual’s private life and that this information, unlike personal contact details, is widely disclosed. ZoomInfo has put in place safeguards to protect personal privacy and individual choice, including disclosures of its data processing activities, the use of consent or opt-outs wherever possible, and the implementation of a privacy center: [/about-zoominfo/privacycenter](#).

**Right to lodge a complaint:** Users that reside in the EEA, the UK, or Switzerland have the right to lodge a complaint about our data collection and processing actions with the supervisory authority concerned. Contact details for data protection authorities are available [here](#).

**Transfers:** Personal information we collect may be transferred to, and stored and processed in, the United States or any other country in which we or our affiliates or subcontractors maintain facilities. Per the applicable requirements of the General Data Protection Regulation (“GDPR”), we will ensure that transfers of personal information to a third country or an international organization are subject to appropriate safeguards as described in Article 46 of the GDPR, such as the EU Standard Contractual Clauses. Please see “Privacy Shield Frameworks” below regarding our compliance with the EU- and Swiss-US Privacy Shields.

**Individual Rights:** If you are a resident of the EEA, the UK, or Switzerland, you are entitled to the following rights under the GDPR. **Please note:** In order to verify your identity, we may require you to provide us with personal information prior to accessing any records containing information about you.

- **The right to access, correction, and restriction of processing.** You have the right to request access to, and a copy of, your personal information at no charge, as well as certain information about our processing activities with respect to your data. You have the right to request correction or completion of your personal information if it is inaccurate or incomplete. You have the right to restrict our processing if you contest the accuracy of the data we hold about you, for as long as it takes to verify its accuracy.
- **The right to data portability.** You have the right to ask for a copy of your data in a machine-readable format. You can also request that we transmit your data to another entity where technically feasible.
- **The right to request data erasure.** You have the right to have your data erased from our Site if the data is no longer necessary for the purpose for which it was collected, you withdraw consent and no other legal basis for processing exists, or your fundamental rights to data privacy and protection outweigh our legitimate interest in continuing the processing.
- **The right to object to our processing.** You have the right to object to our processing if we are processing your data based on legitimate interests or the performance of a task in the public interest as an exercise of official authority (including profiling); using your data for direct marketing (including profiling); or processing your data for purposes of scientific or historical research and statistics.

**When ZoomInfo is a Controller.** ZoomInfo acts as a data controller when we collect and use information about data subjects who are visitors to our Site, as well as when we collect and use information about data subjects for purposes of creating and maintaining our Business Profiles and providing the Services. ZoomInfo’s Data Protection Officer can be contacted by email at [privacy@zoominfo.com](mailto:privacy@zoominfo.com).

**When ZoomInfo is a Processor.** When our customers use our Services, they are acting as the data controller and are responsible for ensuring that personal information collected about data subjects is being processed lawfully. In those circumstances, we are acting as the data processor, and receive personal information as agents of our customers merely for processing as instructed by our customers. Our customers are solely responsible for determining whether and how they wish to use our Services, and for ensuring that all third-party individuals that are a visitor to or user of a website, application, or service on which a customer uses our Services have been provided with adequate notice regarding the processing of their personal information, have given informed consent where such consent is necessary or advised, and that all legal requirements applicable to the collection, use, or other processing of personal information through our Services have been met by such customers. Our customers are also responsible for handling data subject rights requests under applicable law, by their users and other individuals whose data they process through the Services. ZoomInfo’s obligations with respect to personal information for which we are solely a data processor are defined in our agreements with our customers and are not covered by this Policy.



## **B. The General Data Protection Regulation (“GDPR”) 2016/679**

ZoomInfo endeavors to comply with the provisions of the GDPR as to any information in its possession regarding European Union-based persons (“**data subjects**”). As such, ZoomInfo only processes personal information on data subjects where it has a lawful basis to do so, which may include the consent of the person (especially in the case of website visitors who provide their information), performance of a contract, compliance with a legal obligation, or the legitimate interest of the controller or a third party. ZoomInfo provides notice to all data subjects as required by GDPR Article 13 or 14, as appropriate, and honors the rights of data subjects provided in Articles 12-23, including the right to be forgotten. For any opt-out requests or other inquiries related to privacy, please visit our privacy center at </about-zoominfo/privacy-center> or email [remove@zoominfo.com](mailto:remove@zoominfo.com).

In the course of obtaining data to be included on the Site, if ZoomInfo obtains Business

Information regarding an individual that ZoomInfo has reason to believe is based in the

European Union, ZoomInfo will provide such individual with a notice detailing the information ZoomInfo has on such person, the purpose for which it will be used, and informing such person of their rights with respect to such information, including the right to know what information ZoomInfo possesses on them, to correct such information, or to opt out of data collection entirely. Such persons may opt out of the ZoomInfo database by visiting </update/remove> or emailing [remove@zoominfo.com](mailto:remove@zoominfo.com).

## **C. Privacy Shield Frameworks**

While ZoomInfo continues to be certified by and adhere to the principles of the Privacy Shield Frameworks, in light of the Court of Justice of the European Union decision regarding the legal effect of the EU-US Privacy Shield Framework, ZoomInfo does not rely upon the Frameworks to ensure the lawful transfer of data from EEA to non-EEA countries.

ZoomInfo complies with the EU-US Privacy Shield Framework and Swiss-U.S. Privacy Shield Framework as set forth by the US Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States. ZoomInfo has certified to the Department of Commerce that it adheres to the Privacy Shield Principles. If there is any conflict between the policies in this Policy and the

Privacy Shield Principles, the Privacy Shield Principles shall govern. To learn more about the Privacy Shield program, any rights you may have to binding arbitration before a Privacy Shield Panel, and to view our certification page, please visit <https://www.privacyshield.gov>.

For information received under the Privacy Shield, ZoomInfo will require third parties to whom we disclose personal information to safeguard that personal information consistent with this Policy by contract, obligating those third parties to provide at least the same level of protection as is required by the Privacy Shield Principles. EU and Swiss citizens may choose to opt-out of such disclosures. ZoomInfo may have liability to you in case of failure to comply with the law or this policy in handling onward transfer of your information to third parties.

In compliance with the Privacy Shield Principles, ZoomInfo commits to resolve complaints about your privacy and its collection or use of your personal information. European Union or Swiss individuals with inquiries or complaints regarding this Policy should first contact ZoomInfo at [privacy@zoominfo.com](mailto:privacy@zoominfo.com). European Union and Swiss individuals have the right to access their personal information.

ZoomInfo further has committed to refer unresolved privacy complaints under the Privacy Shield Principles to JAMS (Judicial Arbitration & Mediation Services), an independent alternative dispute resolution provider located in the United States and recognized for this purpose by the US Department of Commerce. If you do not receive timely acknowledgment of your complaint, or if your complaint is not satisfactorily addressed, please visit <https://www.jamsadr.com/eu-us-privacy-shield> for more information, and to file a complaint.

The Federal Trade Commission has enforcement authority regarding ZoomInfo’s compliance with the Privacy Shield Principles.

## **XI. Your California Privacy Rights**

If you are a California resident, California law permits you to request certain information regarding the disclosure of your personal information by us to third parties for the third parties’ direct marketing purposes. To make such a request, please send your request, by mail or email, to the address at the end of this Policy under the “Contact Us” section.

## **XII. Do Not Track Signals**

Your browser or device may include ‘Do Not Track’ functionality. Our information collection and disclosure practices, and the choices that we provide to visitors, will continue to operate as described in this Policy, whether or not a Do Not Track signal is received.

## **XIII. Children’s Privacy**

Our Site is not directed to or intended for individuals under the age of 16. We do not knowingly collect or use any personal information from users of our Site who are under the age of 16. No personal information should be submitted to our Site by individuals who are under 16 years of age. If we learn that we have collected information from someone who is under 16, we will take steps to delete the personal information as soon as possible. If you believe we may have collected personal information from someone under 16, please contact us at [privacy@zoominfo.com](mailto:privacy@zoominfo.com).

## **XIV. Changes to this Policy**

ZoomInfo reserves the right to modify this Policy from time to time, so please review it regularly. If we make material changes to this policy, we will notify you here, by email, and/or by means of a notice on our homepage prior to the changes becoming effective.

## **XV. Non-Privacy Shield Related Questions or Complaints**

### **Reserved.XVI. Contact Us**

If you have questions or concerns regarding this Privacy Policy, please contact us at:

ZoomInfo

Attn: Privacy

805 Broadway, Suite 900

Vancouver, WA 98660

360-718-5630

GS-35F-0511T

[www.ecamerica.com](http://www.ecamerica.com)

Email: [privacy@zoominfo.com](mailto:privacy@zoominfo.com)



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**ATTACHMENT B  
GOVERNMENT PRICE LIST**

**INSTRUCTIONS:**

*To view the Government Price List for this contract, please follow the below URL:*

[www.ecamerica.com](http://www.ecamerica.com)

*Then select the URL for GS-35F-0511T, and then the specific manufacturer. The Government Price List for that manufacturer is found under the "Contract Vehicles, Pricelists & Terms" section.*

# Contract Clause Document

for

Solicitation Number : **47QSMD20R0001**

Refresh Number : **19**

Contract Number : **GS-35F-0511T**

Created on January 4, 2024

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**52.203-3 GRATUITIES (APR 1984)**

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—
- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
  - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) above, the Government is entitled—
- (1) To pursue the same remedies as in a breach of the contract; and
  - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**52.207-5 OPTION TO PURCHASE EQUIPMENT (FEB 1995)**

- (a) The Government may purchase the equipment provided on a lease or rental basis under this contract. The Contracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.
- (b) Except for final payment and transfer of title to the Government, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.
- (c) The purchase conversion cost of the equipment shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.
- (d) The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be “continuous rental.”

**52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

**52.222-3 CONVICT LABOR (JUN 2003)**

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

- (1) On parole or probation to work at paid employment during the term of their sentence;
- (2) Who have been pardoned or who have served their terms; or
- (3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—
  - (i) The worker is paid or is in an approved work training program on a voluntary basis;
  - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
  - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
  - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
  - (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)**

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

**52.224-2 PRIVACY ACT (APR 1984)**

(a) The Contractor agrees to—

- (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—
  - (i) The systems of records; and
  - (ii) The design, development, or operation work that the Contractor is to perform;
- (2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a

system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c) (1) "*Operation of a system of records*," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "*Record*," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "*System of records on individuals*," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

#### **52.228-5 INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

#### **52.229-1 STATE AND LOCAL TAXES (APR 1984)**

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide

evidence necessary to sustain an exemption.

### **52.232-37 MULTIPLE PAYMENT ARRANGEMENTS (MAY 1999)**

This contract or agreement provides for payments to the Contractor through several alternative methods. The applicability of specific methods of payment and the designation of the payment office(s) are either stated—

- (a) Elsewhere in this contract or agreement; or
- (b) In individual orders placed under this contract or agreement.

### **52.233-3 PROTEST AFTER AWARD (AUG 1996)**

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the request at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at anytime are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2), or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the

Government.

**52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)**

United States law will apply to resolve any claim of breach of this contract.

**52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

**52.237-3 CONTINUITY OF SERVICES (JAN 1991)**

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to—

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

**52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)**

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations,



documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

#### **52.242-13 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

#### **52.242-15 STOP-WORK ORDER (AUG 1989)**

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either —

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if —

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

#### **52.247-32 F.O.B. ORIGIN, FREIGHT PREPAID (FEB 2006)**

- (a) The term "f.o.b. origin, freight prepaid," as used in this clause, means—
- (1) Free of expense to the Government delivered—
    - (i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;
    - (ii) To, and placed on, the carrier's wharf (at ship-side, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;
    - (iii) To a U.S. Postal Service facility; or
    - (iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and
  - (2) The cost of transportation, ultimately the Government's obligation, is prepaid by the Contractor to the point specified in the contract.
- (b) The Contractor shall—
- (1) (i) Pack and mark the shipment to comply with contract specifications; or  
(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
  - (2) (i) Order specified carrier equipment when requested by the Government; or  
(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;
  - (3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;
  - (4) Be responsible for any loss of and/or damage to the goods—
    - (i) Occurring before delivery to the carrier;
    - (ii) Resulting from improper packing or marking; or
    - (iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;
  - (5) Prepare a bill of lading or other transportation receipt. The bill of lading shall show—
    - (i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;
    - (ii) The seals affixed to the conveyance with their serial numbers or other identification;
    - (iii) Lengths and capacities of cars or trucks ordered and furnished;
-

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for bills of lading; e.g., "This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier;

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency; and

(7) Prepay all freight charges to the extent specified in the contract.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which these supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier's equipment are not available at the Contractor's plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier's facilities are available; subject, however, to the following qualifications:

(1) If the Contractor's shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor's expense, and to that extent the contract shall be "f.o.b. destination."

(2) Notwithstanding subparagraph (c)(1) of this clause, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor's expense to the container yard in the same or nearest city where seavan container service is available.

#### **52.247-34 F.O.B. DESTINATION (NOV 1991)**

(a) The term "f.o.b. destination," as used in this clause, means—

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall—

- (1) (i) Pack and mark the shipment to comply with contract specifications; or  
  
(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
- (2) Prepare and distribute commercial bills of lading;
- (3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;
- (4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;
- (5) Furnish a delivery schedule and designate the mode of delivering carrier; and
- (6) Pay and bear all charges to the specified point of delivery.

**52.247-38 F.O.B. INLAND CARRIER, POINT OF EXPORTATION  
(FEB 2006)**

(a) The term "f.o.b. inland carrier, point of exportation," as used in this clause, means free of expense to the Government, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) The Contractor shall—

- (1) (i) Pack and mark the shipment to comply with contract specifications; or  
  
(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
- (2) Prepare and distribute commercial bills of lading or other transportation receipt;
- (3) (i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and  
  
(ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;
- (4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery in the contract; and
- (5) At the Government's request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

**52.247-39 F.O.B. INLAND POINT, COUNTRY OF IMPORTATION  
(APR 1984)**

(a) The term "f.o.b. inland point, country of importation," as used in this clause, means free of expense to the Government, on board the indicated type of conveyance of the carrier, delivered to the specified inland point where the consignee's facility is located.

(b) The Contractor shall—

- (1) (i) Pack and mark the shipment to comply with contract specifications; or

- (ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;
- (2) (i) Deliver, in or on the inland carrier's conveyance, the shipment in good order and condition to the specified inland point where the consignee's facility is located; and
  - (ii) Pay and bear all applicable charges incurred up to the point of delivery, including transportation costs; export, import, or other fees or taxes; costs of landing; wharfage costs; customs duties and costs of certificates of origin; consular invoices; and other documents that may be required for importation; and
- (3) Be responsible for any loss of and/or damage to the goods until their arrival on or in the carrier's conveyance at the specified inland point.

**52.247-65 F.O.B. ORIGIN, PREPAID FREIGHT—SMALL  
PACKAGE SHIPMENTS (JAN 1991)**

- (a) When authorized by the Contracting Officer, f.o.b. origin freight shipments which do not have a security classification shall move on prepaid commercial bills of lading or other shipping documents to domestic destinations, including air and water terminals. Weight of individual shipments shall be governed by carrier restrictions but shall not exceed 150 pounds by any form of commercial air or 1,000 pounds by other commercial carriers. The Government will reimburse the Contractor for reasonable freight charges.
- (b) The Contractor shall annotate the commercial bill of lading as required by the clause of this contract entitled "Commercial Bill of Lading Notations."
- (c) The Contractor shall consolidate prepaid shipments in accordance with procedures established by the cognizant transportation office. The Contractor is authorized to combine Government prepaid shipments with the Contractor's commercial shipments for delivery to one or more consignees and the Government will reimburse its pro rata share of the total freight costs. The Contractor shall provide a copy of the commercial bill of lading promptly to each consignee. Quantities shall not be divided into mailable lots for the purpose of avoiding movement by other modes of transportation.
- (d) Transportation charges will be billed as a separate item on the invoice for each shipment made. A copy of the pertinent bill of lading, shipment receipt, or freight bill shall accompany the invoice unless otherwise specified in the contract.
- (e) Loss and damage claims will be processed by the Government.

**52.247-68 REPORT OF SHIPMENT (REPSHIP) (FEB 2006)**

- (a) Definition. Domestic destination, as used in this clause, means—
  - (1) A destination within the contiguous United States; or
  - (2) If shipment originates in Alaska or Hawaii, a destination in Alaska or Hawaii, respectively.
- (b) Unless otherwise directed by the Contracting Officer, the Contractor shall—
  - (1) Send a prepaid notice of shipment to the consignee transportation officer—
    - (i) For all shipments of—
      - (A) Classified material, protected sensitive, and protected controlled material;

(B) Explosives and poisons, class 1, division 1.1, 1.2 and 1.3; class 2, division 2.3 and class 6, division 6.1;

(C) Radioactive materials requiring the use of a III bar label; or

(ii) When a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract, or private) for transportation to a domestic destination (other than a port for export);

(2) Transmits the notice by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment; and

(3) Send, to the receiving transportation officer, the bill of lading or letter or other document containing the following information and prominently identified as a "Report of Shipment" or "REPSHIP FOR T.O."

RESHIP FOR T.O. 81 JUN 01  
 TRANSPORTATION OFFICER, DEFENSE DEPOT, MEMPHIS, TN.  
 SHIPPED YOUR DEPOT 1981 JUN 1  
 540 CTNS MENS COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA XX-YY\*  
 IN CAR NO. XX 123456\*\*-BL\*\*\*-C98000031\*\*\*\*\*CONTRACT DLA \_\_\_\_\_  
 ETA\*\*\*\*\*-JUNE 5 JONES & CO., JERSEY CITY N.J.

#### **552.203-71 RESTRICTION ON ADVERTISING (SEP 1999)**

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, that refers to a military resale activity shall contain the following statement: "This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

#### **552.211-73 MARKING (FEB 1996)**

(a) *General requirements.* Interior packages, if any, and exterior shipping containers shall be marked as specified elsewhere in the contract. Additional marking requirements may be specified on delivery orders issued under the contract. If not otherwise specified, interior packages and exterior shipping containers shall be marked in accordance with the following standards.

(1) *Deliveries to civilian activities.* Supplies shall be marked in accordance with Federal Standard 123, edition in effect on the date of issuance of the solicitation.

(2) *Deliveries to military activities.* Supplies shall be marked in accordance with Military Standard 129, edition in effect on the date of issuance of the solicitation.

(b) *Improperly marked material.* When Government inspection and acceptance are at destination, and delivered supplies are not marked in accordance with contract requirements, the Government has the right, without prior notice to the Contractor to perform the required marking, by contract or otherwise, and charge the Contractor, therefor at the rate specified elsewhere in this contract. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

#### **552.211-75 PRESERVATION, PACKAGING, AND PACKING (FEB 1996) (ALTERNATE I - MAY 2003)**

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container of each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering activity and the Contractor.

**552.211-77 PACKING LIST (FEB 1996) (ALTERNATE I – MAY 2003)**

(a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate: (1) Name and address of consignor; (2) Name and complete address of consignee; (3) Ordering activity order or requisition number; (4) Government bill of lading number covering the shipment (if any); and (5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Ordering activity commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include: (1) Cardholder name and telephone number; and (2) the term "Credit Card."

**552.223-70 HAZARDOUS SUBSTANCES (MAY 1989)**

(a) If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, this contract is subject to the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261-1276), implementing regulations thereof (16 CFR Chapter II(c)), and Federal Standard No. 123, Marking for Shipment (Civil Agencies), issue in effect on the date of this solicitation.

(b) The packaged items to be delivered under this contract are subject to the preparation of shipping documents, the preparation of items for transportation, shipping container construction, package making, package labeling, when required, shipper's certification of compliance, and transport vehicle placarding in accordance with Parts 171 through 178 of 49 CFR and the Hazardous Materials Transportation Act.

(c) The minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those in 49 CFR 173.

**552.223-71 NONCONFORMING HAZARDOUS MATERIALS (SEP 1999)**

(a) Nonconforming supplies that contain hazardous material or that may expose persons who handle or transport the supplies to hazardous material and which require replacement under the inspection and/or warranty clauses of this contract shall be reshipped to the Contractor at the Contractor's expense. The Contractor agrees to accept return of these nonconforming supplies and to pay all costs occasioned by their return.

(b) "Hazardous materials," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(c) If the Contractor fails to provide acceptable disposition instructions for the nonconforming supplies within 10 days from the date of the Government's request (or such longer period as may be agreed to between the Contracting Officer and the Contractor), or fails to accept return of the reshipped nonconforming supplies, such failure: (1) may be interpreted as a willful failure to perform, (2) may result in termination of the contract for default and (3) shall be considered by the Contracting Officer in determining the responsibility of the Contractor for any future award (see FAR 9.104-3(b) and 9.406-2).



(d) Pending final resolution of any dispute, the Contractor shall promptly comply with the decision of the Contracting Officer.

#### **552.229-70 FEDERAL, STATE, AND LOCAL TAXES (APR 1984)**

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

#### **552.229-71 FEDERAL EXCISE TAX—DC GOVERNMENT (SEP 1999)**

If the District of Columbia cites an Internal Revenue Tax Exempt Certificate Number on orders placed under this contract, the Contractor shall bill shipments to the District of Columbia at prices exclusive of Federal excise tax and show the amount of such tax on the invoice.

#### **552.232-23 ASSIGNMENT OF CLAIMS (SEP 1999)**

Because this is a requirements or indefinite quantity contract under which more than one agency may place orders, paragraph (a) of the Assignment of Claims clause (FAR 52.232-23) is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, the Contractor shall not assign any claim(s) for amounts due or to become due under this contract. However, the Contractor is permitted to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as "the Act"), all amounts due or to become due under any order amounting to \$1,000 or more issued by any Government agency under this contract. Any such assignment takes effect only if and when the assignee files written notice of the assignment together with a true copy of the instrument of assignment with the contracting officer issuing the order and the finance office designated in the order to make payment. Unless otherwise stated in the order, payments to an assignee of any amounts due or to become due under any order assigned may, to the extent specified in the Act, be subject to reduction or set-off.

#### **52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)**

(a) The Contractor shall notify the Contracting Officer or designee, in writing, To be determined at the task order level days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

### 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

For contract clauses which are contained in the Federal Acquisition Regulation (FAR) the address is <http://acquisition.gov/far/>.

Number	Title	Clause/Provision
52.202-1	DEFINITIONS (JUN 2020)	Clause
52.203-17	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (NOV 2023)	Clause
52.203-3	GRATUITIES (APR 1984)	Clause
52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)	Clause
52.204-19	INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)	Clause
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)	Clause
52.204-7	SYSTEM FOR AWARD MANAGEMENT (OCT 2018)	Clause
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)	Clause
52.208-9	CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (MAY 2014)	Clause
52.209-10	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC	Clause

	CORPORATIONS (NOV 2015)	
52.215-21	REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA - MODIFICATIONS (NOV 2021) (ALTERNATE IV - OCT 2010)	Clause
52.216-18	ORDERING (AUG 2020)	Clause
52.216-19	ORDER LIMITATIONS (OCT 1995)	Clause
52.216-22	INDEFINITE QUANTITY (OCT 1995)	Clause
52.217-8	OPTION TO EXTEND SERVICES (NOV 1999)	Clause
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)	Clause
52.222-29	NOTIFICATION OF VISA DENIAL (APR 2015)	Clause
52.222-49	SERVICE CONTRACT LABOR STANDARDS - PLACE OF PERFORMANCE UNKNOWN (MAY 2014)	Clause
52.223-10	WASTE REDUCTION PROGRAM (MAY 2011)	Clause
52.223-17	AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008)	Clause
52.223-2	AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013)	Clause
52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011)	Clause
52.224-1	PRIVACY ACT NOTIFICATION (APR 1984)	Clause
52.224-2	PRIVACY ACT (APR 1984)	Clause
52.224-3	PRIVACY TRAINING (JAN 2017)	Clause
52.227-14	RIGHTS IN DATA - GENERAL (MAY 2014)	Clause
52.232-17	INTEREST (MAY 2014) (DEVIATION I - MAY 2003)	Clause
52.232-36	PAYMENT BY THIRD PARTY (MAY 2014)	Clause
52.232-37	MULTIPLE PAYMENT ARRANGEMENTS (MAY 1999)	Clause
52.233-1	DISPUTES (MAY 2014)	Clause
52.237-2	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND	Clause

	VEGETATION (APR 1984)	
52.237-3	CONTINUITY OF SERVICES (JAN 1991)	Clause
52.242-13	BANKRUPTCY (JUL 1995)	Clause
52.242-15	STOP-WORK ORDER (AUG 1989)	Clause
52.242-5	PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017)	Clause
52.245-1	GOVERNMENT PROPERTY (SEP 2021)	Clause
52.245-9	USE AND CHARGES (APR 2012)	Clause
52.246-4	INSPECTION OF SERVICES - FIXED-PRICE (AUG 1996) (DEVIATION I - MAY 2003)	Clause
52.247-32	F.O.B. ORIGIN, FREIGHT PREPAID (FEB 2006)	Clause
52.247-34	F.O.B. DESTINATION (NOV 1991)	Clause
52.247-38	F.O.B. INLAND CARRIER, POINT OF EXPORTATION (FEB 2006)	Clause
52.247-38	F.O.B. INLAND CARRIER, POINT OF EXPORTATION (FEB 2006) (DEVIATION I - FEB 2007)	Clause
52.247-39	F.O.B. INLAND POINT, COUNTRY OF IMPORTATION (APR 1984)	Clause
52.247-65	F.O.B. ORIGIN, PREPAID FREIGHT - SMALL PACKAGE SHIPMENTS (JAN 1991)	Clause
52.251-1	GOVERNMENT SUPPLY SOURCES (APR 2012)	Clause
552.211-73	MARKING (FEB 1996)	Clause
552.211-75	PRESERVATION, PACKAGING, AND PACKING (FEB 1996) (ALTERNATE I - MAY 2003)	Clause
552.211-77	PACKING LIST (FEB 1996) (ALTERNATE I - MAY 2003)	Clause
552.211-89	NON-MANUFACTURED WOOD PACKAGING MATERIAL FOR EXPORT (JUL 2016)	Clause
552.229-71	FEDERAL EXCISE TAX - C GOVERNMENT (SEP 1999)	Clause
552.252-6	AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2021) (DEVIATION FAR 52.252-6)	Clause

#### **52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within by written notice to the Contractor within 30 calendar days

before the contract expiration date..

**52.247-38 F.o.b. Inland Carrier, Point of Exportation (FEB 2006)  
(DEVIATION – FEB 2007)**

- (a) The term “f.o.b. inland carrier, point of exportation,” as used in this clause, means free of expense to the ordering activity, on board the conveyance of the inland carrier, delivered to the specified point of exportation.
- (b) The Contractor shall—
- (1) (i) Pack and mark the shipment to comply with contract specifications; or
  - (ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
- (2) Prepare and distribute commercial bills of lading or other transportation receipt;
- (3) (i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and
  - (ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;
- (4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery in the contract; and
- (5) At the ordering activity’s request and expense, assist in obtaining the documents required for—
- (i) Exportation; or
  - (ii) Importation at destination.

**52.246-4 INSPECTION OF SERVICES—FIXED-PRICE (AUG 1996)  
(DEVIATION - MAY 2003)**

- (a) Definition: "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the ordering activity covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the ordering activity during contract performance and for as long afterwards as the contract requires.
- (c) The ordering activity has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The ordering activity shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the ordering activity performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with contract requirements, the ordering activity may require

the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the ordering activity may—

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the ordering activity may--

(1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the ordering activity that is directly related to the performance of such service; or

(2) Terminate the contract for default.

**552.216-70 ECONOMIC PRICE ADJUSTMENT – FSS MULTIPLE  
AWARD SCHEDULE CONTRACTS (SEP 1999) (ALTERNATE I –  
SEP 1999)**

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reductions clause.

(b) Contractors may request price increases to be effective on or after the first 12 months of the contract period providing all of the following conditions are met:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/price list that was used as the basis for the contract award.

(2) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of this subparagraph (b)).

(3) Increases are requested before the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed SEE CLAUSE NOTE percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(d) The following material shall be submitted with the request for a price increase:

(1) A copy of the commercial catalog/price list showing the price increase and the effective date for commercial customers.

(2) Commercial Sales Practices Format regarding the Contractor's commercial pricing practice relating to the reissued or modified catalog/price list, or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.

(3) Documentation supporting the reasonableness of the price increase.

(e) The Government reserves the right to exercise one of the following options:

- (1) Accept the Contractor's price increases as requested when all conditions of (b), (c), and (d) of this clause are satisfied;
- (2) Negotiate more favorable discounts from the new commercial prices when the total increase requested is not supported; or,
- (3) Remove the product(s) from contract involved pursuant to the Cancellation clause of this contract, when the increase requested is not supported.

(f) The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.

Note: Regulation 552.216-70

The EPA Ceiling Limit for this clause is hereby established as 4% for the Human Capital Category, 5% for the Professional Services Category, 5% for the Travel Category and 10% for all other Large Categories.

NOTE: This clause does not apply to contracts participating in the Transactional Data Reporting (TDR) Pilot. Please refer to clause 552.216-70 Deviation II.

**52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED  
MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS  
(MAY 2008)**

(a) Definitions. As used in this clause#

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall#

- (1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and
- (2) Submit this estimate to X.

**552.246-78 INSPECTION AT DESTINATION (JUL 2009)**

Inspection of all purchases under this contract will be made at destination by an authorized Government representative.

**52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT  
(MAR 2000)**



(a) The Government may extend the term of this contract by written notice to the Contractor within To be determined at the task order level; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least To be determined at the task order level days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed To be determined at the task order level (months) (years).

#### **52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)**

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be —

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor- Management Standards Web site at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such

other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) *Subcontracts.*

- (1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.
- (2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.
- (3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.
- (4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

**52.204-9 PERSONAL IDENTITY VERIFICATION OF  
CONTRACTOR PERSONNEL (JAN 2011)**

- (a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.
- (b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:
  - (1) When no longer needed for contract performance.
  - (2) Upon completion of the Contractor employee's employment.
  - (3) Upon contract completion or termination.
- (c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

**52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON  
POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)**

- (a) *Definitions.* As used in this clause—

*Postconsumer fiber* means—

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
  - (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
  - (3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.
- (b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

#### **52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011)**

(a) *Definitions.* As used in this clause—

*Toxic chemical* means a chemical or chemical category listed in 40 CFR 372.65.

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) ([42 U.S.C. 11001-11050](#)), and the Pollution Prevention Act of 1990 (PPA) ([42 U.S.C. 13101-13109](#)).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

- (1) The emergency planning reporting requirements of Section 302 of EPCRA.
- (2) The emergency notice requirements of Section 304 of EPCRA.
- (3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.
- (4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.
- (5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.
- (6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

#### **52.223-10 WASTE REDUCTION PROGRAM (MAY 2011)**

(a) *Definitions.* As used in this clause —

*Recycling* means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

*Waste prevention* means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

*Waste reduction* means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act ([42 U.S.C. 6962](#), et seq.) and implementing regulations (40 CFR part 247).

#### **52.223-19 COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011)**

The Contractor's work under this contract shall conform with all operational controls identified in the applicable agency or facility Environmental Management Systems and provide monitoring and measurement information necessary for the Government to address environmental performance relative to the goals of the Environmental Management Systems.

#### **52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)**

(a) *Definitions.* As used in this clause –

“*Driving*” –

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“*Text messaging*” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor should –

(1) Adopt and enforce policies that ban text messaging while driving –

(i) Company-owned or -rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as –

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks

associated with texting while driving.

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

### **52.251-1 GOVERNMENT SUPPLY SOURCES (APR 2012)**

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. The provisions of the clause at FAR [52.245-1](#), Government Property, apply to all property acquired under such authorization.

### **52.245-9 USE AND CHARGES (APR 2012)**

(a) *Definitions*. Definitions applicable to this contract are provided in the clause at 52.245-1, Government Property. Additional definitions as used in this clause include:

“Rental period” means the calendar period during which Government property is made available for nongovernmental purposes.

“Rental time” means the number of hours, to the nearest whole hour, rented property is actually used for nongovernmental purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

(b) *Use of Government property*. The Contractor may use the Government property without charge in the performance of —

- (1) Contracts with the Government that specifically authorize such use without charge;
- (2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract —
  - (i) Approves a subcontract specifically authorizing such use; or
  - (ii) Otherwise authorizes such use in writing; and
- (3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.

(c) *Rental*. If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause. Authorizing such use of the Government property does not waive any rights of the Government to terminate the Contractor’s right to use the Government property. The rental fee shall be determined in accordance with the following paragraphs.

(d) *General*.

- (1) Rental requests shall be submitted to the Administrative Contracting Officer (ACO), identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Contractor’s best estimate of rental time in the formulae described in paragraph (e) of this clause.
- (2) The Contractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a

non-interference basis.

(e) Rental charge.—

(1) Real property and associated fixtures.

(i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the ACO shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO shall promptly notify the Contractor. The parties may agree on an alternative means for computing a reasonable rental charge.

(iv) The Contractor shall obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for nongovernmental use. The Contractor may obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.

(2) *Other Government property.* The Contractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The hourly rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.

(3) *Alternative methodology.* The Contractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(f) Rental payments.

(1) Rent is due 60 days following completion of the rental period or as otherwise specified in the contract. The Contractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the rental time and computation. Payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in this contract, unless otherwise specified by the Contracting Officer.

(2) Interest will be charged if payment is not made by the date specified in paragraph (f)(1) of this clause. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the Federal Register semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of Government property or any

other failure to perform this contract according to its terms.

(g) *Use revocation.* At any time during the rental period, the Government may revoke nongovernmental use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(h) *Unauthorized use.* The unauthorized use of Government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.

### **52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013)**

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless –

(1) The product cannot be acquired –

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at <http://www.biopreferred.gov>.

(c) In the performance of this contract, the Contractor shall –

(1) Report to the environmental point of contact identified in paragraph (d) of this clause, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30;

(2) Submit this report no later than –

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance.

### **52.216-19 ORDER LIMITATIONS (OCT 1995)**

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than TBD [*insert dollar figure or quantity*], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor —



- (1) Any order for a single item in excess of See SIN Specific Information [*insert dollar figure or quantity*];
- (2) Any order for a combination of items in excess of See SIN Specific Information [*insert dollar figure or quantity*]; or
- (3) A series of orders from the same ordering office within TBD days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection [52.216-21](#) of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within TBD days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

Note: Regulation 52.216-19

"Due to a system limitation, a Maximum Order value of \$250,000 has been identified for the Order-Level Materials SIN. However, as Order-Level Materials are only acquired in direct support of an individual task or delivery order, the contractor's right to decline an order as outlined in FAR 52.216-19 Order Limitations paragraph (b) Maximum Order shall be based on the SINs that are the primary basis or purpose of the order, not the Maximum Order value associated with the Order-Level Materials SIN.

Additionally, Ordering agencies are reminded that the Maximum Order value identified for a Schedule SIN does not limit the value of an individual task or delivery order. Ordering limitations and procedures applicable to task or delivery orders inclusive of Order-Level Materials are outlined in GSAR 552.238-115, Special Ordering Procedures for the Acquisition of Order-Level Materials."

#### **52.208-9 CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (MAY 2014)**

- (a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee) under the [41 U.S.C. 8504](#). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.
- (b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or an AbilityOne central nonprofit agency has authorized purchase from other sources.
- (c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or

services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for AbilityOne central nonprofit agencies are:

(1) National Industries for the Blind  
 1310 Braddock Place  
 Alexandria, VA 22314-1691  
 (703) 310-0500

(2) NISH  
 8401 Old Courthouse Road  
 Vienna, VA 22182  
 (571) 226-4660

**52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 2014)**

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of [5 U.S.C. 5341](#) or [5332](#).

This Statement is for Information Only: It Is Not a Wage Determination

Employee Class	Monetary Wage – Fringe Benefits
To be determined at the task order level	To be determined at the task order level
To be determined at the task order level	To be determined at the task order level
To be determined at the task order level	To be determined at the task order level

**52.222-49 SERVICE CONTRACT LABOR STANDARDS — PLACE OF PERFORMANCE UNKNOWN (MAY 2014)**

(a) This contract is subject to the Service Contract Labor Standards statute, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: To be determined at the task order level (*insert places or areas*). The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by To be determined at the task order level (*insert time and date*).

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

**52.222-51 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT--REQUIREMENTS (MAY 2014)**

(a) The items of equipment to be serviced under this contract are used regularly for other than

Government purposes, and are sold or traded by the Contractor in substantial quantities to the general public in the course of normal business operations.

(b) The services shall be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(1) An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(2) An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

(c) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract shall be the same as that used for these employees and for equivalent employees servicing the same equipment of commercial customers.

(d) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine the applicability of this exemption to any subcontract on or before subcontract award. In making a judgment that the exemption applies, the Contractor shall consider all factors and make an affirmative determination that all of the conditions in paragraphs (a) through (c) of this clause will be met.

(e) If the Department of Labor determines that any conditions for exemption in paragraphs (a) through (c) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Labor Standards statute. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) will be followed.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for exempt services under this contract.

**52.222-53 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR CERTAIN SERVICES--REQUIREMENTS (MAY 2014)**

(a) The services under this contract are offered and sold regularly to non-Governmental customers, and are provided by the Contractor to the general public in substantial quantities in the course of normal business operations.

(b) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

(c) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

(d) The Contractor uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for these employees and for equivalent employees servicing commercial customers.

- (e) (1) Except for services identified in FAR 22.1003-4(d)(1)(iv), the subcontractor for exempt services shall be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost; or
- (2) A subcontract for exempt services shall be awarded on a sole source basis.
- (f) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely subcontractors, that all or nearly all likely subcontractors will meet the conditions in paragraphs (a) through (d) of this clause. If the services are currently being performed under a subcontract, the Contractor shall consider the practices of the existing subcontractor in making a determination regarding the conditions in paragraphs (a) through (d) of this clause. If the Contractor has reason to doubt the validity of the certification, the requirements of the Service Contract Labor Standards statute shall be included in the subcontract.
- (g) If the Department of Labor determines that any conditions for exemption at paragraphs (a) through (e) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Labor Standards statute. In such case, the procedures in at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) will be followed.
- (h) The Contractor shall include the substance of this clause, including this paragraph (h), in subcontracts for exempt services under this contract.

#### **52.227-14 RIGHTS IN DATA--GENERAL (MAY 2014)**

(a) *Definitions.* As used in this clause –

“Computer database” or “database” means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software” –

(1) Means

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

“Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For

computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

“Limited rights” means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

“Limited rights data” means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

“Restricted computer software” means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“Restricted rights” as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. 116](#)).

“Unlimited rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in--

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to--

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright--

(1) Data first produced in the performance of this contract.

(i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of [17 U.S.C. 401 or 402](#), and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor--

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except--

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g) (3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to [41 U.S.C. 4703](#), the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in



writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor--

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may--

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall--

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) *Subcontracting*. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

### **52.232-17 INTEREST (MAY 2014) (DEVIATION – MAY 2003)**

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the ordering activity under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
- (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
- (3) The date the ordering activity transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
- (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

### **52.232-36 PAYMENT BY THIRD PARTY (MAY 2014)**

(a) *General.*

(1) Except as provided in paragraph (a)(2) of this clause, the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(2) The Governmentwide commercial purchase card is not authorized as a method of payment during any period the System for Award Management (SAM) indicates that the Contractor has delinquent debt that is subject to collection under the Treasury Offset Program (TOP). Information on TOP is available at <http://fms.treas.gov/debt/index.html>. If the SAM subsequently indicates that the Contractor no longer has delinquent debt, the Contractor may request the Contracting Officer to authorize payment by Governmentwide commercial purchase card.

(b) *Contractor payment request.*

(1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall make payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor.

(2) When the Contracting Officer has notified the Contractor that the Governmentwide commercial purchase card is no longer an authorized method of payment, the Contractor shall make such payment requests in accordance with instructions provided by the Contracting Officer during the period when the purchase card is not authorized.

(c) *Payment.* The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) *Documentation.* Documentation of each charge against the Government's account shall be provided

to the Contracting Officer upon request.

(e) Assignment of claims. Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940 ([31 U.S.C. 3727](#), [41 U.S.C. 6305](#)).

(f) *Other payment terms.* The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided in the third party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

### 52.233-1 DISPUTES (MAY 2014)

(a) This contract is subject to [41 U.S.C chapter 71](#), Contract Disputes.

(b) Except as provided in [41 U.S.C chapter 71](#), all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under [41 U.S.C chapter 71](#) until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under [41 U.S.C chapter 71](#). The submission may be converted to a claim under [41 U.S.C chapter 71](#), by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in [41 U.S.C chapter 71](#).

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

### **52.223-13 ACQUISITION OF EPEAT®-REGISTERED IMAGING EQUIPMENT (JUN 2014)**

(a) *Definitions.* As used in this clause –

*Imaging equipment* means the following products:

(1) *Copier* — A commercially available imaging product with a sole function of the production of hard copy duplicates from graphic hard-copy originals. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as copiers or upgradeable digital copiers (UDCs).

(2) *Digital duplicator* — A commercially available imaging product that is sold in the market as a fully automated duplicator system through the method of stencil duplicating with digital reproduction functionality. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as digital duplicators.

(3) *Facsimile machine (fax machine)* — A commercially available imaging product whose primary functions are scanning hard-copy originals for electronic transmission to remote units and receiving similar electronic transmissions to produce hard-copy output. Electronic transmission is primarily over a public telephone system but also may be via computer network or the Internet. The product also may be capable of producing hard copy duplicates. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as fax machines.

(4) *Mailing machine* — A commercially available imaging product that serves to print postage onto mail pieces. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as mailing machines.

(5) *Multifunction device (MFD)* — A commercially available imaging product, which is a physically integrated device or a combination of functionally integrated components, that performs two or more of the core functions of copying, printing, scanning, or faxing. The copy functionality as addressed in this definition is considered to be distinct from singlesheet convenience copying offered by fax machines. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as MFDs or multifunction products.

(6) *Printer* — A commercially available imaging product that serves as a hardcopy output device and is capable of receiving information from single-user or networked computers, or other input devices (e.g., digital cameras). The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as printers, including printers that can be upgraded into MFDs in the field.

(7) *Scanner* — A commercially available imaging product that functions as an electro-optical device for converting information into electronic images that can be stored, edited, converted, or transmitted, primarily in a personal computing environment. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as scanners.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only imaging equipment that, at the time of submission of proposals and at the time of award, was EPEAT<sup>®</sup> bronze-registered or higher.

(c) For information about EPEAT<sup>®</sup>, see [www.epa.gov/epeat](http://www.epa.gov/epeat).

#### **52.223-14 ACQUISITION OF EPEAT<sup>®</sup>-REGISTERED TELEVISIONS (JUN 2014)**

(a) *Definitions.* As used in this clause –

*Television or TV* means a commercially available electronic product designed primarily for the reception and display of audiovisual signals received from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other digital or analog sources. A TV consists of a tuner/receiver and a display encased in a single enclosure. The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display, or other display technology. Televisions with computer capability (e.g., computer input port) may be considered to be a TV as long as they are marketed and sold to consumers primarily as televisions.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only televisions that, at the time of submission of proposals and at the time of award, were EPEAT<sup>®</sup> bronze-registered or higher.

(c) For information about EPEAT<sup>®</sup>, see [www.epa.gov/epeat](http://www.epa.gov/epeat).

#### **I-FSS-969 ECONOMIC PRICE ADJUSTMENT—FSS MULTIPLE AWARD SCHEDULE (OCT 2014)**

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.

(b) There are two types of economic price adjustments (EPAs) possible under the Multiple Award Schedules (MAS) program for contracts not based on commercial catalogs or price lists as described below. Price adjustments may be effective on or after the first 12 months of the contract period on the following basis:

(1) Adjustments based on escalation rates negotiated prior to contract award. Normally, when escalation rates are negotiated, they result in a fixed price for the term of the contract. No separate contract modification will be provided when increases are based on negotiated escalation rates. Price increases will be effective on the 12-month anniversary date of the contract effective date, subject to paragraph (f), below.

(2) Adjustments based on an agreed-upon market indicator prior to award. The market indicator, as used in this clause, means the originally released public index, public survey or other public, based market indicator. The market indicator shall be the originally released index, survey or market indicator, not seasonally adjusted, published by the [to be negotiated], and made available at [to be identified]. Any price adjustment shall be based on the percentage change in the designated (i.e. indicator identification and date) market indicator from the initial award to the latest available as of the anniversary date of the contract effective date, subject to paragraph (e), below. If the market indicator is discontinued or deemed no longer available or reliable by the Government, the Government and the Contractor will mutually agree to a substitute. The contract modification reflecting the price adjustment will be effective upon approval by the Contracting Officer, subject to paragraph (g), below. The adjusted prices shall apply to orders issued to the Contractor on or after the effective date of the contract modification.

(c) Notwithstanding the two economic price adjustments discussed above, the Government recognizes the potential impact of unforeseeable major changes in market conditions. For those cases where such changes do occur, the contracting officer will review requests to make adjustments, subject to the Government's examination of industry-wide market conditions and the conditions in paragraph (d) and (e), below. If adjustments are accepted, the contract will be modified accordingly. The determination of whether or not extra-ordinary circumstances exist rests with the contracting officer. The determination of an appropriate mechanism of adjustment will be subject to negotiations.

(d) Conditions of Price change requests under paragraphs b(2) and c above.:

(1) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of subparagraph (b)).

(2) Increases are requested before the last 60 days of the contract period, including options.

(3) At least 30 days elapse between requested increases.

(4) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed SEE CLAUSE NOTE percent (SEE CLAUSE NOTE%) of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(e) The following material shall be submitted with request for a price increase under paragraphs b(2) and c above:

(1) A copy of the index, survey or pricing indicator showing the price increase and the effective date.

(2) Commercial Sales Practice format, per contract clause 52.215-21 Alternate IV, demonstrating the relationship of the Contractor's commercial pricing practice to the adjusted pricing proposed or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.

(3) Any other documentation requested by the Contracting Officer to support the reasonableness of the price increase.

(f) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), (d), and (e) of this clause are satisfied;

(2) Negotiate more favorable prices when the total increase requested is not supported; or,

(3) Decline the price increase when the request is not supported. The Contractor may remove the item(s) from contract involved pursuant to the Cancellation Clause of this contract.

(g) Effective Date of Increases: No price increase shall be effective until the Government receives the electronic file updates pursuant to GSAR 552.238-81, Modifications (Federal Supply Schedule).

(h) All MAS contracts remain subject to contract clauses GSAR 552.238-75, "Price Reductions"; and 552.215-72, "Price Adjustment -- Failure to Provide Accurate Information." In the event the application of an economic price adjustment results in a price less favorable to the Government than the price relationship established during negotiation between the MAS price and the price to the designated customer, the Government will maintain the price relationship to the designated customer.

Note: Regulation I-FSS-969

The EPA Ceiling Limit for this clause is hereby established as 4% for the Human Capital Category, 5% for the Professional Services Category, 5% for the Travel Category and 10% for all other Large Categories.

NOTE: This clause does not apply to contracts participating in the Transactional Data Reporting (TDR) Pilot. Please refer to clause I-FSS-969 Alternate II.

#### **52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)**

The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

#### **52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)**

(a) *Definitions.* As used in this clause —

*Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Segregated facilities* means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.



**52.222-29 NOTIFICATION OF VISA DENIAL (APR 2015)**

(a) *Definitions.* As used in this clause —

*Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

(b) *Requirement to notify.*

(1) It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, sexual orientation, gender identity, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10).

(2) The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, sexual orientation, gender identity, or national origin of the employee or potential employee.

**552.223-73 PRESERVATION, PACKAGING, PACKING, MARKING AND LABELING OF HAZARDOUS MATERIALS (HAZMAT) FOR SHIPMENTS (JUN 2015)**

(a) *Definition. United States*, as used in this clause, means the 48 adjoining U.S. States, Alaska, Hawaii, and U.S. territories and possessions, such as Puerto Rico.

(b) Preservation, packaging, packing, marking and labeling of hazardous materials for export shipment outside the United States in all transport modes shall comply with the following, as applicable:

(1) International Maritime Dangerous Goods (IMDG) Code as established by the International Maritime Organization (IMO).

(2) U.S. Department of Transportation (DOT) Hazardous Material Regulation (HMR) 49 CFR parts 171 through 180. (Note: Classifications permitted by the HMR, but not permitted by the IMDG code, such as Consumer Commodities classed as ORM-D, shall be packaged in accordance with the IMDG Code and dual-marked with both Consumer Commodity and IMDG marking and labeling.)

(3) Occupational Safety and Health Administration (OSHA) Regulation 29 CFR part 1910.1200.

(4) International Air Transport Association (IATA), Dangerous Goods Regulation and/or International Civil Aviation Organization (ICAO), Technical Instructions.

(5) AFMAN 24-204, Air Force Inter-Service Manual, Preparing Hazardous Materials For Military Air Shipments.

(6) Any preservation, packaging, packing, marking and labeling requirements contained elsewhere in this solicitation and contract.

(c) Preservation, packaging, packing, marking and labeling of hazardous materials for domestic shipments within the United States in all transport modes shall comply with the following; as applicable:

- (1) U.S. Department of Transportation (DOT) Hazardous Material Regulation (HMR) 49 CFR parts 171 through 180.
- (2) Occupational Safety and Health Administration (OSHA) Regulation 29 CFR part 1910.1200.
- (3) Any preservation, packaging, packing, marking and labeling requirements contained elsewhere in this solicitation and contract.

(d) Hazardous Material Packages designated for outside the United States destinations through Forwarding Points, Distribution Centers, or Container Consolidation Points (CCPs) shall comply with the IMDG, IATA, ICAO or AFMAN 24-204 codes, as applicable.

(e) The test certification data showing compliance with performance-oriented packaging or UN-approved packaging requirements shall be made available to GSA contract administration/management representatives or regulatory inspectors upon request.

#### **52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (NOV 2014)**

(a) *Definitions.* As used in this clause –

*Inverted domestic corporation* means a foreign incorporated entity that meets the definition of an inverted domestic corporation under [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

*Subsidiary* means an entity in which more than 50 percent of the entity is owned –

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(c) Exceptions to this prohibition are located at [9.108-2](#).

(d) In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

#### **52.223-16 ACQUISITION OF EPEAT®-REGISTERED PERSONAL COMPUTER PRODUCTS (OCT 2015)**

(a) *Definitions.* As used in this clause –

*Computer* means a device that performs logical operations and processes data. Computers are composed of, at a minimum:

- (1) A central processing unit (CPU) to perform operations;
- (2) User input devices such as a keyboard, mouse, digitizer, or game controller; and
- (3) A computer display screen to output information. Computers include both stationary and portable units, including desktop computers, integrated desktop computers, notebook computers, thin clients, and workstations. Although computers must be capable of using input devices and computer displays, as noted in (2) and (3) above, computer systems do not need to include these devices on shipment to meet this definition. This definition does not include server computers, gaming consoles, mobile telephones, portable hand-held calculators, portable digital assistants (PDAs), MP3 players, or any other mobile computing device with displays less than 4 inches, measured diagonally.

*Computer display* means a display screen and its associated electronics encased in a single housing or within the computer housing (e.g., notebook or integrated desktop computer) that is capable of displaying output information from a computer via one or more inputs such as a VGA, DVI, USB, DisplayPort, and/or IEEE 1394–2008TM, Standard for High Performance Serial Bus. Examples of computer display technologies are the cathode-ray tube (CRT) and liquid crystal display (LCD).

*Desktop computer* means a computer where the main unit is intended to be located in a permanent location, often on a desk or on the floor. Desktops are not designed for portability and utilize an external computer display, keyboard, and mouse. Desktops are designed for a broad range of home and office applications.

*Integrated desktop computer* means a desktop system in which the computer and computer display function as a single unit that receives its AC power through a single cable. Integrated desktop computers come in one of two possible forms:

- (1) A system where the computer display and computer are physically combined into a single unit; or
- (2) A system packaged as a single system where the computer display is separate but is connected to the main chassis by a DC power cord and both the computer and computer display are powered from a single power supply. As a subset of desktop computers, integrated desktop computers are typically designed to provide similar functionality as desktop systems.

*Notebook computer* means a computer designed specifically for portability and to be operated for extended periods of time either with or without a direct connection to an AC power source. Notebooks must utilize an integrated computer display and be capable of operation off of an integrated battery or other portable power source. In addition, most notebooks use an external power supply and have an integrated keyboard and pointing device. Notebook computers are typically designed to provide similar functionality to desktops, including operation of software similar in functionality to that used in desktops. Docking stations are considered accessories for notebook computers, not notebook computers. Tablet PCs, which may use touch-sensitive screens along with, or instead of, other input devices, are considered notebook computers.

*Personal computer product* means a computer, computer display, desktop computer, integrated desktop computer, or notebook computer.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only personal computer products that, at the time of submission of proposals and at the time of award, were EPEAT<sup>®</sup> bronze-registered or higher.

(c) For information about EPEAT<sup>®</sup>, see [www.epa.gov/PEAT](http://www.epa.gov/PEAT).

## 552.228-5 GOVERNMENT AS ADDITIONAL INSURED (JAN 2016)

(a) This clause supplements the requirements set forth in FAR clause 52.228-5, Insurance—Work on a Government Installation.

(b) Each insurance policy required under this contract, other than workers' compensation insurance, shall contain an endorsement naming the United States as an additional insured with respect to operations performed under this contract. The insurance carrier is required to waive all subrogation rights against any of the named insured.

**52.223-11 OZONE-DEPLETING SUBSTANCES AND HIGH  
GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS  
(JUN 2016)**

(a) *Definition.* As used in this clause —

“*Global warming potential*” means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide’s global warming potential is defined as 1.0.

“*High global warming potential hydrofluorocarbons*” means any hydrofluorocarbons in a particular end use for which EPA’s Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR Part 82 subpart G with supplemental tables of alternatives available at (<http://www.epa.gov/snap/>).

“*Hydrofluorocarbons*” means compounds that only contain hydrogen, fluorine, and carbon.

“*Ozone-depleting substance,*” means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as —

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products that contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), (d), and (e) and 40 CFR part 82, subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) \*\_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

\* The Contractor shall insert the name of the substance(s).

(c) Reporting. For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall —

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by —

(i) Type of hydrofluorocarbon (*e.g.*, HFC-134a, HFC-125, R-410A, R-404A, etc.);

(ii) Contract number; and

(iii) Equipment/appliance;

(2) Report that information to the Contracting Officer for FY16 and to [www.sam.gov](http://www.sam.gov), for FY17 and after —

(i) Annually by November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(d) The Contractor shall refer to EPA's SNAP program (available at <http://www.epa.gov/snap>) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables available at <http://www.epa.gov/snap>.

(Note: This is an FSS reproduction using word processing software) **STANDARD FORM 1449** (10-95) (BACK)

### **I-FSS-969 ECONOMIC PRICE ADJUSTMENT – FSS MULTIPLE AWARD SCHEDULE (OCT 2014) (ALTERNATE II – JUL 2016)**

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reductions clause.

(b) There are two types of economic price adjustments (EPAs) possible under the Multiple Award Schedules (MAS) program for contracts not based on commercial catalogs or price lists as described below. Price adjustments may be effective on or after the first 12 months of the contract period on the following basis:

(1) **Adjustments based on escalation rates negotiated prior to contract award.** Normally, when escalation rates are negotiated, they result in a fixed price for the term of the contract. No separate contract modification will be provided when increases are based on negotiated escalation rates. Price increases will be effective on the 12-month anniversary date of the contract effective date, subject to paragraph (f), below.

(2) **Adjustments based on an agreed-upon market indicator prior to award.** The market indicator, as used in this clause, means the originally released public index, public survey or other public-based market indicator. The market indicator shall be the originally released index, survey or market indicator, not seasonally adjusted, published by the [to be negotiated], and made available at [to be identified]. Any price adjustment shall be based on the percentage change in the designated (i.e. indicator identification and date) market indicator from the initial award to the latest available as of the anniversary date of the contract effective date, subject to paragraph (e), below. If the market indicator is discontinued or deemed no longer available or reliable by the Government, the Government and the Contractor will mutually agree to a substitute. The contract modification reflecting the price adjustment will be effective upon approval by the Contracting Officer, subject to paragraph (g), below.

(c) Notwithstanding the two economic price adjustments discussed above, the Government recognizes the potential impact of unforeseeable major changes in market conditions. For those cases where such changes do occur, the contracting officer will review requests to make adjustments, subject to the Government's examination of industry-wide market conditions and the conditions in paragraph (d) and (e), below. If adjustments are accepted, the contract will be modified accordingly. The determination of whether or not extra-ordinary circumstances exist rests with the contracting officer. The determination of an appropriate mechanism of adjustment will be subject to negotiations.

(d) Conditions of Price change requests under paragraphs b(2) and c above:

(1) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be

considered subject to the other conditions of subparagraph (b)).

(2) Increases are requested before the last 60 days of the contract period, including options.

(3) At least 30 days elapse between requested increases.

(4) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed SEE CLAUSE NOTE percent (SEE CLAUSE NOTE%) of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(e) The following material shall be submitted with request for a price increase under paragraphs b(2) and c above:

(1) A copy of the index, survey or pricing indicator showing the price increase and the effective date.

(2) Any other documentation requested by the Contracting Officer to support the reasonableness of the price increase.

(f) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), (d), and (e) of this clause are satisfied;

(2) Negotiate more favorable prices when the total increase requested is not supported; or,

(3) Decline the price increase when the request is not supported. The Contractor may remove the item(s) from contract involved pursuant to the Cancellation Clause of this contract.

(g) Effective Date of Increases: The increased contract prices shall apply to orders issued to the Contractor on or after the effective date of the contract modification.

Note: Regulation I-FSS-969

The EPA Ceiling Limit for this clause is hereby established as 4% for the Human Capital Category, 5% for the Professional Services Category, 5% for the Travel Category and 10% for all other Large Categories.

NOTE: This clause applies to contracts participating in the Transactional Data Reporting (TDR) Pilot.

**552.216-70 ECONOMIC PRICE ADJUSTMENT – FSS MULTIPLE  
AWARD SCHEDULE CONTRACTS (SEP 1999) (DEVIATION II –  
JUL 2016)**

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors may submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.

(b) Contractors may request price increases to be effective on or after the first 12 months of the contract period providing all of the following conditions are met:

(1) No more than three increases will be considered during each succeeding 12-month period of the contract. For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of this subparagraph (b).

(2) Increases are requested before the last 60 days of the contract period.

(3) At least 30 days elapse between requested increases.

(c) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed SEE CLAUSE NOTE percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(d) Documentation supporting the reasonableness of the price increase shall be submitted with the request for a price increase.

(e) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), and (d) of this clause are satisfied;

(2) Negotiate smaller increases when the total increase requested is not supported; or,

(3) Remove the product(s) from contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported.

(f) The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.

Note: Regulation 552.216-70

The EPA Ceiling Limit for this clause is hereby established as 4% for the Human Capital Category, 5% for the Professional Services Category, 5% for the Travel Category and 10% for all other Large Categories.

NOTE: This clause applies to contracts participating in the Transactional Data Reporting (TDR) Pilot.

### **552.211-89 NON-MANUFACTURED WOOD PACKAGING MATERIAL FOR EXPORT (JUL 2016)**

(a) *Definitions:*

*IPPC Country:* Countries of the European Union (EU) or any other country endorsing the International Plant Protection Convention (IPPC) "Guidelines for Regulating Wood Packaging Material in International Trade," approved March 15, 2002. A listing of countries participating in the IPPC is found at [http://www.aphis.usda.gov/import\\_export/plants/plants\\_exports/wpm/country/index.shtml](http://www.aphis.usda.gov/import_export/plants/plants_exports/wpm/country/index.shtml)

*Non-Manufactured wood,* is also called solid wood and defined as wood packing other than that comprised wholly of wood-based products such as plywood, particle board, oriented strand board, veneer, wood wool, and similar materials, which has been created using glue, heat and pressure or a



combination thereof.

*Packaged material, and Solid Wood Packing Material (SWPM)*, for purposes of this clause, is defined as each separate and distinct material that by itself or in combination with other materials forms the container providing a means of protecting and handling a product. This includes, but is not limited to, pallets, dunnage, crating, packing blocks, drums, load boards, pallet collars, and skids.

(b) Non-manufactured wood pallets and other non-manufactured wood packaging material used to pack items for delivery to or through IPPC countries must be marked and properly treated in accordance with IPPC guidelines.

(c) This requirement applies whether the shipment is direct to the end user or through a Government designated consolidation point. Packaging that does not conform to IPPC guidelines will be refused entry, destroyed or treated prior to entry.

(d) For Department of Defense distribution facilities or freight consolidation points, all non-manufactured wood pallets or packaging material with a probability of entering countries endorsing the IPPC Guidelines must be treated and marked in accordance with DLA 47.305-1 (available at <http://farsite.hill.af.mil/archive/Dlad/Rev5/PART47.htm>), and MIL-STD-2073-1, Standard Practice for Military Packaging (and any future revision).

(e) Pallets and packing material shipped to FAS distribution facilities designated for possible delivery to the countries endorsing the IPPC Guidelines will comply with DLAD 47.305-1, and MIL-STD-2073-1.

(f) Delays in delivery caused by non-complying pallets or wood package material will not be considered as beyond the control of the Contractor. Any applicable Government expense incurred as a result of the Contractor's failure to provide appropriate pallets or package material shall be reimbursed by the Contractor. Expenses may include the applicable cost for repackaging, handling and return shipping, or the destruction of solid wood packaging material.

### **52.224-3 PRIVACY TRAINING (JAN 2017)**

(a) *Definition.* As used in this clause, "personally identifiable information" means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. (*See Office of Management and Budget (OMB) Circular A-130, Managing Federal Information as a Strategic Resource*).

(b) The Contractor shall ensure that initial privacy training, and annual privacy training thereafter, is completed by contractor employees who—

(1) Have access to a system of records;

(2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information on behalf of an agency; or

(3) Design, develop, maintain, or operate a system of records (see also FAR subpart 24.1 and 39.105).

(c) (1) Privacy training shall address the key elements necessary for ensuring the safeguarding of personally identifiable information or a system of records. The training shall be role-based, provide foundational as well as more advanced levels of training, and have measures in place to test the knowledge level of users. At a minimum, the privacy training shall cover —

(i) The provisions of the Privacy Act of 1974 (5 U.S.C. 552a), including penalties for violations of the Act;

- (ii) The appropriate handling and safeguarding of personally identifiable information;
- (iii) The authorized and official use of a system of records or any other personally identifiable information;
- (iv) The restriction on the use of unauthorized equipment to create, collect, use, process, store, maintain, disseminate, disclose, dispose or otherwise access personally identifiable information;
- (v) The prohibition against the unauthorized use of a system of records or unauthorized disclosure, access, handling, or use of personally identifiable information; and
- (vi) The procedures to be followed in the event of a suspected or confirmed breach of a system of records or the unauthorized disclosure, access, handling, or use of personally identifiable information (see OMB guidance for Preparing for and Responding to a Breach of Personally Identifiable Information).

(2) Completion of an agency-developed or agency-conducted training course shall be deemed to satisfy these elements.

- (d) The Contractor shall maintain and, upon request, provide documentation of completion of privacy training to the Contracting Officer.
- (e) The Contractor shall not allow any employee access to a system of records, or permit any employee to create, collect, use, process, store, maintain, disseminate, disclose, dispose or otherwise handle personally identifiable information, or to design, develop, maintain, or operate a system of records unless the employee has completed privacy training, as required by this clause.
- (f) The substance of this clause, including this paragraph (f), shall be included in all subcontracts under this contract, when subcontractor employees will—

- (1) Have access to a system of records;
- (2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or
- (3) Design, develop, maintain, or operate a system of records.

#### **52.242-5 PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017)**

(a) *Definitions.* As used in this clause —

*Reduced payment* means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

*Untimely payment* means a payment that is more than 90 days past due under the terms and conditions of a subcontract, for supplies and services for which the Government has paid the prime contractor.

(b) *Notice.* The Contractor shall notify the Contracting Officer, in writing, not later than 14 days after —

- (1) A small business subcontractor was entitled to payment under the terms and conditions of the subcontract; and

(2) The Contractor —

(i) Made a reduced or untimely payment to the small business subcontractor; or

(ii) Failed to make a payment, which is now untimely.

(c) *Content of notice.* The Contractor shall include the reason(s) for making the reduced or untimely payment in any notice required under paragraph (b) of this clause.

### **52.222-26 EQUAL OPPORTUNITY (SEP 2016)**

(a) *Definition.* As used in this clause.

“*Compensation*” means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

“*Compensation information*” means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor’s profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

“*Essential job functions*” means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if —

(1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or

(2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

“*Gender identity*” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

“*Sexual orientation*” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

“*United States,*” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor’s activities (41 CFR 60-1.5).

(c) (1) The Contractor shall not discriminate against any employee or applicant for employment

because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to —

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) (i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by —

(A) Incorporation into existing employee manuals or handbooks; and

(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(7) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(8) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(9) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(10) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(11) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the Director of OFCCP may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

#### **52.204-15 SERVICE CONTRACT REPORTING REQUIREMENTS FOR INDEFINITE-DELIVERY CONTRACTS (OCT 2016)**

(a) Definition.

First-tier subcontract means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed during the preceding Government fiscal year (October 1–September 30) under this contract for orders that exceed the thresholds established in 4.1703(a)(2).

(c) The Contractor shall report the following information:

(1) Contract number and order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the order.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at [www.sam.gov](http://www.sam.gov). (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the Contracting Officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor's failure to comply with the reporting requirements a part of the Contractor's performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report, or document its rationale for the agency.

(f) (1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following detailed information to the Contractor in sufficient time to submit the report:

(i) Subcontract number (including subcontractor name and unique entity identifier), and

(ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

#### **52.222-41 SERVICE CONTRACT LABOR STANDARDS (AUG 2018)**

(a) *Definitions.* As used in this clause –

*Contractor* when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

*Service employee* means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of 41 U.S.C. chapter 67, Service Contract Labor Standards, and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by [41 U.S.C. 6702](#), as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed herein and which is to be employed under

the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit [Standard Form \(SF\) 1444](#), Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.



(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Service Contract Labor Standards statute and this contract.

(vi) Upon discovery of failure to comply with subparagraphs (b)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under the contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor Contracts.* If this contract succeeds a contract subject to the Service Contract Labor Standards statute under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative

decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of [41 U.S.C. 6703](#) and of this contract.

(h) *Safe and Sanitary Working Conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of the service employee. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Service Contract Labor Standards statute shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, a record of the following:

(i) For each employee subject to the Service Contract Labor Standards statute —

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor will permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay Periods.* The Contractor shall unconditionally pay to each employee subject to the Service Contract Labor Standards statute all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in

which the wages were earned or accrued. A pay period under this statute may not be of any duration longer than semi-monthly.

(k) *Withholding of Payments and Termination of Contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Service Contract Labor Standards statute all or part of the wages or fringe benefits due under the Service Contract Labor Standards statute, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Service Contract Labor Standards statute.

(m) *Collective Bargaining Agreements Applicable to Service Employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority List.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent prime Contractor shall furnish to the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Ruling and Interpretations.* Rulings and interpretations of the Service Contract Labor Standards statute are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's Certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under [41 U.S.C. 6706](#).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under [41 U.S.C. 6706](#).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, Tolerances, and Exemptions Involving Employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor,

pursuant to [41 U.S.C. 6707](#) prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by [41 U.S.C. 6703\(1\)](#) without diminishing any fringe benefits or cash payments in lieu thereof required under [41 U.S.C. 6703\(2\)](#), in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, persons with disabilities, and disabled clients of work centers under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the statute for the employment of apprentices, student-learners, persons with disabilities, or disabled clients of work centers not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two statutes, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by [41 U.S.C. 6703\(1\)](#), in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision —

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Labor Standards minimum wage through the combination of direct wages and tip credit;

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of [41 U.S.C. 6707\(c\)](#).

(t) *Disputes Concerning Labor Standards.* The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its

subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

Note: Regulation 52.222-41

NOTE: This clause does not apply to the following 5 subcategories under Large Category C - Furniture and Furnishings: Office Furniture; Healthcare Furniture; Household, Dormitory & Quarters Furniture; Packaged Furniture; Miscellaneous Furniture.

**52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE  
CONTRACT LABOR STANDARDS—PRICE ADJUSTMENT  
(MULTIPLE YEAR AND OPTION CONTRACTS) (AUG 2018)**

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.
- (b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The wage determination, issued under the Service Contract Labor Standards statute, ([41 U.S.C. chapter 67](#)), by the Administrator, Wage and Hour Division, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, ([29 U.S.C. 206](#)) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.
- (d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:
- (1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;
  - (2) An increase or decrease wage determination otherwise applied to the contract by operation of law; or
  - (3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
- (e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.
- (f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed

and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment in its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

**52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (AUG 2018)**

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired#

- (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (2) Meeting contract performance requirements; or
- (3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The list of EPA-designated items is available at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(Note: This is an FSS reproduction using word processing software) **STANDARD FORM 1449** (10-95) (BACK)

**52.204-7 SYSTEM FOR AWARD MANAGEMENT (OCT 2018)**

(a) Definitions. As used in this provision —

*“Electronic Funds Transfer (EFT) indicator”* means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity.

*“Registered in the System for Award Management (SAM)”* means that —

- (1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)) into SAM;
- (2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in the SAM;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

“*Unique entity identifier*” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b) (1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

(1) Company legal business name.

(2) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(3) Company Physical Street Address, City, State, and Zip Code.

(4) Company Mailing Address, City, State and Zip Code (if separate from physical).

(5) Company telephone number.

(6) Date the company was started.

(7) Number of employees at your location.

(8) Chief executive officer/key manager.

(9) Line of business (industry).

(10) Company Headquarters name and address (reporting relationship within your entity).

(d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

### **52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)**

(a) *Definitions.* As used in this clause —

“*Electronic Funds Transfer (EFT) indicator*” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart [32.11](#)) for the same entity.

“*Registered in the System for Award Management (SAM)*” means that —



- (1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)), into SAM;
- (2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
- (4) The Government has marked the record “Active”.

“*System for Award Management (SAM)*” means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

- (1) Data collected from prospective Federal awardees required for the conduct of business with the Government;
- (2) Prospective contractor-submitted annual representations and certifications in accordance with FAR [subpart 4.12](#); and
- (3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

“*Unique entity identifier*” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision 52.204–7 with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

- (d) (1) (i) If a Contractor has legally changed its business name or *doing business* as name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart [42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day’s written notification of its intention to —

(A) Change the name in SAM;

(B) Comply with the requirements of subpart [42.12](#) of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient

documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

(e) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.sam.gov>.

#### **52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)**

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management via <https://www.sam.gov>.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIS consists of two segments —

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by —

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIS is automatically transferred after a waiting period of 14 calendar days, except for —

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the nonpublic segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

### **52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER-SYSTEM FOR AWARD MANAGEMENT (OCT 2018)**

(a) Method of payment.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the System for Award Management (SAM). In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to SAM.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in SAM is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into SAM; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in SAM and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to [Subpart 32.8](#), is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in SAM.

### **552.238-105 DELIVERIES BEYOND THE CONTRACTUAL PERIOD - PLACING OF ORDERS (MAY 2019)**

In accordance with Clause [552.238-113](#), Scope of Contract (Eligible Ordering Activities), this contract covers all requirements that may be ordered, as distinguished from delivered during the contract term. This is for the purpose of providing continuity of supply or operations by permitting ordering activities to place orders as

requirements arise in the normal course of operations. Accordingly, any order mailed (or received, if forwarded by other means than through the mail) to the Contractor on or before the expiration date of the contract, and providing for delivery within the number of days specified in the contract, shall constitute a valid order.

**552.238-107 TRAFFIC RELEASE (SUPPLIES) (MAY 2019)**

Supplies ordered by GSA for export will not be shipped by the Contractor until shipping instructions are received from GSA. To obtain shipping instructions, the Contractor shall forward completed copies of GSA Form 1611, Application for Shipping Instructions and Notice of Availability, to the GSA office designated on the purchase order at least 15 days prior to the anticipated shipping date. Copies of GSA Form 1611 will be furnished to the Contractor with the purchase order. Failure to comply with this requirement could result in nonacceptance of the material by authorities at the port of exportation. When supplies for export are ordered by other Government agencies the Contractor should obtain shipping instructions from the ordering agency.

**552.238-86 DELIVERY SCHEDULE (MAY 2019)**

(a) *Time of delivery.* The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO) in the case of F.O.B. Destination prices; or to place of shipment in transit in the case of F.O.B. Origin prices, as set forth below. Offerors shall insert in the "Time of Delivery (days ARO)" column in the schedule of Items a definite number of calendar days within which delivery will be made. In no case shall the offered delivery time exceed the Contractor's normal business practice. The Government requires the Contractor's normal delivery time, as long as it is less than the "stated" delivery time(s) shown below. If the Offeror does not insert a delivery time in the schedule of items, the Offeror will be deemed to offer delivery in accordance with the Government's stated delivery time, as stated below [*The contracting officer shall insert the solicited items or Special Item Numbers (SIN) as well as a reasonable delivery time that corresponds with each item or SIN, if known*]:

Items or group of items (special item no. or nomenclature)

\_\_\_\_\_

Government's stated delivery time (days ARO)

\_\_\_\_\_

Contractor's delivery time

\_\_\_\_\_

(b) *Expedited delivery times.* For those items that can be delivered quicker than the delivery times in paragraph (a) of this clause, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested.

Items or group of items (special item no. or nomenclature)

\_\_\_\_\_

Expedited delivery time (hours/days ARO)

\_\_\_\_\_

(c) *Overnight and 2-Day delivery times.* Ordering activities may require overnight or 2-day delivery. The Offeror is requested to annotate its price list or by separate attachment identify the items that can be delivered overnight or within 2 days. Contractors offering such delivery services will be required to state in the cover sheet to its FSS price list details concerning this service.

**552.238-89 DELIVERIES TO THE U.S. POSTAL SERVICE (MAY 2019)**

(a) *Applicability.* This clause applies to orders placed for the U.S. Postal Service (USPS) and accepted by the Contractor for the delivery of supplies to a USPS facility (consignee).

(b) *Mode/method of transportation.* Unless the Contracting Officer grants a waiver of this requirement, any shipment that meets the USPS requirements for mailability (i.e., 70 pounds or less, combined length and girth not more than 108 inches, etc.) delivery shall be accomplished via the use of the USPS. Other commercial services shall not be used, but this does not preclude the Contractor from making delivery by the use of the Contractor's own vehicles.

(c) *Time of delivery.* Notwithstanding the required time for delivery to destination as may be specified elsewhere in this contract, if shipments under this clause are mailed not later than five (5) calendar days before the required delivery date, delivery shall be deemed to have been made timely.

#### **552.238-90 CHARACTERISTICS OF ELECTRIC CURRENT (MAY 2019)**

Contractors supplying equipment which uses electrical current are required to supply equipment suitable for the electrical system at the location at which the equipment is to be used as specified on the order.

#### **552.238-91 MARKING AND DOCUMENTATION REQUIREMENTS FOR SHIPPING (MAY 2019)**

(a) *Responsibility.* It shall be the responsibility of the ordering activity to determine the full marking and documentation requirements necessary under the various methods of shipment authorized by the contract.

(b) *Documentation.* In the event the ordering activity fails to provide the essential information and documentation, the Contractor shall, within three days after receipt of order, contact the ordering activity and advise them accordingly. The Contractor shall not proceed with any shipment requiring transshipment via U.S. Government facilities without the prerequisites stated in paragraph (c) of this section.

(c) *Direct shipments.* The Contractor shall mark all items ordered against this contract with indelible ink, paint or fluid, as follows:

- (1) Traffic Management or Transportation Officer at FINAL destination.
- (2) Ordering Supply Account Number.
- (3) Account number.
- (4) Delivery Order or Purchase Order Number.
- (5) National Stock Number, if applicable; or Contractor's item number.
- (6) Box \_\_\_\_\_ of \_\_\_\_\_ Boxes.
- (7) Nomenclature (brief description of items).

#### **552.238-92 VENDOR MANAGED INVENTORY (VMI) PROGRAM (MAY 2019)**

(a) The term "Vendor Managed Inventory" describes a system in which the Contractor monitors and maintains specified inventory levels for selected items at designated stocking points. VMI enables the

Contractor to plan production and shipping more efficiently. Stocking points benefit from reduced inventory but steady stock levels.

(b) Contractors that commercially provide a VMI-type system may enter into similar partnerships with ordering agencies under a Blanket Purchase Agreement.

**552.238-93 ORDER ACKNOWLEDGMENT (MAY 2019)**

Contractors shall acknowledge only those orders which state "Order Acknowledgment Required." These orders shall be acknowledged within 10 calendar days after receipt. Such acknowledgment shall be sent to the ordering activity placing the order and contain information pertinent to the order, including the anticipated delivery date.

**552.238-94 ACCELERATED DELIVERY REQUIREMENTS (MAY 2019)**

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, the ordering activity is encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within three (3) business days after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

**552.238-95 SEPARATE CHARGE FOR PERFORMANCE ORIENTED PACKAGING (POP) (MAY 2019)**

(a) Offerors are requested to list the hazardous material item to which the separate charge applies in the spaces provided in this paragraph or on a separate attachment. The final price shall be quoted separately at the order level and, if considered reasonable, will be accepted as part of the order.

ITEMS	
SINS or Descriptive Name of Articles (as appropriate)	Charge for Performance Oriented

(b) Ordering activities will not be obligated to utilize the Contractor's services for Performance Oriented Packaging, and they may obtain such services elsewhere if desired. However, the Contractor shall provide items in Performance Oriented Packaging when such packing is specified on the delivery order. The Contractor's contract price and the charge for Performance Oriented Packaging will be shown as separate entries on the delivery order.

**552.238-96 SEPARATE CHARGE FOR DELIVERY WITHIN CONSIGNEE'S PREMISES (MAY 2019) [538.273\(d\)\(20\)](#)**

(a) Offerors are requested to insert, in the spaces provided below or by attachment hereto, a separate charge for "Delivery Within Consignee's Premises" applicable to each shipping container to be shipped. (Articles which are comparable in size and weight, and for which the same charge is applicable, should be grouped under an appropriate item description.) These additional charges will be accepted as part of the award, if considered reasonable, and shall be included in the Contractor's published catalog and/or price list.



(b) Ordering activities are not obligated to issue orders on the basis of "Delivery Within Consignee's Premises," and Contractors may refuse delivery on that basis provided such refusal is communicated in writing to the ordering activity issuing such orders within 5 days of the receipt of such order by the Contractor and provided further, that delivery is made in accordance with the other delivery requirements of the contract. Failure of the Contractor to submit this notification within the time specified shall constitute acceptance to furnish "Delivery Within Consignee's Premises" at the additional charge awarded. When an ordering activity issues an order on the basis of "Delivery Within Consignee's Premises" at the accepted additional charge awarded and the Contractor accepts such orders on that basis, the Contractor will be obligated to provide delivery "F.o.b. Destination, Within Consignee's Premises" in accordance with FAR 52.247-35, which is then incorporated by reference, with the exception that an additional charge as provided herein is allowed for such services. Unless otherwise stipulated by the Offeror, the additional charges awarded hereunder may be applied to any delivery within the 48 contiguous States and the District of Columbia.

(c) When exercising their option to issue orders on the basis of delivery service as provided herein, ordering activities will specify "Delivery Within Consignee's Premises" on the order, and will indicate the exact location to which delivery is to be made. The Contractor's delivery price and the additional charge(s) for "Delivery Within Consignee's Premises" will be shown as separate entries on the order..

ITEMS	
(NSNs or Special Item Numbers or Descriptive Name of Articles)	Additional Charge (Per shipping container) FOR "DELIVERY WITHIN CONSIGNEE'S PREMISES"

**552.238-100 TRANSSHIPMENTS (MAY 2019)**

(a) The Contractor shall complete two (2) DD Forms 1387, Military Shipment Labels and, if applicable, four copies of DD Form 1387-2, Special Handling/Data Certification-used when shipping chemicals, dangerous cargo, etc.

(1) Two copies of the DD Form 1387 will be attached to each shipping container delivered to the port Transportation Officer for subsequent transshipment by the Government as otherwise provided for under the terms of this contract.

(2) These forms will be attached to one end and one side, not on the top or bottom, of the container.

(3) The Contractor will complete the bottom line of these forms, which pertains to the number of pieces, weight and cube of each piece, using U.S. weight and cubic measures. Weights will be rounded off to the nearest pound. (One kg = 2.2 U.S. pounds; one cubic meter = 35.3156 cubic feet.)

(b) In addition, if the cargo consists of chemicals, or is dangerous, one copy of the DD Form 1387-2 will be attached to the container, and three copies will be furnished to the Transportation Officer with the Bill of Lading.

(c) Dangerous cargo will not be intermingled with non-dangerous cargo in the same container.

(d) Copies of the above forms and preparation instructions will be obtained from the ordering activity issuing the Delivery Order. Reproduced copies of the forms are acceptable.

(e) Failure to include DD Form 1387, and DD Form 1387-2, if applicable, on each shipping container will result in rejection of shipment by the port Transportation Officer.

**552.238-101 FOREIGN TAXES AND DUTIES (MAY 2019)**

Prices offered must be net, delivered, f.o.b. to the destinations accepted by the Government.

(a) The Contractor warrants that such prices do not include any tax, duty, customs fees, or other foreign Governmental costs, assessments, or similar charges from which the U.S. Government is exempt.

(b) Standard commercial export packaging, including containerization, if necessary, packaging, preservation, and/or marking are included in the pricing offered and accepted by the Government.

**552.238-102 ENGLISH LANGUAGE AND U.S. DOLLAR REQUIREMENTS (MAY 2019)**

(a) All documents produced by the Contractor to fulfill requirements of this contract including, but not limited to, Federal Supply Schedule catalogs and price lists, must reflect all terms and conditions in the English language.

(b) U.S. dollar equivalency, if applicable, will be based on the rates published in the "Treasury Reporting Rates of Exchange" in effect as of the date of the agency's purchase order or in effect during the time period specified elsewhere in this contract.

**552.238-103 ELECTRONIC COMMERCE (MAY 2019)**

(a) General background. The Federal Acquisition Streamlining Act (FASA) of 1994 requires the Government to evolve its acquisition process from one driven by paper to an expedited process based on electronic commerce/electronic data interchange (EC/EDI). EC/EDI encompasses more than merely automating manual processes and eliminating paper transactions. EC/EDI improves business processes (e.g. procurement, finance, logistics) into a fully electronic environment and fundamentally changes the way organizations operate.

(b) Trading partners and Value-Added Networks (VAN's).

(1) Within the electronic commerce architecture, electronic documents (e.g., orders, invoices, etc.) are carried between the Federal Government's procuring office and Contractors (now known as "trading partners"). These transactions are carried by commercial telecommunications companies called Value-Added Networks (VAN's).

(2) EDI can be performed using commercially available hardware, software, and telecommunications. The selection of a VAN is a business decision Contractors must make. There are many different VAN's which provide a variety of electronic services and different pricing strategies. If the VAN only provides communications services, you may also need a software translation package.

(c) Registration instructions. To perform EDI with the Government, Contractors shall register as a trading partner. Contractors will provide regular business information, banking information, and EDI capabilities to all agencies in this single registration. A central repository of all trading partners is the Systems for Award Management (SAM) <http://www.sam.gov>. Contractors shall follow the instructions on the SAM website regarding how to register for EDI.

(d) Implementation conventions. All EDI transactions must comply with the Federal Implementation Conventions (ICs). The ICs are available on a registry maintained by the National Institute of Standards and Technology (NIST). It is accessible via the INTERNET at <http://www.nist.gov/itl>. ICs are available for common business documents such as Purchase Order, Price Sales Catalog, Invoice, Request for Quotes, etc.

(e) Additional information. GSA has additional information available for Contractors who are interested

in using EC/EDI on its website, <http://www.gsa.gov>.

(f) GSA Advantage!<sup>®</sup>.

(1) GSA Advantage!<sup>®</sup> uses electronic commerce to receive catalogs, invoices and text messages; and to send purchase orders, application advice, and functional acknowledgments. GSA Advantage!<sup>®</sup> enables customers to:

- (i) Perform database searches across all contracts by manufacturer; manufacturer's model/part number; Contractor; and generic supply categories.
- (ii) Generate EDI delivery orders to Contractors, generate EDI delivery orders from the Federal Supply Service to Contractors, or download files to create their own delivery orders.
- (iii) Use the credit card.

(2) GSA Advantage!<sup>®</sup> may be accessed via the GSA Home Page. The Internet address is: <http://www.gsa.gov>.

#### **552.238-104 DISSEMINATION OF INFORMATION BY CONTRACTOR (MAY 2019)**

The Government will provide the Contractor with a single copy of the resulting Federal Supply Schedule contract award documents. However, it is the responsibility of the Contractor to furnish all sales outlets authorized to participate in the performance of the contract with the terms, conditions, pricing schedule, and other appropriate information.

#### **552.238-106 INTERPRETATION OF CONTRACT REQUIREMENTS (MAY 2019)**

No interpretation of any provision of this contract, including applicable specifications, shall be binding on the Government unless furnished or agreed to in writing by the Contracting Officer or his designated representative.

#### **552.238-112 DEFINITION (FEDERAL SUPPLY SCHEDULES) - NON-FEDERAL ENTITY (MAY 2019)**

Ordering activity (also called "ordering agency" and "ordering office") means an eligible ordering activity (see [552.238-113](#)), authorized to place orders under Federal Supply Schedule contracts.

#### **552.238-70 COVER PAGE FOR WORLDWIDE FEDERAL SUPPLY SCHEDULES (MAY 2019) FOR ALL GEOGRAPHIC AREAS**

Solicitation No. 47QSMD20R0001 Refresh 0019

Federal Supply Schedule Contract for All Geographic Areas.

(a) Federal Supply Classification (FSC) GROUP: Various  
PART: Various  
SECTION: Various  
SUPPLY: Various  
FSC CLASS(ES)/PRODUCT CODE(S)/NAICS: Various

(b) STANDARD INDUSTRY GROUP: Various  
SERVICE: Various  
SERVICE CODE(S)/NAICS: Various

#### **552.238-79 CANCELLATION (MAY 2019)**

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

#### **552.238-81 PRICE REDUCTIONS (MAY 2019)**

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c) (1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor

(i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

(iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the eligible ordering activity with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d) There shall be no price reduction for sales —

(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;

(2) To Federal agencies;

(3) Made to Eligible Ordering Activities identified in GSAR Clause 552.238-113 when the order is placed under this contract (and the Eligible Ordering Activities identified in GSAR Clause 552.238-113 is the agreed upon customer or category of customer that is the basis of award); or

(4) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.

(f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

Note: Regulation 552.238-81

This clause does not apply to contracts participating in the Transactional Data Reporting (TDR) Pilot. Please refer to clause 552.238-81 Alternate I.

#### **552.238-81 PRICE REDUCTIONS (MAY 2019) (ALTERNATE I - APR 2014)**

(a) The Government may request from the Contractor, and the Contractor may provide to the Government, a temporary or permanent price reduction at any time during the contract period.

(b) The Contractor may offer the Contracting Officer a voluntary price reduction at any time during the contract period.

Note: Regulation 552.238-81

This clause applies to contracts participating in the Transactional Data Reporting (TDR) Pilot.

#### **552.238-83 EXAMINATION OF RECORDS BY GSA (FEDERAL SUPPLY SCHEDULES) (MAY 2019)**

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall have access to and the right to examine any books, documents, papers and records of the contractor involving transactions related to this contract for overbillings, billing errors, compliance with contract clauses 552.238-81, Price Reductions and 552.238-80, Industrial Funding Fee and Sales Reporting. This authority shall expire 3 years after final payment. The basic contract and each option shall be treated as separate contracts for purposes of applying this clause.

#### **552.238-84 DISCOUNTS FOR PROMPT PAYMENT (MAY 2019)**

(a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount") will be considered in evaluating the relationship of the Offeror's concessions to the Government vis-a-vis the Offeror's concessions to its commercial and Federal non-schedule customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low Offeror in the situation described in the "Offers on Identical Products" provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the Federal Register. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Discounts for early payment may be offered either in the original offer or on individual invoices

submitted under the resulting contract. Discounts offered will be taken by the ordering activity if payment is made within the discount period specified.

(e) Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(f) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

#### **552.238-85 CONTRACTOR'S BILLING RESPONSIBILITIES (MAY 2019)**

(a) The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor's name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to

- (1) Comply with the same terms and conditions as the Contractor for sales made under the contract;
- (2) Maintain a system of reporting sales under the contract to the manufacturer, which includes
  - (i) The date of sale;
  - (ii) The ordering activity to which the sale was made;
  - (iii) The service or supply/model sold;
  - (iv) The quantity of each service or supply/model sold;
  - (v) The price at which it was sold, including discounts; and
  - (vi) All other significant sales data.
- (3) Be subject to audit by the Government, with respect to sales made under the contract; and
- (4) Place orders and accept payments in the name of the Contractor in care of the dealer.

(b) An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government.

#### **552.238-87 DELIVERY PRICES (MAY 2019)**

(a) Prices offered must cover delivery as provided below to destinations located within the 48 contiguous States and the District of Columbia.

- (1) Delivery to the door of the specified Government activity by freight or express common carriers on articles for which store-door delivery is provided, free or subject to a charge, pursuant to regularly published tariffs duly filed with the Federal and/or State regulatory bodies governing such carrier; or, at the option of the Contractor, by parcel post on mailable articles, or by the Contractor's vehicle. Where store-door delivery is subject to a charge, the Contractor shall place

the notation "Delivery Service Requested" on bills of lading covering such shipments, and pay such charge and add the actual cost thereof as a separate item to his invoice.

(2) Delivery to siding at destinations when specified by the ordering office, if delivery is not covered under paragraph (a)(1) of this section.

(3) Delivery to the freight station nearest destination when delivery is not covered under paragraph (a)(1) or (2) of this section.

(b) The Offeror shall indicate in the offer whether or not prices submitted cover delivery f.o.b. destination in Alaska, Hawaii, and the Commonwealth of Puerto Rico.

(c) When deliveries are made to destinations outside the contiguous 48 States; i.e., Alaska, Hawaii, and the Commonwealth of Puerto Rico, and are not covered by paragraph (b), above, the following conditions will apply:

(1) Delivery will be f.o.b. inland carrier, point of exportation (FAR 52.247-38), with the transportation charges to be paid by the Government from point of exportation to destination in Alaska, Hawaii, or the Commonwealth of Puerto Rico, as designated by the ordering office. The Contractor shall add the actual cost of transportation to destination from the point of exportation in the 48 contiguous States nearest to the designated destination. Such costs will, in all cases, be based upon the lowest regularly established rates on file with the Interstate Commerce Commission, the U.S. Maritime Commission (if shipped by water), or any State regulatory body, or those published by the U.S. Postal Service; and must be supported by paid freight or express receipt or by a statement of parcel post charges including weight of shipment.

(2) The right is reserved to ordering agencies to furnish Government bills of lading.

#### **552.238-88 GSA ADVANTAGE!<sup>®</sup>. (MAY 2019)**

(a) The Contractor shall participate in the GSA Advantage!<sup>®</sup> online shopping service. Information and instructions regarding Contractor participation are contained in clause 552.238-103, *Electronic Commerce*.

(b) The Contractor shall refer to contract clauses 552.238-77, *Submission and Distribution of Authorized FSS Price Lists* (which provides for submission of price lists on a common-use electronic medium), and 552.238-82, *Modifications* (which addresses electronic file updates).

#### **552.238-97 PARTS AND SERVICE (MAY 2019)**

(a) For equipment under items listed in the schedule of items or services on which offers are submitted, the Contractor represents by submission of this offer that parts and services (including the performing of warranty or guarantee service) are now available from dealers or distributors serving the areas of ultimate overseas destination or that such facilities will be established and will be maintained throughout the contract period. If a new servicing facility is to be established, the facility shall be established no later than the beginning of the contract period.

(b) Each Contractor shall be fully responsible for the services to be performed by the named servicing facilities, or by such facilities to be established, and fully guarantees performance of such services if the original service proves unsatisfactory.

(c) Contractors are requested to provide the Ordering Activity, the names and addresses of all supply and service points maintained in the geographic area in which the Contractor will perform. Please indicate opposite each point whether or not a complete stock of repair parts for items offered is carried at that point, and whether or not mechanical service is available.



**552.238-98 CLAUSES FOR OVERSEAS COVERAGE (MAY 2019)**

- (a) 52.214-34 Submission of Offers in the English Language
- (b) 52.214-35 Submission of Offers in U.S. Currency
- (c) [552.238-90](#) Characteristics of Electric Current
- (d) [552.238-91](#) Marking and Documentation Requirements Per Shipment
- (e) [552.238-97](#) Parts and Service
- (f) [552.238-99](#) Delivery Prices Overseas
- (g) [552.238-100](#) Transshipments
- (h) [552.238-101](#) Foreign Taxes and Duties
- (i) 52.247-34 FOB Destination
- (j) 52.247-38 FOB Inland Carrier, Point of Exportation
- (k) 52.247-39 FOB Inland Point, Country of Importation

**552.238-99 DELIVERY PRICES OVERSEAS (MAY 2019)**

- (a) Prices offered must cover delivery to destinations as provided as follows:
  - (1) Direct delivery to consignee. F.O.B. Inland Point, Country of Importation (FAR 52.247-39). (Offeror should indicate countries where direct delivery will be provided.)
  - (2) Delivery to overseas assembly point for transshipment when specified by the ordering activity, if delivery is not covered under paragraph (1), above.
  - (3) Delivery to the overseas port of entry when delivery is not covered under paragraph (a)(1) or (2) of this section.
- (b) Geographic area(s)/countries/zones which are intended to be covered must be identified in the offer.

**52.216-32 TASK-ORDER AND DELIVERY-ORDER OMBUDSMAN (SEP 2019) (ALT I SEP 2019)**

(a) In accordance with [41 U.S.C. 4106\(g\)](#), the Agency has designated the following task-order and delivery-order Ombudsman for this contract. The Ombudsman must review complaints from the Contractor concerning all task-order and delivery-order actions for this contract and ensure the Contractor is afforded a fair opportunity for consideration in the award of orders, consistent with the procedures in the contract.

[Contracting Officer to insert name, address, telephone number, and email address for the Agency Ombudsman or provide the URL address where this information may be found.]

- (b) Consulting an ombudsman does not alter or postpone the timeline for any other process (e.g.,

protests).

(c) Before consulting with the Ombudsman, the Contractor is encouraged to first address complaints with the Contracting Officer for resolution. When requested by the Contractor, the Ombudsman may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.

(d) Contracts used by multiple agencies.

(1) This is a contract that is used by multiple agencies. Complaints from Contractors concerning orders placed under contracts used by multiple agencies are primarily reviewed by the task-order and delivery-order Ombudsman for the ordering activity.

(2) The ordering activity has designated the following task-order and delivery-order Ombudsman for this order:

[The ordering activity's contracting officer to insert the name, address, telephone number, and email address for the ordering activity's Ombudsman or provide the URL address where this information may be found.]

(3) Before consulting with the task-order and delivery-order Ombudsman for the ordering activity, the Contractor is encouraged to first address complaints with the ordering activity's Contracting Officer for resolution. When requested by the Contractor, the task-order and delivery-order Ombudsman for the ordering activity may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.

End of clause

#### **52.219-13 NOTICE OF SET-ASIDE OF ORDERS (MAR 2020)**

(a) The Contracting Officer may set aside orders for the small business concerns identified in 19.000(a)(3).

(b) The Contracting Officer will give notice of the order or orders, if any, to be set aside for small business concerns identified in [19.000\(a\)\(3\)](#) and the applicable small business program. This notice, and its restrictions, will apply only to the specific orders that have been set aside for any of the small business concerns identified in [19.000\(a\)\(3\)](#).

End of clause

#### **52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (MAR 2020)**

(a) *Definition.*

"*Small business concern*," as used in this clause, means a concern, including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *Applicability.* This clause applies only to —

(1) Contracts that have been totally set aside for small business concerns; and

(2) Orders set aside for small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).

(c) General.

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

End of clause

#### **552.238-77 SUBMISSION AND DISTRIBUTION OF AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICE LISTS (MAR 2020)**

(a) The Contractor shall submit its Authorized Federal Supply Schedule Price List on a common-use electronic medium as prescribed by GSA. Some structured data entry in a prescribed format may be required.

(b) Eligible ordering activities will utilize GSA's online shopping and ordering system to review a Contractor's price lists.

End of clause

Note: Regulation 552.238-77

Contractors must follow the detailed guidance and requirements provided in the Contract Requirements and Modification Guidance page ([www.gsa.gov/mascontractrequirements](http://www.gsa.gov/mascontractrequirements)) when submitting electronic data for inclusion on the GSA Advantage! website.

#### **52.202-1 DEFINITIONS (JUN 2020)**

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless-

(a) The solicitation, or amended solicitation, provides a different definition;

(b) The contracting parties agree to a different definition;

(c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning;

(d) The word or term is defined in FAR part 31, for use in the cost principles and procedures; or

(e) The word or term defines an acquisition-related threshold, and if the threshold is adjusted for inflation as set forth in FAR 1.109(a), then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment; see FAR 1.109(d).

#### **52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUN 2020)**

(a) *Definitions.* As used in this clause:

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

“Month of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information.

(d) (1) Executive compensation of the prime contractor. As a part of its annual registration requirement in the System for Award Management (SAM) database (Federal Acquisition Regulation (FAR) provision 52.204-7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if –

(i) In the Contractor’s preceding fiscal year, the Contractor received –

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

(2) *First-tier subcontract information.* Unless otherwise directed by the Contracting Officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, the Contractor shall report the following information at <http://www.ftrs.gov> for that first-tier subcontract. (The Contractor shall follow the instructions at <http://www.ftrs.gov> to report the data.)

(i) Unique entity identifier for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

(xiii) Treasury account symbol (TAS) as reported in FPDS.

(xiv) The applicable North American Industry Classification System code (NAICS).

(3) *Executive compensation of the first-tier subcontractor.* Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <http://www.ftrs.gov>, if -

(i) In the subcontractor's preceding fiscal year, the subcontractor received -

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value below the threshold specified in FAR 4.1403(a), on the date of subcontract award to avoid the reporting requirements in paragraph (d) of this clause.

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g) (1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor.

(h) The FSRS database at <http://www.fsrs.gov> will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM database information is incorrect, the contractor is responsible for correcting this information.

#### **52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (AUG 2020)**

(a) *Definition.* As used in this clause-

*Commercial and Government Entity (CAGE) code* means-

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract for each location of contract, including subcontract, performance. For contractors registered in the System for Award Management (SAM), the DLA Commercial and Government Entity (CAGE) Branch shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the contracting officer in accordance with [subpart 42.12](#). The contractor shall communicate any change to the CAGE code to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE code on the contract.

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Commercial and Government Entity (CAGE) Branch. Requests for changes shall be provided at <https://cage.dla.mil>. Change requests to the CAGE master file are accepted from the entity identified by the code.

(d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau (points of contact available at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>) or NSPA at <https://eportals.nspa.nato.int/AC135Public/scage/CageList.aspx> to request CAGE changes.

(e) Additional guidance for maintaining CAGE codes is available at <https://cage.dla.mil>.

(f) If the contract includes Federal Acquisition Regulation clause 52.204-2, Security Requirements, the contractor shall ensure that subcontractors maintain their CAGE code(s) throughout the life of the contract.

### **52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)**

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60–741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

### **52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)**

(a) *Definitions.* As used in this clause -

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60–300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

### **52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020)**

(a) *Definitions.* As used in this clause, “active duty wartime or campaign badge veteran,” “Armed



Forces service medal veteran,” “disabled veteran,” “protected veteran,” and “recently separated veteran,” have the meanings given in Federal Acquisition Regulation (FAR) 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on-

(1) The total number of employees in the contractor’s workforce, by job category and hiring location, who are protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by filing the VETS-4212 “Federal Contractor Veterans’ Employment Report” (see “VETS-4212 Federal Contractor Reporting” and “Filing Your VETS-4212 Report” at <http://www.dol.gov/vets/vets4212.htm>).

(d) The Contractor shall file VETS-4212 Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date-

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-4212. The contractor’s knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor.

### **52.223-15 Energy Efficiency in Energy-Consuming Products (MAY 2020)**

(a) Definition. As used in this clause--

Energy-efficient product--

(1) Means a product that--

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

(2) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR<sup>®</sup> products or FEMP-designated products) at the time of contract award, for products that are--

(1) Delivered;

(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(3) Furnished by the Contractor for use by the Government; or

(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless--

(1) The energy-consuming product is not listed in the ENERGY STAR<sup>®</sup> Program or FEMP; or

(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available for--

(1) ENERGY STAR<sup>®</sup> at <http://www.energystar.gov/products>; and

(2) FEMP at <https://www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies>

**52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States (MaY 2020)**

(a) Definitions. As used in this clause--

*Chief of mission* means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Pub. L. 96-465) to be temporarily in charge of such a mission or office.

*Combatant commander* means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161. Designated operational area means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

*Supporting a diplomatic or consular mission* means performing outside the United States under a contract administered by Federal agency personnel who are subject to the direction of a chief of mission.

(b) *General.*

(1) This clause applies when Contractor personnel are required to perform outside the United States--

(i) In a designated operational area during--

- (A) Contingency operations;
- (B) Humanitarian or peacekeeping operations; or
- (C) Other military operations; or military exercises, when designated by the Combatant Commander; or

(ii) When supporting a diplomatic or consular mission--

- (A) That has been designated by the Department of State as a danger pay post (see <https://aoprals.state.gov/>); or
- (B) That the Contracting Officer has indicated is subject to this clause.

(2) Contract performance may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are civilians.

(i) Except as provided in paragraph (b)(3)(ii) of this clause, and in accordance with paragraph (i)(3) of this clause, Contractor personnel are only authorized to use deadly force in self-defense.

(ii) Contractor personnel performing security functions are also authorized to use deadly force when use of such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in the contract or with their job description and terms of employment.

(4) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.* Unless specified elsewhere in the contract, the Contractor is responsible for all logistical and security support required for Contractor personnel engaged in this contract.

(d) *Compliance with laws and regulations.* The Contractor shall comply with, and shall ensure that its personnel in the designated operational area or supporting the diplomatic or consular mission are familiar with and comply with, all applicable--

- (1) United States, host country, and third country national laws;
- (2) Treaties and international agreements;
- (3) United States regulations, directives, instructions, policies, and procedures; and
- (4) Force protection, security, health, or safety orders, directives, and instructions issued by the Chief of Mission or the Combatant Commander; however, only the Contracting Officer is authorized to modify the terms and conditions of the contract.

(e) *Preliminary personnel requirements.*

(1) Specific requirements for paragraphs (e)(2)(i) through (e)(2)(vi) of this clause will be set forth in the statement of work, or elsewhere in the contract.

(2) Before Contractor personnel depart from the United States or a third country, and before Contractor personnel residing in the host country begin contract performance in the designated operational area or supporting the diplomatic or consular mission, the Contractor shall ensure the

following:

- (i) All required security and background checks are complete and acceptable.
- (ii) All personnel are medically and physically fit and have received all required vaccinations.
- (iii) All personnel have all necessary passports, visas, entry permits, and other documents required for Contractor personnel to enter and exit the foreign country, including those required for in-transit countries.
- (iv) All personnel have received--
  - (A) A country clearance or special area clearance, if required by the chief of mission; and
  - (B) Theater clearance, if required by the Combatant Commander.
- (v) All personnel have received personal security training. The training must at a minimum--
  - (A) Cover safety and security issues facing employees overseas;
  - (B) Identify safety and security contingency planning activities; and
  - (C) Identify ways to utilize safety and security personnel and other resources appropriately.
- (vi) All personnel have received isolated personnel training, if specified in the contract. Isolated personnel are military or civilian personnel separated from their unit or organization in an environment requiring them to survive, evade, or escape while awaiting rescue or recovery.
- (vii) All personnel who are U.S. citizens are registered with the U.S. Embassy or Consulate with jurisdiction over the area of operations on-line at <http://www.travel.state.gov>.

(3) The Contractor shall notify all personnel who are not a host country national or ordinarily resident in the host country that--

- (i) If this contract is with the Department of Defense, or the contract relates to supporting the mission of the Department of Defense outside the United States, such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States (see the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261 et seq.);
- (ii) Pursuant to the War Crimes Act, 18 U.S.C. 2441, Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States; and
- (iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of United States diplomatic, consular, military or other United States Government missions outside the United States (18 U.S.C. 7(9)).

(f) *Processing and departure points.* The Contractor shall require its personnel who are arriving from outside the area of performance to perform in the designated operational area or supporting the diplomatic or consular mission to--

- (1) Process through the departure center designated in the contract or complete another process as directed by the Contracting Officer;
- (2) Use a specific point of departure and transportation mode as directed by the Contracting Officer; and
- (3) Process through a reception center as designated by the Contracting Officer upon arrival at the place of performance.

(g) *Personnel data.*

- (1) Unless personnel data requirements are otherwise specified in the contract, the Contractor shall establish and maintain with the designated Government official a current list of all Contractor personnel in the areas of performance. The Contracting Officer will inform the Contractor of the Government official designated to receive this data and the appropriate system to use for this effort.
- (2) The Contractor shall ensure that all employees on this list have a current record of emergency data, for notification of next of kin, on file with both the Contractor and the designated Government official.

(h) *Contractor personnel.* The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including termination for default or cause.

(i) *Weapons.*

(1) If the Contracting Officer, subject to the approval of the Combatant Commander or the Chief of Mission, authorizes the carrying of weapons--

(i) The Contracting Officer may authorize an approved Contractor to issue Contractor-owned weapons and ammunition to specified employees; or

(ii) To be determined at the task order level [*Contracting Officer to specify individual, e.g., Contracting Officer Representative, Regional Security Officer, etc.*] may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(2) The Contractor shall provide to the Contracting Officer a specific list of personnel for whom authorization to carry a weapon is requested.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons--

(i) Are adequately trained to carry and use them--

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander or the Chief of Mission; and

(C) In compliance with applicable agency policies, agreements, rules, regulations,

and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander or the Chief of Mission regarding possession, use, safety, and accountability of weapons and ammunition.

(4) Upon revocation by the Contracting Officer of the Contractor's authorization to possess weapons, the Contractor shall ensure that all Government-furnished weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(5) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(j) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the area of performance.

(k) *Military clothing and protective equipment.*

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must wear distinctive patches, armbands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures.

(2) Contractor personnel may wear specific items required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(l) *Evacuation.*

(1) If the Chief of Mission or Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide to United States and third country national Contractor personnel the level of assistance provided to private United States citizens.

(2) In the event of a non-mandatory evacuation order, the Contractor shall maintain personnel on location sufficient to meet contractual obligations unless instructed to evacuate by the Contracting Officer.

(m) *Personnel recovery.*

(1) In the case of isolated, missing, detained, captured or abducted Contractor personnel, the Government will assist in personnel recovery actions.

(2) Personnel recovery may occur through military action, action by non-governmental organizations, other Government-approved action, diplomatic initiatives, or through any combination of these options.

(3) The Department of Defense has primary responsibility for recovering DoD contract service employees and, when requested, will provide personnel recovery support to other agencies in accordance with DoD Directive 2310.2, Personnel Recovery.

(n) *Notification and return of personal effects.*

(1) The Contractor shall be responsible for notification of the employee-designated next of kin, and notification as soon as possible to the U.S. Consul responsible for the area in which the event occurred, if the employee--

- (i) Dies;
- (ii) Requires evacuation due to an injury; or
- (iii) Is isolated, missing, detained, captured, or abducted.

(2) The Contractor shall also be responsible for the return of all personal effects of deceased or missing Contractor personnel, if appropriate, to next of kin.

(o) *Mortuary affairs.* Mortuary affairs for Contractor personnel who die in the area of performance will be handled as follows:

(1) If this contract was awarded by DoD, the remains of Contractor personnel will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(2) (i) If this contract was awarded by an agency other than DoD, the Contractor is responsible for the return of the remains of Contractor personnel from the point of identification of the remains to the location specified by the employee or next of kin, as applicable, except as provided in paragraph (o)(2)(ii) of this clause.

(ii) In accordance with 10 U.S.C. 1486, the Department of Defense may provide, on a reimbursable basis, mortuary support for the disposition of remains and personal effects of all U.S. citizens upon the request of the Department of State.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to perform outside the United States--

(1) In a designated operational area during--

- (i) Contingency operations;
- (ii) Humanitarian or peacekeeping operations; or
- (iii) Other military operations; or military exercises, when designated by the Combatant Commander; or

(2) When supporting a diplomatic or consular mission--

(i) That has been designated by the Department of State as a danger pay post (see <https://aoprals.state.gov/>); or

(ii) That the Contracting Officer has indicated is subject to this clause.

### **52.216-18 ORDERING (AUG 2020)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from TBD through TBD.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the



event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) A delivery order or task order is considered "issued" when--

(1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail;

(2) If sent by fax, the Government transmits the order to the Contractor's fax number; or

(3) If sent electronically, the Government either--

(i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or

(ii) Distributes the delivery order or task order via email to the Contractor's email address.

(d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

### **52.228-3 WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT) (JUL 2014)**

(a) The Contractor shall

(1) Before commencing performance under this contract, establish provisions to provide for the payment of disability compensation and medical benefits to covered employees and death benefits to their eligible survivors, by purchasing workers' compensation insurance or qualifying as a self-insurer under the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 932](#)) as extended by the Defense Base Act ([42 U.S.C. 1651, et seq.](#)), and continue to maintain provisions to provide such Defense Base Act benefits until contract performance is completed;

(2) Within ten days of an employee's injury or death or from the date the Contractor has knowledge of the injury or death, submit Form LS-202 (Employee's First Report of Injury or Occupational Illness) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 930\(a\)](#), 20 CFR 702.201 to 702.203);

(3) Pay all compensation due for disability or death within the time frames required by the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 914](#), 20 CFR 702.231 and 703.232);

(4) Provide for medical care as required by the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 907](#), 20 CFR 702.402 and 702.419);

(5) If controverting the right to compensation, submit Form LS-207 (Notice of Controversion of Right to Compensation) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 914\(d\)](#), 20 CFR 702.251);

(6) Immediately upon making the first payment of compensation in any case, submit Form LS-206 (Payment Of Compensation Without Award) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 914\(c\)](#), 20 CFR 702.234);

(7) When payments are suspended or when making the final payment, submit Form LS-208 (Notice of Final Payment or Suspension of Compensation Payments) to the Department of Labor in accordance with the Longshore and Harbor Workers' Compensation Act ([33 U.S.C. 914\(c\)](#) and (g), 20 CFR 702.234 and 702.235); and

(8) Adhere to all other provisions of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act, and Department of Labor regulations at 20 CFR Parts 701 to 704.

(b) For additional information on the Longshore and Harbor Workers' Compensation Act requirements see <http://www.dol.gov/owcp/dlhw/lsdba.htm>.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts to

which the Defense Base Act applies.

(End of clause)

(Note: This is an FSS reproduction using word processing software) **STANDARD FORM 1449** (10-95) (BACK)

#### **52.204-2 SECURITY REQUIREMENTS (MAR 2021)**

- (a) This clause applies to the extent that this contract involves access to information classified “Confidential,” “Secret,” or “Top Secret.”
- (b) The Contractor shall comply with –
- (1) The Security Agreement ([DD Form 441](#)), including the National Industrial Security Program Operating Manual (32 CFR part 117); and
  - (2) Any revisions to that manual, notice of which has been furnished to the Contractor.
- (c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.
- (d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

#### **52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2021)**

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC’s List of Specially Designated Nationals and Blocked Persons at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. More information about these restrictions, as well as updates, is available in the OFAC’s regulations at 31 CFR chapter V and/or on OFAC’s Web site at <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

#### **552.238-80 INDUSTRIAL FUNDING FEE AND SALES REPORTING (JUL 2020)**

(a) Reporting of Federal Supply Schedule Sales. The Contractor shall report all contract sales under this contract as follows:

- (1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the

nearest whole dollar, of all sales under this contract by calendar quarter (January 1-March 31, April 1- June 30, July 1-September 30, and October 1-December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor's established commercial accounting practice. The acceptable points at which sales may be reported include—

- (i) Receipt of order;
- (ii) Shipment or delivery, as applicable;
- (iii) Issuance of an invoice; or
- (iv) Payment.

(2) Contract sales shall be reported to Federal Acquisition Services (FAS) within 30 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including “zero” sales, through physical completion of the last outstanding task order or delivery order of the contract.

(3) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC); a separately awarded FAR Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing authority shall be counted as reportable sales for IFF purposes.

(4) The Contractor shall electronically report the quarterly dollar value of sales, including “zero” sales, by utilizing the automated reporting system at an Internet website designated by the General Services Administration (GSA)'s Federal Acquisition Service (FAS). Prior to using this automated system, the Contractor shall complete contract registration with the FAS Vendor Support Center (VSC). The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or sub-item.

(5) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the “Treasury Reporting Rates of Exchange” issued by the U.S. Department of Treasury, Financial Management Service. The Contractor shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from Financial Management Service, International Funds Branch, Telephone: (202) 874-7994, Internet: [http://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch\\_home.htm](http://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm).

(b) The Contractor shall remit the IFF at the rate set by GSA's FAS.

(1) The Contractor shall remit the IFF to FAS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA's FAS. GSA's FAS has the unilateral right to change the percentage at any time, but not more than once per year. FAS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FAS for the costs of operating the Federal Supply Schedules Program. FAS recoups its operating costs from ordering activities as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized FAS programs, in accordance with 40 U.S.C. 321. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FAS will post notice of the

current IFF at <https://srp.fas.gsa.gov/> or successor website as appropriate.

(c) Within 60 days of award, an FAS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FAS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(d) Failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232-17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

End of Clause

Note: Regulation 552.238-80  
 FSS contractors are required to report sales and remit IFF for Schedule items sold via FedMall, just as they would for any other Schedule sale. FedMall sales of Schedule items are treated no differently than sales earned via GSA Advantage! or from orders directly placed by an ordering activity.  
  
 This clause does not apply to contracts participating in the Transactional Data Reporting (TDR) Pilot. Please refer to clause 552.238-80 Alternate I.

**52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (FEB 2021) (ALTERNATE I - JUL 1995)**

(a) Hazardous material, as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (if none insert None)	Identification No.

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i)(2) the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS must be placed in a weather resistant envelope.

Note: Regulation 52.223-3

Safety Data Sheets, hazardous material labels and other relevant data should not be submitted to the MAS Contracting Officer. This information should be provided directly to the ordering activity in accordance with this clause.

#### **552.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2021)**

**(DEVIATION FAR 52.252-6)**

(a) Deviations to FAR clauses. This solicitation or contract identifies any authorized deviation to a Federal Acquisition Regulation (FAR) (48 CFR chapter 1) clause by the addition of “(DEVIATION FAR (clause number))” after the date of the clause.

(b) Deviations to GSAR clauses. This solicitation or contract identifies any authorized deviation to a General Services Administration Acquisition Regulation (GSAR) (48 CFR chapter 5) clause by the addition of “(DEVIATION)” after the date of the clause.

(c) “Substantially the same as” clauses. Changes in wording of clauses prescribed for use on a “substantially the same as” basis are not considered deviations.

(End of Clause)

**52.245-1 GOVERNMENT PROPERTY (SEP 2021)**

(a) *Definitions.* As used in this clause-

*Cannibalize* means to remove parts from Government property for use or for installation on other Government property.

*Contractor-acquired property* means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

*Contractor inventory* means-

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

*Contractor’s managerial personnel* means the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of-

(1) All or substantially all of the Contractor’s business;

(2) All or substantially all of the Contractor’s operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

*Demilitarization* means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

*Discrepancies incident to shipment* means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

*Equipment* means a tangible item that is functionally complete for its intended purpose, durable,

nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

*Government-furnished property* means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

*Government property* means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

*Loss of Government property* means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to-

- (1) Items that cannot be found after a reasonable search;
- (2) Theft;
- (3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or
- (4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

*Material* means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, special test equipment or real property.

*Nonseverable* means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

*Precious metals* means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

*Production scrap* means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development contract activities. Production scrap may have value when re-melted or reprocessed, e.g., textile and metal clippings, borings, and faulty castings and forgings.

*Property* means all tangible property, both real and personal.

*Property Administrator* means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

*Property records* means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

*Provide* means to furnish, as in Government-furnished property, or to acquire, as in



contractor-acquired property.

*Real property* See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

*Sensitive property* means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

*Unit acquisition cost* means-

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the Contractor's records that reflect consistently applied generally accepted accounting principles.

(b) *Property management.*

(1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Contractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this contract (except where inconsistent with law or regulation).

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self assessments, or audits. Significant findings or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(c) *Use of Government property.*

(1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are-

(i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;

(ii) Required for normal maintenance; or

(iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

(d) *Government-furnished property.*

(1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3)

(i) The Contracting Officer may by written notice, at any time-

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Title to Government property.*

(1) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its

identity as personal property by being attached to any real property.

(2) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable line items under Fixed-Price contracts.*

(i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon-

(A) Issuance of the property for use in contract performance;

(B) Commencement of processing of the property for use in contract performance; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(f) *Contractor plans and systems.*

(1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) *Acquisition of Property.* The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.

(ii) *Receipt of Government Property.* The Contractor shall receive Government property and document the receipt, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(I) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) *Government-furnished property.* The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) *Contractor-acquired property.* The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) *Records of Government property.* The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(1) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the contract.

(2) Quantity received (or fabricated), issued, and balance-on-hand.

(3) Unit acquisition cost.

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(5) Unit of measure.

(6) Accountable contract number or equivalent code designation.

(7) Location.

(8) Disposition.

(9) Posting reference and date of transaction.

(10) Date placed in service (if required in accordance with the terms and conditions of the contract).

(B) *Use of a Receipt and Issue System for Government Material.* When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) *Physical inventory.* The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) *Subcontractor control.*

(A) The Contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss of Government property).

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) *Reports.* The Contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property-related reports as directed by the Contracting Officer.

(vii) *Relief of stewardship responsibility and liability.* The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:

- (1) Date of incident (if known).
  - (2) The data elements required under (f)(1)(iii)(A).
  - (3) Quantity.
  - (4) Accountable contract number.
  - (5) A statement indicating current or future need.
  - (6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.
  - (7) All known interests in commingled material of which includes Government material.
  - (8) Cause and corrective action taken or to be taken to prevent recurrence.
  - (9) A statement that the Government will receive compensation covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.
  - (10) Copies of all supporting documentation.
  - (11) Last known location.
  - (12) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.
- (C) Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when-
- (1) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator;
  - (2) Property Administrator grants relief of responsibility and liability for loss of Government property;
  - (3) Property is delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or
  - (4) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.
- (viii) *Utilizing Government property.*
- (A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.
- (B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.
- (ix) *Maintenance.* The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) *Property closeout.* The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss of Government property cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions, loss of Government property, and disposition of material and equipment.

(g) *Systems analysis.*

(1) The Government shall have access to the Contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(h) *Contractor Liability for Government Property.*

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss of Government property furnished or acquired under this contract, except when any one of the following applies-

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with [31.205-19](#).

(ii) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss of Government property occurred while the Contractor had adequate property management practices or the loss did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the property from further loss. The Contractor shall separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Contracting Officer.

(5) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of contract for the following:

- (1) Any delay in delivery of Government-furnished property.
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use.
- (3) An increase, decrease, or substitution of Government-furnished property.
- (4) Failure to repair or replace Government property for which the Government is responsible.

(j) *Contractor inventory disposal.* Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer or authorizing official.

(1) Predisposal requirements.

(i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract. Property no longer needed shall be considered contractor inventory.

(ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)

(2) *Inventory disposal schedules.*

(i) Absent separate contract terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Contractor, as directed by the Plant Clearance Officer or authorizing official, shall use [Standard Form 1428](#), Inventory Disposal Schedule or electronic equivalent, to identify and report-

(A) Government-furnished property that is no longer required for performance of this contract;

(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.



(iv) The Contractor shall provide the information required by FAR [52.245-1](#)(f)(1)(iii) along with the following:

(A) Any additional information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

(3) *Submission requirements.*

(i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than-

(A) 30 days following the Contractor's determination that a property item is no longer required for performance of this contract;

(B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Contracting Officer, following contract termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.

(4) *Corrections.* The Plant Clearance Officer may-

(i) Reject a schedule for cause (*e.g.*, contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(5) *Post submission adjustments.* The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(6) *Storage.*

(i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days

following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121<sup>st</sup> day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(7) Disposition instructions.

(i) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(ii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(8) *Disposal proceeds.* As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(9) *Subcontractor inventory disposal schedules.* The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(3) of this clause.

(k) *Abandonment of Government property.*

(1) The Government shall not abandon sensitive property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive property in place, at which time all obligations of the Government regarding such property shall cease.

(3) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

(4) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) *Communication.* All communications under this clause shall be in writing.

(m) *Contracts outside the United States.* If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

## 52.219-33 NONMANUFACTURER RULE (SEP 2021)

(a) Definitions. As used in this clause—

Manufacturer means the concern that transforms raw materials, miscellaneous parts, or components into the end item. Concerns that only minimally alter the item being procured do not qualify as manufacturers of the end item. Concerns that add substances, parts, or components to an existing end item to modify its performance will not be considered the end item manufacturer, where those identical modifications can be performed by and are available from the manufacturer of the existing end item.

Nonmanufacturer means a concern, including a supplier, that provides an end item it did not manufacture, process, or produce.

(b) Applicability.

(1) This clause does not apply to contracts awarded pursuant to the unrestricted portion of a partial set-aside or to a contractor that is the manufacturer of the product or end item.

(2) This clause applies to—

(i) Contracts that have been awarded pursuant to a set-aside, in total or in part, for any of the small business concerns identified in 19.000(a)(3);

(ii) Contracts that have been awarded on a sole-source basis in accordance with subparts 19.8, 19.13, 19.14, and 19.15;

(iii) Orders expected to exceed the simplified acquisition threshold and that are—

(A) Set aside for small business under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or

(B) Issued directly to a small business concern under multiple-award contracts as described in 19.504(c)(1)(ii);

(iv) Orders, regardless of dollar value, that are—

(A) Set aside in accordance with subparts 19.8, 19.13, 19.14, and 19.15 under multiple award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F); or

(B) Issued directly to concerns that qualify for the programs described in subparts 19.8, 19.13, 19.14, and 19.15 under multiple-award contracts as described in 19.504(c)(1)(ii); and

(v) Contracts using the HUBZone price evaluation preference to award to a HUBZone concern

unless the Contractor waived the evaluation preference.

(c) Requirements.

(1) The Contractor shall—

(i) Provide an end item that a small business has manufactured, processed, or produced in the United States or its outlying areas; for kit assemblers who are nonmanufacturers, see paragraph (c)(2) of this clause instead;

(ii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iii) Take ownership or possession of the item(s) with its personnel, equipment, or facilities in

a manner consistent with industry practice; for example, providing storage, transportation, or delivery.

(2) When the end item being acquired is a kit of supplies, at least 50 percent of the total cost of

the components of the kit shall be manufactured, processed, or produced in the United States

or its  
outlying areas by small business concerns.

(End of clause)

**52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN  
(SEP 2021)**

(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan (see 19.705-7), established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

End of Clause

**52.203-13 Contractor Code of Business Ethics and Conduct (NOV 2021)**

(a) Definitions. As used in this clause –

*Agent* means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

*Full cooperation* -

(1) Means disclosure to the Government of the information sufficient for law enforcement to

identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require –

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from -

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

*Principal* means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

*Subcontract* means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) Code of business ethics and conduct.

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall -

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall -

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed -

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial product or commercial service as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall –

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including -

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that exceed the threshold specified in FAR 3.1004(a) on the date of subcontract award and have a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the



Inspector General, with a copy to the Contracting Officer.

### **52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021)**

(a) *Definitions.* As used in this clause —

*Covered contractor information system* means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

*Federal contract information* means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

*Information* means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information ([44 U.S.C. 3502](#)).

*Safeguarding* means measures or controls that are prescribed to protect information systems.

(b) *Safeguarding requirements and procedures.*

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

- (i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
- (ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
- (iii) Verify and control/limit connections to and use of external information systems.
- (iv) Control information posted or processed on publicly accessible information systems.
- (v) Identify information system users, processes acting on behalf of users, or devices.
- (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
- (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
- (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
- (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
- (x) Monitor, control, and protect organizational communications (*i.e.*, information

transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial products or commercial services, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

#### **52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (NOV 2021)**

(a) *Definitions.* As used in this clause -

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means -

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means -

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled -
  - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
  - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

- (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication

equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing -

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

**52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN  
SUBCONTRACTING WITH CONTRACTORS DEBARRED,  
SUSPENDED, OR PROPOSED FOR DEBARMENT (NOV 2021)**

(a) *Definition.* "Commercially available off-the-shelf (COTS)" *item*, as used in this clause-

(1) Means any item of supply (including construction material) that is-

(i) A commercial product (as defined in paragraph (1) of the definition of "commercial product in Federal Acquisition Regulation (FAR) [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

(b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of the threshold specified in FAR 9.405-2(b) on the date of subcontract award with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed the threshold specified in FAR 9.405-2(b) on the date of subcontract award, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) *Subcontracts.* Unless this is a contract for the acquisition of commercial products or commercial services, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that-

(1) Exceeds the threshold specified in FAR 9.405-2(b) on the date of subcontract award; and

(2) Is not a subcontract for commercially available off-the-shelf items.

**552.238-111 ENVIRONMENTAL PROTECTION AGENCY  
REGISTRATION REQUIREMENT (JAN 2022)**

(a) With respect to the products described in this solicitation which require registration with the Environmental Protection Agency (EPA), as required by the Federal Insecticide, Fungicide, and Rodenticide Act, Section 3, Registration of Pesticides, awards will be made only for such products that have been assigned an EPA registration number, prior to the time of bid opening.

(b) The offeror shall insert in the spaces provided in this section, the manufacturer's and/or distributor's name and the "EPA Registration Number" for each item offered. Any offer which does not specify a current "EPA Registration Number" in effect for the duration of the contract period, and including the manufacturer's and/or distributor's name will be rejected.

Items			
Item Numbers	Name of Manufacturer / Distributor	EPA Registration Number	Date of Expiration

(c) If, during the performance of a contract awarded as a result of this solicitation, the EPA Registration Number for products being furnished is terminated, withdrawn, canceled, or suspended, and such action does not arise out of causes beyond the control, and with the fault or negligence of the Contractor or subcontractor, the Government may terminate the contract pursuant to either the Default Clause or Termination for Cause Paragraph (contained in the clause 52.212-4, Contract Terms and Conditions-Commercial Products and Commercial Services), whichever is applicable to the resultant contract.

**552.238-114 USE OF FEDERAL SUPPLY SCHEDULE CONTRACTS  
BY NON-FEDERAL ENTITIES (JAN 2022)**

(a) If an entity identified in paragraph (d) of the clause at 552.238-113, *Scope of Contract (Eligible Ordering Activities)*, elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Product and Commercial Service Contract Terms and Conditions that specifies "Compliance with laws unique to Government contracts" (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (e.g., FAR 52.212-4 at paragraph (f) and FSS clause I-FSS-249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses

mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at [552.238-113](#), *Scope of Contract (Eligible Ordering Activities)*, the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause [552.238-80](#), Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number:

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at [552.238-113](#), *Scope of Contract (Eligible Ordering Activities)*, and

(2) The dollar value for sales to entities identified in paragraph (d) of clause [552.238-113](#) *Scope of Contract (Eligible Ordering Activities)*.

**552.238-82 MODIFICATIONS (FEDERAL SUPPLY SCHEDULE)  
(JAN 2022) (ALTERNATE I - MAR 2020)**

(a) *General.* The Contractor may request a contract modification by transmitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of Modifications.*

(1) Additional items/additional SINs. When requesting additions, the following information



must be transmitted:

(i) *Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.*

(ii) Discount information for the new item(s) or new SIN(s). Specifically, transmit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be transmitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) must be transmitted in accordance with the request for proposal.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be transmitted in accordance with the request for proposal.

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be transmitted if required by 52.215- 6, *Place of Performance*.

(vi) Hazardous Material information (if applicable) must be transmitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by 52.212-3(f), *Offeror Representations and Certifications—Commercial Products and Commercial Services*, that may be necessary to assure compliance with FAR 52.225-1, *Buy American Act—Balance of Payments Programs—Supplies*.

(2) Deletions. The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) Price Reduction. The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238-81. If the Price reduction falls under item (i), the Contractor shall transmit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall transmit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) *Effective dates*. The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238-81.

(d) *Electronic File Updates*. The Contractor shall update electronic file transmissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238-81.

(e) Electronic transmission of modification requests is mandatory via eMod (<http://eOffer.gsa.gov>), unless otherwise stated in the electronic transmission standards and requirements at the Vendor Support Center website (<http://vsc.gsa.gov>). If the electronic transmission standards and requirements information is updated at the Vendor Support Center website, Contractors will be notified prior to the effective date of the change.

End of clause

Note: Regulation 552.238-82

This clause does not apply to contracts participating in the Transactional Data Reporting (TDR) Pilot. Please refer to clause 552.238-82 Alternate II.

**552.238-82 MODIFICATIONS (FEDERAL SUPPLY SCHEDULE)  
(JAN 2022) (ALTERNATE II MAY 2019)**

(a) *General.* The Contractor may request a contract modification by transmitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of Modifications.*

(1) Additional items/additional SINS. When requesting additions, the Contractor must transmit the following information:

(i) Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the instructions in the solicitation.

(ii) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.

(iii) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215-6, Place of Performance.

(iv) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(v) Any information requested by FAR 52.212-3(f), Offeror Representations and Certifications-Commercial Products and Commercial Services, that may be necessary to assure compliance with FAR 52.225-1, Buy American Act-Balance of Payments Programs-Supplies.

(2) Deletions. The Contractor must provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the Contracting Officer determines that the higher price is unreasonable compared to the price of the deleted item.

(c) *Effective dates.* The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238-81.

(d) *Electronic File Updates.* The Contractor shall update electronic file transmissions to reflect all modifications. For additional items or SINS, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238-81.

End of clause

Note: Regulation 552.238-82

This clause applies to contracts participating in the Transactional Data Reporting (TDR) Pilot.

**552.238-78 IDENTIFICATION OF PRODUCTS THAT HAVE ENVIRONMENTAL ATTRIBUTES (JAN 2022)**

(a) Several laws, Executive orders, and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (see FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (e.g., publications and electronic formats).

(b) *Definitions.* As used in this clause —

“Energy-efficient product” means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR® trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

“GSA Advantage!” is an on-line shopping mall and ordering system that provides customers with access to products and services under GSA contracts.

“Other environmental attributes” refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

“Post-consumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is part of the broader category of “recovered material.” The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and <http://www.epa.gov/cpg/>).

“Recovered materials” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (Executive Order 13101 and 42 U.S.C. 6903(19) and <http://www.epa.gov/cpg/>). For paper and paper products, see the definition at FAR 11.301 (42 U.S.C. 6962(h)).

“Remanufactured” means factory rebuilt to original specifications.

“Renewable energy” means energy produced by solar, wind, geothermal, and biomass power

“Renewable energy technology” means –

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

(c) *Identification Requirements.*

(1) The offeror must identify products that —

- (i) Are compliant with the recovered and post-consumer material content levels recommended in the Recovered Materials Advisory Notices (RMANs) for EPA-designated products in the CPG program (<http://www.epa.gov/cpg/>);
- (ii) Contain recovered materials that either do not meet the recommended levels in the RMANs or are not EPA-designated products in the CPG program (see FAR 23.401 and <http://www.epa.gov/cpg/>);
- (iii) Are energy-efficient, as defined by either ENERGY STAR® and/or FEMP's designated top 25th percentile levels (see ENERGY STAR® at <http://www.energystar.gov/> and FEMP at <http://www.eere.energy.gov/femp/procurement/>);
- (iv) Are water-efficient
- (v) Use renewable energy technology;
- (vi) Are remanufactured; and
- (vii) Have other environmental attributes.

(2) These identifications must be made in each of the offeror's following mediums:

- (i) The offer itself.
- (ii) Printed commercial catalogs, brochures, and pricelists.
- (iii) Online product website.
- (iv) Electronic data submission for GSA Advantage! submitted via GSA's Schedules Input Program (SIP) software or the Electronic Data Inter-change (EDI). Offerors can use the SIP or EDI methods to indicate environmental and other attributes for each product that are translated into respective icons in GSA Advantage!.
- (d) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR part 260, Guides for the Use of Environmental Marketing Claims). The Government will accept an offeror's claim of a product's environmental attribute on the basis of—
  - (1) Participation in a Federal agency sponsored program (e.g., the EPA and DOE ENERGY STAR® product labeling program);
  - (2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis, research, study, or other evidence to be “competent and reliable,” it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

## **52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUN 2020) (ALTERNATE I-NOV 2021)**

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any

manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial products or commercial services, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial product(s) and commercial service(s).

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

#### **52.222-50 COMBATING TRAFFICKING IN PERSONS (NOV 2021)**

(a) *Definitions.* As used in this clause -

*Agent* means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

*Coercion* means -

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

*Commercially available off-the-shelf (COTS) item* -

- (1) Means any item of supply (including construction material) that is -
  - (i) A commercial product (as defined in paragraph (1) of the definition of "commercial product" at Federal Acquisition Regulation (FAR) [2.101](#));
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person.

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of

those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

*Employee* means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

*Forced Labor* means knowingly providing or obtaining the labor or services of a person -

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

*Involuntary servitude* includes a condition of servitude induced by means of -

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

*Recruitment fees* means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

- (1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for -
  - (i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;
  - (ii) Advertising;
  - (iii) Obtaining permanent or temporary labor certification, including any associated fees;
  - (iv) Processing applications and petitions;
  - (v) Acquiring visas, including any associated fees;
  - (vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;
  - (vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;
  - (viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;
  - (ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;
  - (x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs —

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is —

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to —

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

*Severe forms of trafficking in persons* means —

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

*Sex trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

*Subcontract* means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or



for a prime contractor or another subcontractor.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy*. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not —

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract;
- (3) Use forced labor in the performance of the contract;
- (4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;
- (5)
  - (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;
  - (ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
- (6) Charge employees or potential employees recruitment fees;
- (7)
  - (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment —
    - (A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or
    - (B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that —
  - (ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is —
    - (A) Legally permitted to remain in the country of employment and who chooses to do so; or
    - (B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements.* The Contractor shall —

(1) Notify its employees and agents of —

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.*

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of —

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in —

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

- (2) Requiring the Contractor to terminate a subcontract;
- (3) Suspension of contract payments until the Contractor has taken appropriate remedial action;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
- (5) Declining to exercise available options under the contract;
- (6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (7) Suspension or debarment.

(f) *Mitigating and aggravating factors.* When determining remedies, the Contracting Officer may consider the following:

- (1) *Mitigating factors.* The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.
- (2) *Aggravating factors.* The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation.*

- (1) The Contractor shall, at a minimum -
  - (i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;
  - (ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;
  - (iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and
  - (iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.
- (2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not -
  - (i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;
  - (ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or
  - (iii) Restrict the Contractor from -

(A) Conducting an internal investigation;

or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan.*

(1) This paragraph (h) applies to any portion of the contract that -

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$550,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate —

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) *Minimum requirements.* The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at [help@befree.org](mailto:help@befree.org).

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee or potential employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting.*

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be

performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) *Certification.* Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that -

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontractor or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either -

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that -

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$550,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

#### **52.222-55 MINIMUM WAGES FOR CONTRACTOR WORKERS UNDER EXECUTIVE ORDER 14026 (JAN 2022)**

(a) Definitions. As used in this clause—

United States means the 50 states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.).

Worker –

(1) (i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and—

(A) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the

Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV);

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2) (i) A worker performs on a contract if the worker directly performs the specific services called for by the contract; and

(ii) A worker performs in connection with a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

(b) Executive Order Minimum wage rate.

(1) The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of \$15.00 per hour beginning January 30, 2022.

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2023, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on <https://www.sam.gov> (or any successor website), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract.

(3) (i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any

contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 23.230, Deductions.

(7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance or any applicable contract establishing a minimum wage higher than the E.O. 14026 minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Contractor shall follow the policies and procedures in 29 CFR 23.240(b) and 23.280 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(c)

(1) This clause applies to workers as defined in paragraph (a). As provided in that definition—

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to—

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., i.e. those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special



certificates issued under 29 U.S.C. 214(a) ;

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b) ; and

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(d) Notice. The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at [www.dol.gov/agencies/whd/government-contracts](http://www.dol.gov/agencies/whd/government-contracts), in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) Payroll Records.

(1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer.

(3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 23.260 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) Access. The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) **Withholding.** The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

(h) **Disputes.** Department of Labor has set forth in 29 CFR 23.510, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 23. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) **Antiretaliation.** The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) **Subcontractor compliance.** The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) **Subcontracts.** The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of clause)

**52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706  
(JAN 2022)**

(a) *Definitions.* As used in this clause (in accordance with 29 CFR 13.2) —

“Child”, “domestic partner”, and “domestic violence” have the meaning given in 29 CFR 13.2.

“Employee” —

- (1) (i) Means any person engaged in performing work on or in connection with a contract covered by Executive Order (E.O.) 13706, and

(A) Whose wages under such contract are governed by the Service Contract Labor Standards statute ([41 U.S.C. chapter 67](#)), the Wage Rate Requirements (Construction) statute ([40 U.S.C. chapter 31](#), subchapter IV), or the Fair Labor Standards Act ([29 U.S.C. chapter 8](#)),

(B) Including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions,

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

(ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

- (2) (i) An employee performs “on” a contract if the employee directly performs the specific services called for by the contract; and
- (ii) An employee performs “in connection with” a contract if the employee’s work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

“Individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship” has the meaning given in 29 CFR 13.2.

“Multiemployer” plan means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

“Paid sick leave” means compensated absence from employment that is required by E.O. 13706 and 29 CFR part 13.

“Parent”, “sexual assault”, “spouse”, and “stalking” have the meaning given in 29 CFR 13.2.

“United States” means the 50 States and the District of Columbia.

(b) *Executive Order 13706.*

(1) This contract is subject to E.O. 13706 and the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the E.O.

(2) If this contract is not performed wholly within the United States, this clause only applies with respect to that part of the contract that is performed within the United States.

(c) *Paid sick leave.* The Contractor shall —

(1) Permit each employee engaged in performing work on or in connection with this contract to earn not less than 1 hour of paid sick leave for every 30 hours worked;

(2) Allow accrual and use of paid sick leave as required by E.O. 13706 and 29 CFR part 13;

(3) Comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract;

(4) Provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account;

(5) Provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken; and

(6) Be responsible for the compliance by any subcontractor with the requirements of E.O. 13706, 29 CFR part 13, and this clause.

(d) Contractors may fulfill their obligations under E.O. 13706 and 29 CFR part 13 jointly with other contractors through a multiemployer plan, or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

(e) *Withholding.* The Contracting Officer will, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this or any other Federal contract with the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of E.O. 13706, 29 CFR part 13, or this clause,

including—

- (1) Any pay and/or benefits denied or lost by reason of the violation;
- (2) Other actual monetary losses sustained as a direct result of the violation; and
- (3) Liquidated damages.

(f) Payment suspension/contract termination/contractor debarment.

(1) In the event of a failure to comply with E.O. 13706, 29 CFR part 13, or this clause, the contracting agency may, on its own action or after authorization or by direction of the Department of Labor and written notification to the Contractor take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Any failure to comply with the requirements of this clause may be grounds for termination for default or cause.

(3) A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

(g) The paid sick leave required by E.O. 13706, 29 CFR part 13, and this clause is in addition to the Contractor's obligations under the Service Contract Labor Standards statute and Wage Rate Requirements (Construction) statute, and the Contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of E.O. 13706 and 29 CFR part 13.

(h) Nothing in E.O. 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under E.O. 13706 and 29 CFR part 13.

(i) *Recordkeeping*

(1) The Contractor shall make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the following information for each employee, which the Contractor shall make available upon request for inspection, copying, and transcription by authorized representatives of the Administrator of the Wage and Hour Division of the Department of Labor:

- (i) Name, address, and social security number of each employee.
- (ii) The employee's occupation(s) or classification(s).
- (iii) The rate or rates of wages paid (including all pay and benefits provided).
- (iv) The number of daily and weekly hours worked.
- (v) Any deductions made.
- (vi) The total wages paid (including all pay and benefits provided) each pay period.
- (vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(2).
- (viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests.

- (ix) Dates and amounts of paid sick leave taken by employees (unless the Contractor's paid time off policy satisfies the requirements of E.O. 13706 and 29 CFR part 13 as described in 29 CFR 13.5(f)(5), leave shall be designated in records as paid sick leave pursuant to E.O. 13706).
- (x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR 13.5(d)(3).
- (xi) Any records reflecting the certification and documentation the Contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee.
- (xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave.
- (xiii) The relevant contract.
- (xiv) The regular pay and benefits provided to an employee for each use of paid sick leave.
- (xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve the Contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).
- (2) (i) If the Contractor wishes to distinguish between an employee's covered and noncovered work, the Contractor shall keep records or other proof reflecting such distinctions. Only if the Contractor adequately segregates the employee's time will time spent on noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if the Contractor adequately segregates the employee's time may the Contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform noncovered work during the time he or she asked to use paid sick leave.
- (ii) If the Contractor estimates covered hours worked by an employee who performs work in connection with contracts covered by the E.O. pursuant to 29 CFR 13.5(a)(i) or (iii), the Contractor shall keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the Contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. If the Contractor estimates the amount of time an employee spends performing in connection with contracts covered by the E.O., the Contractor shall permit the employee to use his or her paid sick leave during any work time for the Contractor.
- (3) In the event the Contractor is not obligated by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the Fair Labor Standards Act's minimum wage and overtime requirements, and the Contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the Contractor is excused from the requirement in paragraph (i)(1)(iv) of this clause and 29 CFR 13.25(a)(4) to keep records of the employee's number of daily and weekly hours worked.
- (4) (i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of E.O. 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents shall also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The Contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the Contractor's recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, the Family and Medical Leave Act, E.O. 14026, their respective implementing regulations, or any other applicable law.

(j) *Interference/discrimination.*

(1) The Contractor shall not in any manner interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR part 13. Interference includes, but is not limited to —

(i) Miscalculating the amount of paid sick leave an employee has accrued;

(ii) Denying or unreasonably delaying a response to a proper request to use paid sick leave;

(iii) Discouraging an employee from using paid sick leave;

(iv) Reducing an employee's accrued paid sick leave by more than the amount of such leave used;

(v) Transferring an employee to work on contracts not covered by the E.O. to prevent the accrual or use of paid sick leave;

(vi) Disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave; or

(vii) Making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the Contractor's operational needs.

(2) The Contractor shall not discharge or in any other manner discriminate against any employee for —

(i) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR part 13;

(ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 and 29 CFR part 13;

(iii) Cooperating in any investigation or testifying in any proceeding under E.O. 13706

and 29 CFR part 13; or

(iv) Informing any other person about his or her rights under E.O. 13706 and 29 CFR part 13.

(k) *Notice.* The Contractor shall notify all employees performing work on or in connection with a contract covered by the E.O. of the paid sick leave requirements of E.O. 13706, 29 CFR part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any website that is maintained by the Contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

(l) *Disputes concerning labor standards.* Disputes related to the application of E.O. 13706 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 13. Disputes within the meaning of this contract clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the employees or their representatives.

(m) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (m), in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

#### **52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (NOV 2021)**

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are —

- (1) Acquired for a U.S. Government agency account;
- (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street, SW, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.



(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to —

- (1) Cargoes carried in vessels as required or authorized by law or treaty;
- (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
- (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
- (4) Subcontracts or purchase orders for the acquisition of commercial products or commercial services unless —
  - (i) This contract is —
    - (A) A contract or agreement for ocean transportation services; or
    - (B) A construction contract; or
  - (ii) The supplies being transported are —
    - (A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or
    - (B) Shipped in direct support of U.S. military —
      - (1) Contingency operations;
      - (2) Exercises; or
      - (3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may

be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202-366-4610.

**52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA — MODIFICATIONS (NOV 2021) (ALTERNATE IV — OCT 2010)**

- (a) Submission of certified cost or pricing data is not required.
- (b) Provide data described below: *[Insert description of the data and the format that are required, including the access to records necessary to permit an adequate evaluation of the proposed price in accordance with [15.403-3](#).]*
- (1) Information required by the clause at 552.238-82, Modifications (Multiple Award Schedule).
- (2) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.
- (3) By submitting a request for modification, the Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before agreeing to a modification, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Contractor's cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

**552.238-116 OPTION TO EXTEND THE TERM OF THE FSS CONTRACT (MAR 2022)**

- (a) The Government may require continued performance of this contract for an additional 5 year period. This option may be exercised up to three times.
- (b) The Contracting Officer may exercise the option by providing written notice to the Contractor 30 days before the contract expires.

(End of Clause)

**552.238-115 SPECIAL ORDERING PROCEDURES FOR THE ACQUISITION OF ORDER-LEVEL MATERIALS (APR 2022)**

- (a) Definition.
- “Order-level materials”, as used in this clause, means supplies and/or services acquired in direct support of an individual task or delivery order placed against a Federal Supply Schedule (FSS) contract or FSS blanket purchase agreement (BPA), when the supplies and/or services are not known at the time of Schedule contract or FSS BPA award. The prices of order-level materials are not established in the FSS contract or FSS BPA. Order-level materials acquired following the procedures in paragraph (d) of this clause are done so under the authority of the FSS program, pursuant to 41 U.S.C. 152(3), and are not open market items, which are discussed in FAR 8.402(f).
- (b) FAR 8.403(b) provides that GSA may establish special ordering procedures for a particular FSS.
- (c) The procedures in FAR subpart 8.4 apply to this contract, with the exceptions listed in this clause. If a requirement in this clause is inconsistent with FAR subpart 8.4, this clause takes precedence pursuant to FAR 8.403(b).

(d) Procedures for including order-level materials when placing an individual task or delivery order against an FSS contract or FSS BPA.

(1) The procedures discussed in FAR 8.402(f) do not apply when placing task and delivery orders that include order-level materials.

(2) Order-level materials are included in the definition of the term "material" in FAR clause 52.212-4 Alternate I, and, therefore, all provisions of FAR clause 52.212-4 Alternate I that apply to "materials" also apply to order-level materials.

(3) Order-level materials shall only be acquired in direct support of an individual task or delivery order and not as the primary basis or purpose of the order.

(4) The value of order-level materials in a task or delivery order, or the cumulative value of order-level materials in orders against an FSS BPA awarded under a FSS contract, shall not exceed 33.33%.

(5) All order-level materials shall be placed under the Order-Level Materials SIN.

(6) Prior to the placement of an order that includes order-level materials, the Ordering Activity shall follow the procedures in FAR 8.404(h).

(7) To support the price reasonableness of order-level materials—

(i) The Contractor proposing order-level materials as part of a solution shall obtain a minimum of three quotes for each order-level material above the simplified acquisition threshold.

(A) One of these three quotes may include materials furnished by the Contractor under paragraph (i)(1)(ii)(A) of FAR clause 52.212-4 Alternate I.

(B) If the Contractor cannot obtain three quotes, the Contractor shall maintain documentation of why three quotes could not be obtained to support their determination.

(C) A Contractor with an approved purchasing system, per FAR subpart 44.3, shall instead follow its purchasing system requirement and is exempt from the requirements in paragraphs (d)(7)(i)(A) through (B) of this clause.

(ii) The Ordering Activity Contracting Officer must make a determination that prices for all order-level materials are fair and reasonable. The Ordering Activity Contracting Officer may base this determination on a comparison of the quotes received in response to the task or delivery order solicitation or other relevant pricing information available.

(iii) If indirect costs are approved per paragraph (i)(1)(ii)(D)(2) of FAR clause 52.212-4 Alternate I, the Ordering Activity Contracting Officer must make a determination that all indirect costs approved for payment are fair and reasonable. Supporting data shall be submitted in a form acceptable to the Ordering Activity Contracting Officer.

(8) Prior to an increase in the ceiling price of order-level materials, the Ordering Activity Contracting Officer shall follow the procedures at FAR 8.404(h)(3)(iv).

(9) In accordance with GSAR clause 552.238-83, *Examination of Records by GSA (Federal Supply Schedules)*, GSA has the authority to examine the Contractor's records for compliance with the pricing provisions in FAR clause 52.212-4 Alternate I, to include examination of any books, documents, papers, and records involving transactions related to the contract for overbillings, billing errors, and compliance with the Industrial Funding Fee (IFF) and the Sales Reporting clauses of the contract.

(10) Order-level materials are exempt from the following clauses:

(i) 552.216-70 *Economic Price Adjustment - FSS Multiple Award Schedule Contracts.*

(ii) 552.238-77 *Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.*

(iii) 552.238-81 *Price Reductions.*

End of clause

**552.238-73 IDENTIFICATION OF ELECTRONIC OFFICE EQUIPMENT PROVIDING ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES (MAR 2022)**

(a) Definitions.

"Electronic office equipment accessibility" means the application/configuration of electronic office equipment (includes hardware, software and firmware) in a manner that accommodates the functional limitations of individuals with disabilities so as to promote productivity and provide access to work related and/or public information resources.

"Individuals with Disabilities" mean qualified individuals with impairments as cited in 29 U.S.C. 705(20) who can benefit from electronic office equipment accessibility.

"Special peripheral" means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to individuals with disabilities.

(b) The offeror is encouraged to identify in its offer, and include in any commercial catalogs and pricelists accepted by the Contracting Officer, office equipment, including any special peripheral, that will facilitate electronic office equipment accessibility for individuals with disabilities. Identification should include the type of disability accommodated and how the users with that disability would be helped.

End of clause

**52.216-22 INDEFINITE QUANTITY (OCT 1995)**

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as

if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the completion of customer order, including options, 60 months following the expiration of the FSS contract ordering period.

End of clause

### **52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (MAY 2022)**

(a) *Definitions.* As used in this clause –

*Commercially available off-the-shelf (COTS) item* –

(1) Means any item of supply that is –

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

*Employee assigned to the contract* means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at [22.1803](#). An employee is not considered to be directly performing work under a contract if the employee –

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

*Subcontract* means any contract, as defined in [2.101](#), entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

*United States*, as defined in [8 U.S.C. 1101\(a\)\(38\)](#), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall –

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of –

(i) *All new employees.*

(A) Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at [20 U.S.C. 1001\(a\)](#)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of –

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in

accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <https://www.e-verify.gov>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee –

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that –

(1) Is for –

(i) Services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,500; and

(3) Includes work performed in the United States.

End of clause

**552.238-199 SPECIAL ORDERING PROCEDURES APPLICABLE WHEN PROCURING CLOUD COMPUTING ON A CONSUMPTION BASIS (MAR 2022)**

(a) Definitions.

(1) “Capital asset” has the meaning given the term by Office of Management and Budget (OMB) Circular A-11 Capital Programming Guide and any amendatory or superseding document(s) thereto.

(2) “Cloud computing” has the meaning given the term by the National Institute of Standards and Technology in Special Publication (SP) 800-145 and any amendatory or superseding document(s) thereto.

(3) “Consumption basis” or “consumption-based” means any offering that is metered with charges that accrue on a predetermined periodic basis (e.g., per second, minute, hour, week, month, or another per-unit basis) and is billed based on actual usage during an elapsed period with predetermined pricing or discounts.

(4) “Requirements task order” means a task order that provides for filling all actual purchase requirements of a designated Ordering Activity during a specified contract period, with performance by the Contractor being scheduled when the Ordering Activity awards, or exercises



options for, individual contract line items (CLINs) under the task order.

(i) This task order type is appropriate when the Ordering Activity anticipates recurring requirements but cannot predetermine the precise quantities of services that it will need during a definite period.

(ii) A requirements task order issued under a FSS contract is a single contract award as defined FAR 2.101. Individual CLINs executed and funded under this task order type are not considered to be second-tier instruments issued under the awarded task order.

(iii) A requirements task order is not a requirements contract as described at FAR 16.503.

(b) Ordering procedures.

(1) FAR 8.403(b) provides that GSA may establish special ordering procedures for a particular FSS offering.

(2) The procedures in FAR subpart 8.4 apply to this contract, with the exceptions listed in this clause. If a requirement in this clause is inconsistent with FAR subpart 8.4, this clause takes precedence pursuant to FAR 8.403(b).

(c) Applicability.

(1) The Ordering Activity Contracting Officer shall follow the procedures contained within this clause when placing an incrementally funded task order under this contract for cloud computing services on a consumption basis.

(2) The Ordering Activity Contracting Officer is permitted, but not required to use the procedures contained within this clause for task orders that are not incrementally funded.

(3) The Ordering Activity Contracting Officer shall not use the procedures contained within this clause for the acquisition, maintenance, or modification of capital assets.

(d) Pricing.

(1) The Ordering Activity Contracting Officer shall establish a task order ceiling price for all estimated requirements.

(2) All cloud computing services offered under this FSS contract are considered fixed-price.

(e) Task order type.

The Ordering Activity Contracting Officer shall use a requirements task order for cloud computing services procured on a consumption basis in accordance with this clause.

(1) This task order type may include other contract types, such as firm-fixed-price, when procuring other offerings under this contract that are not being procured on a consumption-basis.

(2) Estimates for cloud computing services to be procured on a consumption basis.

(i) The Ordering Activity Contracting Officer must state a realistic estimate of—

(A) The consumption of cloud computing services in the task order solicitation; and

(B) The total amount in dollars to be expended on cloud consumption in the task order.

(ii) This estimate is not a representation to an Offeror or Contractor that the estimated consumption will be required or ordered, or that conditions affecting requirements will be stable or normal.

(iii) The Ordering Activity Contracting Officer may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available.

(iv) If the Government's requirements do not meet this estimate, that fact shall not constitute the basis for an equitable price adjustment.

(3) All CLINs within the task order must include a defined scope with all services priced at the time of award.

(f) Incremental funding.

(1) The Ordering Activity may allot funds incrementally as the bona fide need arises for predefined and established fixed-priced procurement requirements on individual CLINs.

(2) The Ordering Activity shall ensure sufficient funds are allotted to the task order—

(i) At the time of award to cover the total amount payable to the Contractor for the awarded CLIN(s); and

(ii) At the time an optional CLIN is exercised to cover the total amount payable to the Contractor for that optional CLIN.

(3) Nothing in this clause shall be construed to supersede the Ordering Activity's contract funding policies.

(g) Consumption monitoring.

(1) The Contractor shall—

(i) Provide, at no additional cost to the Government, access to tools that enable the Government to track its usage of cloud computing services offered on a consumption basis; or

(ii) Notify the Ordering Activity Contracting Officer when total consumption reaches—  
 (A) 50 percent and 75 percent of the ceiling price for each CLIN for consumption-based cloud computing services, or other milestones as agreed upon by the Contractor and the Ordering Activity Contracting Officer; and  
 (B) 50 percent and 75 percent of the task order ceiling price, or other milestones as agreed upon by the Contractor and the Ordering Activity Contracting Officer.

(2) The Ordering Activity Contracting Officer shall determine that the consumption monitoring capabilities offered by the Contractor will enable the Government to adequately track its incurred costs before awarding a task order in accordance with this clause.

(h) Limitation of funds.

(1) The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the task order, and the Contractor shall not be obligated to continue performance if doing so would exceed the ceiling price set forth in the task order.

(2) The Ordering Activity Contracting Officer may use a Limitation of Funds clause when CLINs under the task order are incrementally funded.

(i) Scope reviews.

(1) The Ordering Activity Contracting Officer is encouraged to request a scope review from the GSA Federal Acquisition Service (FAS) Office of Information Technology Category (ITC) before placing a task order in accordance with these special ordering procedures.

(2) The purpose of a scope review is to analyze whether the planned acquisition is—

(i) compatible with the scope of Special Item Number (SIN) 518210C (previously 132-40) or successor SINs;

(ii) utilizing recommended best practices; and

(iii) not for the acquisition, maintenance, or modification of capital assets.

(3) The Ordering Activity Contracting Officer may request a scope review by contacting FAS ITC at

cloud-sin-rfi@gsa.gov.

(End of Clause)

Note: Regulation 552.238-199

This GSAR clause is prescribed and contained within Acquisition Letter MV-21-06, Supplement 1.

#### 52.219-14 LIMITATIONS ON SUBCONTRACTING (OCT 2022)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) Definition. Similarly situated entity, as used in this clause, means a first-tier subcontractor, including an independent contractor, that—

(1) Has the same small business program status as that which qualified the prime contractor for the award (e.g., for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

(2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

(c) Applicability. This clause applies only to—

(1) Contracts that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(2) Part or parts of a multiple-award contract that have been set aside for any of the small business concerns identified in 19.000(a)(3);

(3) Contracts that have been awarded on a sole-source basis in accordance with subparts 19.8, 19.13, 19.14, and 19.15;

(4) Orders expected to exceed the simplified acquisition threshold and that are—

- (i) Set aside for small business concerns under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or
- (ii) Issued directly to small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii);
- (5) Orders, regardless of dollar value, that are—
- (i) Set aside in accordance with subparts 19.8, 19.13, 19.14, or 19.15 under multiple-award contracts, as described in 8.405-5 and 16.505(b)(2)(i)(F); or
- (ii) Issued directly to concerns that qualify for the programs described in subparts 19.8, 19.13, 19.14, or 19.15 under multiple-award contracts, as described in 19.504(c)(1)(ii); and
- (6) Contracts using the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference.
- (d) Independent contractors. An independent contractor shall be considered a subcontractor.
- (e) Limitations on subcontracting. By submission of an offer and execution of a contract, the Contractor agrees that in performance of a contract assigned a North American Industry Classification System (NAICS) code for—
- (1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract;
- (2) Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;
- (3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 85 percent subcontract amount that cannot be exceeded; or
- (4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 75 percent subcontract amount that cannot be exceeded.
- (f) The Contractor shall comply with the limitations on subcontracting as follows:
- (1) For contracts, in accordance with paragraphs (c)(1), (2), (3) and (6) of this clause—  
[Contracting Officer check as appropriate.]
- # By the end of the base term of the contract and then by the end of each subsequent option period; or
- # By the end of the performance period for each order issued under the contract.
- (2) For orders, in accordance with paragraphs (c)(4) and (5) of this clause, by the end of the performance period for the order.
- (g) A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.
- (1) In a joint venture comprised of a small business protégé and its mentor approved by the Small Business Administration, the small business protégé shall perform at least 40 percent of the work performed by the joint venture. Work performed by the small business protégé in the joint venture must be more than administrative functions.
- (2) In an 8(a) joint venture, the 8(a) participant(s) shall perform at least 40 percent of the work performed by the joint venture. Work performed by the 8(a) participants in the joint venture must be more than administrative functions.

(End of clause)

**52.219-27 NOTICE OF SERVICE-DISABLED VETERAN-OWNED  
SMALL BUSINESS SET- ASIDE (OCT 2022)**

- (a) *Definition. Definition.* "Service-disabled veteran-owned small business concern"—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) "Service-disabled veteran" means a veteran, as defined in [38 U.S.C.101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C.101\(16\)](#).

(b) *Applicability*. This clause applies only to—

(1) Contracts that have been set aside for service-disabled veteran-owned small business concerns;

(2) Part or parts of a multiple-award contract that have been set aside for service-disabled veteran-owned small business concerns;

(3) Orders set aside for service-disabled veteran-owned small business concerns under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#); and

(4) Orders issued directly to service-disabled veteran-owned small business concerns under multiple-award contracts as described in [19.504\(c\)\(1\)\(ii\)](#).

(c) General.

(1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a service-disabled veteran-owned small business concern.

(d) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one party to the joint venture complies with the criteria defined in paragraph (a) of this clause and [13 CFR 125.18\(b\)\(2\)](#); and

(2) Each party to the joint venture is small under the size standard corresponding to the NAICS code assigned to the procurement, or the protégé is small under the size standard corresponding to the NAICS code assigned to the procurement in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under an SBA mentor-protégé program.

(e) In a joint venture that complies with paragraph (f) of this clause, the service-disabled veteran-owned small business party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the service-disabled veteran-owned small business party or parties to the joint venture must be more than administrative functions.

(End of clause)

**52.219-29 NOTICE OF SET-ASIDE FOR, OR SOLE SOURCE  
AWARD TO, ECONOMICALLY DISADVANTAGED  
WOMEN-OWNED SMALL BUSINESS CONCERNS (OCT 2022)**

(a) Definitions.

*Economically disadvantaged women-owned small business (EDWOSB) concern*, as used in this clause, means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with [13 CFR part 127](#), and is certified pursuant to [13 CFR 127.300](#) as an EDWOSB. It automatically qualifies as a women-owned small business (WOSB) concern eligible under the WOSB Program.

*WOSB Program Repository* means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *Applicability*. This clause applies only to—

(1) Contracts that have been set aside for, or awarded on a sole-source basis to, EDWOSB concerns;

(2) Part or parts of a multiple-award contract that have been set aside for EDWOSB concerns;

(3) Orders set aside for EDWOSB concerns under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#); and

(4) Orders issued directly to EDWOSB concerns under multiple-award contracts as described in [19.504\(c\)\(1\)\(ii\)](#).

(c) *General*.

(1) For EDWOSB set-aside procurements, offers are solicited only from certified EDWOSB concerns or EDWOSB concerns with a pending application for certification in the Dynamic Small Business Search (DSBS).

(2) For EDWOSB sole-source awards, offers are solicited only from certified EDWOSB concerns.

(3) Offers received from other concerns will not be considered.

(4) Any award resulting from this solicitation will be made to a certified EDWOSB concern.

(d) *Joint Venture*. A joint venture may be considered an EDWOSB concern if—

(1) At least one party to the joint venture complies with the criteria defined in paragraph (a) and paragraph (c)(3) of this clause, and [13 CFR 127.506\(c\)](#); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(e) In a joint venture that complies with paragraph (d) of this clause, the EDWOSB party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the EDWOSB party or parties to the joint venture must be more than administrative functions.

(End of clause)

**52.219-30 NOTICE OF SET-ASIDE FOR, OR SOLE SOURCE  
AWARD TO, WOMEN-OWNED SMALL BUSINESS CONCERNS  
ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS  
PROGRAM (OCT 2022)**

(a) *Definitions*. As used in this clause—

*Definition. Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with [13 CFR part 127](#)), as used in this clause, means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with [13 CFR 127.300](#) as a WOSB. A certified EDWOSB is automatically eligible as a certified WOSB.*

(b) *Applicability.* This clause applies only to-

(1) Contracts that have been set aside for, or awarded on a sole-source basis to, WOSB concerns eligible under the WOSB Program;

(2) Part or parts of a multiple-award contract that have been set aside for WOSB concerns eligible under the WOSB Program;

(3) Orders set aside for WOSB concerns eligible under the WOSB Program, under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#); and

(4) Orders issued directly to WOSB concerns eligible under the WOSB Program under multiple-award contracts as described in [19.504\(c\)\(1\)\(ii\)](#).

(c) *General.*

(1) For WOSB set-aside procurements, offers are solicited only from certified WOSB concerns eligible under the WOSB Program or WOSB concerns with a pending application for certification status in the Dynamic Small Business Search (DSBS).

(2) For WOSB sole-source awards, offers are solicited only from certified WOSB concerns.

(3) Offers received from other concerns shall not be considered.

(4) Any award resulting from this solicitation will be made to a certified WOSB concern eligible under the WOSB Program.

(d) *Joint Venture.* A joint venture may be considered a WOSB concern eligible under the WOSB Program if—

(1) At least one party to the joint venture complies with the criteria defined in paragraph (a) and (c)(3) of this clause, and [13 CFR 127.506\(c\)](#); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(e) In a joint venture that complies with paragraph (d) of this clause, the WOSB party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the WOSB party or parties to the joint venture must be more than administrative functions.

(End of clause)

### **52.219-3 NOTICE OF HUBZONE SET-ASIDE OR SOLE SOURCE AWARD (OCT 2022)**

(a) *Definitions.* *HUBZone small business concern, as used in this clause, means a small business concern, certified by the Small Business Administration (SBA), that appears on the List of Qualified HUBZone Small Business Concerns maintained by the SBA (13 CFR 126.103).*

(b) *Applicability.* This clause applies only to-

(1) Contracts that have been set aside or awarded on a sole-source basis to, HUBZone small business concerns;

(2) Part or parts of a multiple-award contract that have been set aside for HUBZone small business concerns;

(3) Orders set aside for HUBZone small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F); and

(4) Orders issued directly to HUBZone small business concerns under multiple-award contracts as described in 19.504(c)(1)(ii).

(c) *General.*

(1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns will not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(d) *Joint Venture.* A joint venture may be considered a HUBZone concern if—

(1) At least one party to the joint venture is a HUBZone small business concern and complies with 13 CFR 126.616(c); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(e) A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business party or parties to the joint venture must be more than administrative functions.

(End of clause)

### **C-FSS-370 CONTRACTOR TASKS / SPECIAL REQUIREMENTS (DEC 2022)**

(a) *Security clearances.* The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule (MAS).

(b) *Travel.* The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by FAR part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under MAS. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does not apply to travel and per diem charges.

(c) *Certifications, licenses and accreditations.* As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses, and accreditations for specific Federal Supply Code (FSC)/Product Service Code (PSC) classifications offered. All costs associated with obtaining/ possessing such certifications, licenses, and accreditations should be factored into the price



offered under MAS.

(d) *Insurance.* As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/PSC classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under MAS.

(e) *Personnel.* The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering agencies may require prior approval of additions or replacements to key personnel.

(f) *Organizational conflicts of interest.* Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such an order may be restricted in accordance with FAR part 9.5.

(g) *Documentation/Standards.* The Contractor may be requested to provide products or services in accordance with rules, regulations, Office of Management and Budget orders, standards and documentation as specified by the order.

(h) *Data/Deliverable requirements.* Any required data/deliverables at the order level will be specified or negotiated by the ordering agency.

(i) *Government-furnished property.* As specified by the order, the Government may provide property, equipment, materials or resources as necessary.

(j) *Availability of funds.* Many ordering agencies operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.

(k) *Overtime.* For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed a time and a half of the labor rate).

(End of clause)

#### **I-FSS-40 CONTRACTOR TEAM ARRANGEMENTS (DEC 2022)**

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with GSAR clause 52.238-80, Industrial Funding Fee and Sales Reporting (i.e., each contractor participating in a contractor team arrangement must report sales and remit the Industrial Funding Fee for all products and services provided under its individual contract).

(End of clause)

#### **I-FSS-600 CONTRACT PRICE LISTS (DEC 2022)**

(a) *Electronic Contract Data.*

(1) At the time of award, the Contractor will be provided instructions for submitting electronic contract data in a prescribed format as required by GSAR clause 552.238-77, Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.

(2) The Contractor will have a choice to transmit its file submissions electronically through Electronic Data Interchange (EDI) in accordance with the Federal Implementation Convention

(IC) or use the application made available at the time of award. The Contractor's electronic files must be complete, correct, readable, virus free, and contain only those supplies and services, prices, and terms and conditions that were accepted by the Government. They will be added to GSA's electronic ordering system known as GSA Advantage!®, a menu driven database system that provides online access to contract ordering information, terms and conditions, current pricing, and the option to create an electronic order. The Contractor's electronic files must be received no later than 30 days after award. Contractors should refer to the GSAR clause at 552.238-88, GSA Advantage!®, for further information.

(3) Further details on EDI, ICs, and GSA Advantage! ® can be found in GSAR clause 552.238-103, Electronic Commerce.

(4) The Contractor is encouraged to place the GSA logo on their website for those supplies or services covered by this contract. Contractors may link the GSA logo to their FSS price list. Only GSA Schedule holders may use the GSA logo, which is at <https://www.gsa.gov/logos>. All resultant "web price lists" shown on the Contractor's website must be in accordance with paragraph (b)(3)(ii) of this clause and nothing other than what was accepted/awarded by the Government may be included. If the Contractor elects to use contract identifiers on its website (either logos or contract number) the website must clearly distinguish between those items awarded on the contract and any other items offered by the Contractor on an open market basis.

(5) The Contractor is responsible for keeping all electronic catalogs data current, accurate, and complete; e.g., prices, product deletions and replacements, etc.

*(b) Federal Supply Schedule Price Lists.*

(1) The Contractor must prepare and distribute an FSS price list as required by GSAR clause 552.238-77, Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.

(2) The Contractor must prepare an FSS price list by composing a price list in which only those items, terms, and conditions accepted by the Government are included, and which contain only net prices, based upon the commercial price list or commercial market prices less discounts accepted by the Government. The cover page of the FSS price list must include the following statement: "Prices Shown Herein are Net (discount deducted)".

(3) The cover page of the FSS price list must include the following information prepared in the following format:

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Service Authorized Federal Supply Schedule FSS Price List

Online access to contract ordering information, terms and conditions, pricing, and the option to create an electronic delivery order are available through GSA Advantage!®. The website for GSA Advantage!® is: <https://www.GSAAdvantage.gov>.

Schedule title

FSC Group, Part, and Section or Standard Industrial Group (as applicable)

FSC Class(es)/Product Code(s) and/or Service Codes (as applicable).

Contract number

Contract period

Contractor's name, address, and phone number (include toll free WATS number and FAX number, if applicable)

Contractor's internet address/website where Schedule information can be found (as applicable)

Contract administration source (if different from preceding entry)

Business size

For more information on ordering go to the following website: <https://www.gsa.gov/schedules>.

**CUSTOMER INFORMATION:** The following information should be placed under this heading in consecutively numbered paragraphs in the sequence set forth below. If this information is placed in another part of the FSS price list, a table of contents must be shown on the cover page that refers to the exact location of the information.

- 1a. Table of awarded special item number(s) with appropriate cross reference to item descriptions and awarded price(s).
- 1b. Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment discounts, or any other concession affecting price. Contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply.
- 1c. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility, and education for those types of employees or subcontractors who will perform services shall be provided. If hourly rates are not applicable, the Contractor shall insert "Not applicable" for this item.
2. Maximum order.
3. Minimum order.
4. Geographic coverage (delivery area).
5. Point(s) of production (city, county, and State or foreign country).
6. Discount from list prices or statement of net price.
7. Quantity discounts.
8. Prompt payment terms. The Contractor must insert the following statement after identifying the prompt payment terms: "Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions."
9. Foreign items (list items by country of origin).
- 10a. Time of delivery. (Contractor insert number of days.)
- 10b. Expedited Delivery. The Contractor must insert the sentence "Items available for expedited delivery are noted in this price list." under this heading. The Contractor may use a symbol of its choosing to highlight items in its FSS price list that have expedited delivery.
- 10c. Overnight and 2-day delivery. The Contractor must indicate whether overnight and 2-day delivery are available. Also, the Contractor must indicate that the ordering activity may contact the Contractor for rates for overnight and 2-day delivery.
- 10d. Urgent Requirements. The Contractor must note in its FSS price list that ordering agencies can request accelerated delivery for urgent requirements.
11. F.O.B. point(s).
- 12a. Ordering address(es).
- 12b. Ordering procedures: See Federal Acquisition Regulation (FAR) 8.405-3.
13. Payment address(es).
14. Warranty provision.
15. Export packing charges, if applicable.
16. Terms and conditions of rental, maintenance, and repair (if applicable).
17. Terms and conditions of installation (if applicable).
- 18a. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable).
- 18b. Terms and conditions for any other services (if applicable).
19. List of service and distribution points (if applicable).
20. List of participating dealers (if applicable).
21. Preventive maintenance (if applicable).
- 22a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants).
- 22b. If applicable, indicate that Section 508 compliance information is available for the information and communications technology (ICT) products and services offered and show where full details can be found (e.g., Contractor's website or other location). ICT accessibility standards can be found at <https://www.section508.gov/>.

23. Unique Entity Identifier (UEI) number.
24. Notification regarding registration in the System for Award Management (SAM) database.
- (4) Amendments to the FSS price lists must include on the cover page the same information as the current FSS price list plus the title "Supplement No. (sequentially numbered)" and the effective date(s) of such supplements.
- (5) Accuracy of information and computation of prices is the responsibility of the Contractor.
- (6) Inclusion of incorrect information in the FSS price list will cause the Contractor to resubmit/correct the FSS price list, and may constitute sufficient cause for termination, pursuant to GSA clause 552.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services, and application of any other remedies as provided by law—including monetary recovery.

(End of clause)

**I-FSS-644 PRODUCTS OFFERED AND SOLD BY VENDORS  
OTHER THAN THE MANUFACTURER (DEC 2022)**

- (a) Applicability. This clause applies to offerings and sales of products made by Contractors other than the manufacturer of such products. This clause applies specifically to, but is not limited to, Contractors who are resellers and distributors. This clause does not apply to Contractors who are also the manufacturer of the product(s) being offered and sold under this contract.
- (b) Terms of Offering and Sales. Contractors shall not offer or sell products under this contract for which they do not have authorization, as applicable, and they lack an uninterrupted source of supply sufficient to satisfy the Government's requirements.
- (1) *Manufacturer Authorization Program.*
- (i) For products that manufacturers manage through any "authorized supplier", "controlled distribution", or other similar program, the Contractor shall be included in such a program to sell products to the Government. The Government will rely on information provided by the manufacturer to identify such authority, to the extent provided by the manufacturer.
- (ii) If the Contractor is not included in any authorization program, then sales of those products under this contract are not permitted.
- (iii) For products that manufacturers do not manage through any authorization program, the Contractor need only provide the uninterrupted source of supply as required by paragraph (b)(2) of this clause.
- (2) *Uninterrupted Source of Supply.* The Contractor shall provide evidence of, and shall maintain, an uninterrupted source of supply sufficient to satisfy the Government's requirements for all products on its contract.
- (3) *Manufacturer Prohibitions.* The Contractor shall not offer or sell any product under this contract that the manufacturer of the product has prohibited the Contractor from selling.
- (c) Discrepancies. In the event that the Government becomes aware of any discrepancy regarding a Contractor's authorization program status, uninterrupted source of supply, or manufacturer prohibition, the Contracting Officer will give written notice of such discrepancy to the Contractor. The Contractor shall have 30 days to respond to the discrepancy. Failure to respond to or resolve (as applicable) a notice of discrepancy may result in cancellation of this contract, in whole or in part, in accordance with GSAR clause 552.238-79, Cancellation.

(End of clause)

**I-FSS-973 PAYMENTS BY NON-FEDERAL ORDERING  
ACTIVITIES (DEC 2022)**

If eligible non-federal ordering activities are subject to a State prompt payment law, the terms and conditions of the applicable State law apply to the orders placed under this contract by such activities. If eligible non-federal ordering activities are not subject to a State prompt payment law, the terms and conditions of the Federal Prompt Payment Act as reflected in GSAR clause 552.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services, apply to such activities in the same manner as to Federal ordering activities.

**G-FSS-900-C CONTACT FOR CONTRACT ADMINISTRATION  
(DEC 2022)**

Offerors should complete paragraphs (a) and (b) of this clause if providing both domestic and overseas delivery. Complete paragraph (a) of this clause if providing domestic delivery only. Complete paragraph (b) of this clause if providing overseas delivery only.

The Contractor shall designate a person to serve as the contract administrator for the contract both domestically and overseas. The contract administrator is responsible for overall compliance with contract terms and conditions. The contract administrator is also the responsible official for issues concerning GSAR clause 552.238-80, Industrial Funding Fee and Sales Reporting, including reviews of Contractor records. The Contractor's designation of representatives to handle certain functions under this contract does not relieve the contract administrator of responsibility for contract compliance. Any changes to the designated individual must be provided to the Contracting Officer in writing, with the proposed effective date of the change.

(a) *Domestic.*

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

ADDRESS \_\_\_\_\_

ZIP CODE \_\_\_\_\_

TELEPHONE NO. (\_\_\_\_\_) \_\_\_\_\_ FAX NO. \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

(b) *Overseas.* Overseas contact points are mandatory for local assistance with the resolution of any delivery, performance, or quality complaint from ordering agencies. (Also, see the requirement in GSAR clause 552.238-97, Parts and Service) At a minimum, a contact point must be furnished for each area in which deliveries are contemplated, e.g., Europe, South America, Far East, etc.

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

ADDRESS \_\_\_\_\_

ZIP CODE \_\_\_\_\_

TELEPHONE NO. (\_\_\_\_\_) \_\_\_\_\_ FAX NO. \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

(End of provision)

**I-FSS-106 GUARANTEED MINIMUM (DEC 2022)**

(a) The guaranteed minimum that the Government agrees to order during the period of this contract is \$2,500. If the Contractor receives total orders for less than \$2,500 during the term of the contract, the Government will pay the difference between the amount ordered and \$2,500.

(b) Payment of any amount due under this clause shall be contingent upon the Contractor's timely submission of reportable sales and fees and receipt of the close-out sales report pursuant to GSAR clause 552.238-80, Industrial Funding Fee and Sales Reporting.

(c) The guaranteed minimum applies only if the contract expires or contract cancellation is initiated by the Government. The guaranteed minimum does not apply if the contract is terminated for cause or if the contract is canceled at the request of the Contractor.

### **52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (MAR 2023)**

(a)

(1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 3801, within 15 days after receipt of

accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(2) The Contractor agrees to make such payments to its small business subcontractors without any further consideration from or fees charged to the subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial products or commercial services.

(End of clause)

### **552.238-81 PRICE REDUCTIONS (DEC 2021) (DEVIATION)**

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c)(1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor—

(i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

(iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the eligible ordering activity with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

- (d) There shall be no price reduction for sales—
- (1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;
  - (2) To Federal agencies;
  - (3) Made to Eligible Ordering Activities identified in GSAR Clause 552.238-113 when the order is placed under this contract (and the Eligible Ordering Activities identified in GSAR Clause 552.238-113 is the agreed upon customer or category of customer that is the basis of award); or
  - (4) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.[ or;
  - (5) Cloud computing services offered on a consumption basis under Special Item Number (SIN) 518210C (previously 132-40) or successor SINs within the Information Technology (IT) Category (previously Schedule 70).]
- (e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.
- (f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.
- (g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

(End of clause)

Note: Regulation 552.238-81  
This GSAR clause is prescribed and contained within Acquisition Letter MV-21-06, Supplement 1.

#### **52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION (JUN 2023)**

- (a) Definitions. As used in this clause—

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)—

- (1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—
    - (i) Of that equipment; or
    - (ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;
  - (2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but
  - (3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.
- (b) Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023



(Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this contract, including equipment provided by the Contractor’s employees; however, this prohibition does not apply if the Contracting Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M-23-13.

(c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

#### **552.219-74 SECTION 8(a) DIRECT AWARD (SEP 1999)**

(a) This contract is issued as a direct award between the contracting activity and the 8(a) Contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the General Services Administration. SBA retains the responsibility for 8(a) certifications, 8(a) eligibility determinations, and related issues, and will provide counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

[Complete at time of award]

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any advance payments or novation agreements. The contracting activity may assign contract administration functions to a contract administration office.

(c) The Contractor agrees:

(1) To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA’s 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(2) To the requirements of 52.219-14, Limitations on Subcontracting.

(End of clause)

**52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) PARTICIPANTS (OCT 2022) (DEVIATION)**

(a) Offers are solicited only from—

(1) Small business concerns expressly certified by the Small Business Administration (SBA) for

participation in SBA's 8(a) program and which meet the following criteria at the time of submission of offer—

(i) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(ii) The Offeror is in conformance with the Business Activity Targets set forth in its approved

business plan or any remedial action directed by SBA;

(2) A joint venture, in which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause, that complies with 13 CFR 124.513(c); or

(3) A joint venture—

(i) That is comprised of a mentor and an 8(a) protégé with an approved mentor-protégé agreement under the 8(a) program;

(ii) In which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause; and

(iii) That complies with 13 CFR 124.513(c).

(b) By submission of its offer, the Offeror represents that it meets the applicable criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d) The \_\_\_\_\_ [insert name of SBA's contractor] will notify the \_\_\_\_\_ [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock.

(End of clause)

**552.238-80 INDUSTRIAL FUNDING FEE AND SALES REPORTING (JUL 2020) (ALTERNATE I MAY 2023)**

(a) Definition. "Transactional data" encompasses the historical details of the products or services delivered by the Contractor during the performance of task or delivery orders issued against this contract.

(b) Reporting of Transactional Data. The Contractor must report all transactional data under this contract as follows:

(1) The Contractor must electronically report transactional data by utilizing the automated reporting system at an Internet website designated by the General Services Administration (GSA) or by uploading the data according to GSA instructions. GSA will post registration instructions and reporting procedures on the Vendor Support Center website, <https://vsc.gsa.gov>. The reporting system website address, as well as registration instructions and reporting procedures,

will be provided at the time of award or inclusion of this clause in the contract.

(2) The Contractor must provide, at no additional cost to the Government, the following transactional data elements, as applicable:

(i) Contract or Blanket Purchase Agreement (BPA) Number.

(ii) Delivery/Task Order Number/Procurement Instrument Identifier (PIID).

(iii) Non Federal Entity.

(iv) Description of Deliverable.

(v) Manufacturer Name.

(vi) Manufacturer Part Number.

(vii) Unit Measure (each, hour, case, lot).

(viii) Quantity of Item Sold.

(ix) Universal Product Code.

(x) Price Paid per Unit.

(xi) Total Price.

**Note to paragraph (b)(2):** The Contracting Officer may add data elements to the standard elements listed in paragraph (b)(2) of this section with the approvals listed in GSAM 507.105(b)(3).

(3) The contractor must report transactional data within 30 calendar days from the last calendar day of the month. If there was no contract activity during the month, the Contractor must submit a confirmation of no reportable transactional data within 30 calendar days of the last calendar day of the month.

(4) The Contractor must report the price paid per unit, total price, or any other data elements with an associated monetary value listed in (b)(2) of this section, in U.S. dollars.

(5) The reported price paid per unit and total price must include the Industrial Funding Fee (IFF).

(6) The Contractor must maintain a consistent accounting method of transactional data reporting, based on the Contractor's established commercial accounting practice.

(7) Reporting Points.

(i) The acceptable points at which transactional data may be reported include-

(A) Issuance of an invoice; or

(B) Receipt of payment.

(ii) The Contractor must determine whether to report transactional data on the basis of invoices issued or payments received.

(8) The Contractor must continue to furnish reports, including confirmation of no transactional data, through physical completion of the last outstanding task or delivery order of the contract.

(9) Unless otherwise expressly stated by the ordering activity, orders that contain classified information or other information that would compromise national security are exempt from this reporting requirement.

(10) This clause does not exempt the Contractor from fulfilling existing reporting requirements contained elsewhere in the contract.

(11) GSA reserves the unilateral right to change reporting instructions following 60 calendar days' advance notification to the Contractor.

(c) Industrial Funding Fee (IFF).

(1) This contract includes an IFF charged on orders placed against this contract. The IFF is paid by the authorized ordering activity but remitted to GSA by the Contractor. The IFF reimburses GSA for the costs of operating the Federal Supply Schedule program, as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefiting other authorized GSA programs, in accordance with 40 U.S.C. 321.

(2) GSA has the unilateral right to change the fee amount at any time, but not more than once per year; GSA will provide reasonable notice prior to the effective date of any change. GSA will post notice of the current IFF on the Vendor Support Center website at <https://vsc.gsa.gov>.

(3) Offerors must include the IFF in their prices. The fee is included in the awarded price(s) and reflected in the total amount charged to ordering activities. The fee will not be included in the price of non-contract items purchased pursuant to a separate contracting authority, such as a Governmentwide Acquisition Contract (GWAC); a separately awarded Federal Acquisition Regulation (FAR) Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract.

(4) The Contractor must remit the IFF to GSA in U.S. dollars within 30 calendar days after the last calendar day of the reporting quarter; final payment must be remitted within 30 calendar days after physical completion of the last outstanding task order or delivery order issued against the contract.

(5) GSA reserves the unilateral right to change remittance instructions following 60 calendar days' advance notification to the Contractor.

(d) The Contractor's failure to remit the full amount of the IFF within 30 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or offsetting payments and interest on the debt (see FAR clause 52.232-17, Interest). If the Contractor fails to submit the required transactional data reports, falsifies them, or fails to timely pay the IFF, these reasons constitute sufficient cause for the Government to terminate the contract for cause.

Note: Regulation 552.238-80

FSS contractors are required to report sales and remit IFF for Schedule items sold via FedMall, just as they would for any other Schedule sale. FedMall sales of Schedule items are treated no differently than sales earned via GSA Advantage! or from orders directly placed by an ordering activity.

This clause applies to contracts participating in the Transactional Data Reporting (TDR) Pilot.

### **552.238-113 SCOPE OF CONTRACT (ELIGIBLE ORDERING ACTIVITIES) (MAY 2023)**

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic and/or overseas delivery. For the Wireless Mobility Services Special Item Number ONLY, limited geographic coverage (consistent with the Offeror's commercial practice) may be proposed.

- (1) Executive agencies (as defined in FAR Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101-26.000;
- (2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1;
- (3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);
- (4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).
- (5) The District of Columbia;
- (6) Tribal governments when authorized under 25 USC 450j(k);
- (7) Tribes or tribally designated housing entities pursuant to 25 U.S.C. 4111(j);
- (8) Qualified Nonprofit Agencies as authorized under 40 USC 502(b); and
- (9) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) *Definitions.*

“Domestic delivery” is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

“Overseas delivery” is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. territories

(c) Offerors are requested to check one of the following boxes:

- Contractor will provide domestic and overseas delivery.
- Contractor will provide overseas delivery only.

\_\_\_\_ Contractor will provide domestic delivery only.

(d) The following activities may place orders against Schedule contracts:

(1) State and local government may place orders against Consolidated Schedule contracts containing information technology or security and protection Special Item Numbers, on an optional basis; provided, the Contractor accepts order(s) from such activities;

(2) The American National Red Cross may place orders against Federal Supply Schedules for products and services in furtherance of the purposes set forth in its Federal charter (36 U.S.C. 300102); provided, the Contractor accepts order(s) from the American National Red Cross; and

(3) Other qualified organizations, as defined in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5152), may place orders against Federal Supply Schedules for products and services determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency; provided, the Contractor accepts order(s) from such activities.

(4) State and local governments may place orders against Federal Supply Schedules for good or services determined by the Secretary of Homeland Security to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.) to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack; provided, the Contractor accepts order(s) from such activities.

(e) Articles or services may be ordered from time to time in such quantities as may be needed to fill any requirement, subject to the Order Limitations thresholds which will be specified in resultant contracts. Overseas activities may place orders directly with schedule contractors for delivery to CONUS port or consolidation point.

(f) (1) The Contractor is obligated to accept orders received from activities within the Executive branch of the Federal Government.

(2) The Contractor is not obligated to accept orders received from activities outside the Executive branch; however, the Contractor is encouraged to accept such orders. If the Contractor elects to accept such orders, all provisions of the contract shall apply, including clause 52.232-36 *Payment by Third Party*. If the Contractor is unwilling to accept such orders, and the proposed method of payment is not through the Credit Card, the Contractor shall return the order by mail or other means of delivery within 5 workdays from receipt. If the Contractor is unwilling to accept such orders, and the proposed method of payment is through the Credit Card, the Contractor must so advise the ordering activity within 24 hours of receipt of order. (Reference clause 52.232-36 *Payment by Third Party*.) Failure to return an order or advise the ordering activity within the time frames of this paragraph shall constitute acceptance whereupon all provisions of the contract shall apply.

(g) The Government is obligated to purchase under each resultant contract a guaranteed minimum of \$2,500 (two thousand, five hundred dollars) during the contract term.

(h) All users of GSA's Federal Supply Schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in the Federal Acquisition Regulation (FAR) 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

#### **552.238-117 PRICE ADJUSTMENT—FAILURE TO PROVIDE**

**ACCURATE INFORMATION (OCT 2023)**

(a) The Government, at its election, may reduce the price of this contract or contract modification if the Contracting Officer determines after award of this contract or contract modification that the price negotiated was increased by a significant amount because the Contractor failed to:

- (1) provide information required by this solicitation/contract or otherwise requested by the Government; or
- (2) submit information that was current, accurate, and complete; or
- (3) disclose changes in the Contractor's commercial pricelist(s), discounts or discounting policies which occurred after the original submission and prior to the completion of negotiations.

(b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 14 calendar days prior to the date it is submitted.

(c) If any reduction in the contract price under this clause reduces the price for items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States—

- (1) The amount of the overpayment; and
- (2) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective each quarter prescribed by the Secretary of Treasury under 26 U.S.C.6621(a)(2).

(d) Failure to agree on the amount of the decrease shall be resolved as a dispute.

(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

**I-FSS-639 CONTRACT SALES CRITERIA (SEP 2023)**

The Federal Supply Schedule (FSS) Contracting Officer may decide not to exercise the first option to extend the term of the contract if the Contractor's reported sales are not expected to exceed \$100,000 within the first 60 months following contract award. The FSS Contracting Officer may decide not to exercise subsequent options to extend the term of the contract if the Contractor's reported sales did not exceed \$125,000 each 60 month period thereafter.

(End of clause)

**552.212-71 CONTRACT TERMS AND CONDITIONS APPLICABLE TO GSA ACQUISITIONS OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (OCT 2023)**

(a) The Contractor agrees to comply with any clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial products, including commercial components, and commercial services. The clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The Contracting Officer should check the clauses in paragraph (b) that apply or delete the clauses that do not apply from the list. The Contracting Officer may add the date of the clause if desired for clarity. The GSAR clauses [ ] in



paragraph (b) of this section are incorporated by reference.

(b) Clauses.

X [552.203-71](#) Restriction on Advertising

Varies by Category, Subcategory and SIN [552.211-73](#) Marking

Varies by Category, Subcategory and SIN [552.219-70](#) Allocation of Orders—Partially Set-Aside Items

X [552.229-70](#) Federal, State, and Local Taxes

Varies by Category, Subcategory and SIN [552.232-72](#) Final Payment Under Building Services Contracts

Varies by Category, Subcategory and SIN [552.237-71](#) Qualifications of Employees

N/A [552.242-70](#) Status Report of Orders and Shipments

(End of Clause)

**552.212-72 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (OCT 2023)**

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the lists in paragraphs (a) and (b). The contracting officer may add the date of the provision or clause if desired for clarity. The GSAR following provisions in paragraph (a) and GSAR clauses [in paragraph (b)] are incorporated by reference.

(a) Provisions.

Varies by Category, Subcategory and SIN [552.223-72](#) Hazardous Material Information

(b) Clauses.

\* \_\_\_\_\_ \* [552.215-70](#) Examination of Records by GSA

Varies by Category, Subcategory and SIN [552.223-70](#) Hazardous Substances.

Varies by Category, Subcategory and SIN [552.223-71](#) Nonconforming Hazardous Material.

X [552.223-73](#) Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Shipments.

X [552.232-23](#) Assignment of Claims

(End of Clause)

### 52.225-5 TRADE AGREEMENTS (NOV 2023)

(a) Definitions. As used in this clause-

“Caribbean Basin country end product”—

(1) Means an article that-

(i) (A) Is wholly the growth, product, or manufacture of a Caribbean Basin country;  
or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C.2703 (b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna prepared or preserved in any manner in airtight containers;

(2) Petroleum, or any product derived from petroleum;

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <https://usitc.gov/tata/hts/index.htm>. In particular, see the following:

(1) General Note3(c), Products Eligible for Special Tariff treatment.

(2) General Note17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible

for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”), Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo,

Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country end product” means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Free Trade Agreement country end product” means an article that-

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Least developed country end product” means an article that-

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-made end product” means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

“WTO GPA country end product” means an article that-

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) Delivery of end products. The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled “Trade Agreements Certificate.”

End of clause

**552.212-4 CONTRACT TERMS AND CONDITIONS –  
COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES  
(NOV 2023) (DEVIATION – FEB 2007) (FAR DEVIATION - JAN  
2023)**

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights —

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However,

when a third party makes payment (e.g., use of the credit card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at Federal Acquisition Regulation (FAR) [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include —

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on a Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for

the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), *Payment by Electronic Funds Transfer — System for Award Management*, or [52.232-34](#), *Payment by Electronic Funds Transfer—Other Than System for Award Management*), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

(i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10th day after Government acceptance of supplies delivered or services-performed by the Contractor.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall —

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the —

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by [33.211](#) if —

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on —

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of an Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.



(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](#), Kickbacks; "[10 U.S.C. 4701](#)" relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. chapter 21](#) relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements – Unenforceable Clauses paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements – Unenforceable Clauses provision.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) [Reserved]

(u) *Unauthorized Obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 502.101) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) *Incorporation by reference.* The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(w) *Commercial supplier agreements – unenforceable clauses.* When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in 502.101), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, “this agreement” means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the Government, the following shall apply:

(i) *Applicability*. This agreement is a part of a contract between the commercial supplier and the Government for the acquisition of the supply or service that necessitates a license (including all contracts, task orders, and delivery orders under FAR Part 12).

(ii) *End user*. This agreement shall bind the Government as end user but shall not operate to bind an Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes*. This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance*. The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the Government to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

(v) *Arbitration; equitable or injunctive relief*. In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vi) *Updating terms*.

(A) After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as:

- (1) Terms that change the Government's rights or obligations;
- (2) Terms that increase Government prices;
- (3) Terms that decrease overall level of service; or
- (4) Terms that limit any other Government right addressed elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) *No automatic renewals*. If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(viii) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(ix) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the Government. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the Government, will be resolved in accordance with subparagraph (d) (Disputes); no payment obligation shall arise on the part of the Government until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under subparagraph (b) of this clause.

(xii) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevail to the extent of such inconsistency.

<p>Note: Regulation 552.212-4 This clause applies to fixed price orders.</p>
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**552.212-4 CONTRACT TERMS AND CONDITIONS -  
COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES  
(NOV 2023) (FAR DEVIATION - JAN 2023) (ALTERNATE I - NOV  
2021) (DEVIATION - FEB 2007)**

(a) *Inspection/Acceptance.*

(1) The Government has the right to inspect and test all materials furnished and services

performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the "hourly rate" attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [*Insert portion of labor rate attributable to profit.*]

(5) (i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may —

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to —

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at Federal Acquisition Regulation (FAR) [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.*

(1) The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference. As used in this clause —

(i) Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are —

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

(C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) *Materials* means —

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: Each order must list separately subcontracts for services excluded from the FSS Hourly Rates; and

(E) Indirect costs specifically provided for in this clause.

(iv) *Subcontract* means any contract, as defined in FAR [subpart 2.1](#), entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(f) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), *Payment by Electronic Funds Transfer—System for Award Management*, or [52.232-34](#), *Payment by Electronic Funds Transfer—Other Than System for Award Management*), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.



(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

(i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payments.*

(1) Work performed. The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) Hourly rate.

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) Materials.

(A) If the Contractor furnishes materials that meet the definition of a commercial product at FAR [2.101](#), the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the —

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor —

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall —

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) Other Costs. Unless listed below, other direct and indirect costs will not be reimbursed.

(1) Other Direct Costs. The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: **Each order must list separately the elements of other direct costs for that order.**

(2) Indirect Costs (Material Handling, Subcontract Administration, etc.). The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: **Each order must list separately the fixed amount for the indirect costs and payment schedule; if no indirect costs are approved, insert "None."**

(2) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this

contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment —

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost —

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall —

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the —

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final Decisions. The Contracting Officer will issue a final decision as required by [33.211](#) if —

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see FAR [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on —

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.

(viii) Upon receipt and approval of the invoice designated by the Contractor as the "completion invoice" and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(8) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR part 1315.

(9) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(10) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the

number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](#), Kickbacks; [10 U.S.C. 4701](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. chapter 21](#) relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements - Unenforceable Clauses paragraphs of this clause.
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements - Unenforceable Clauses provision.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) *[Reserved]*.

(u) *Unauthorized Obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in [502.101](#)) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation ([31 U.S.C. 1341](#)), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(w) *Commercial supplier agreements—unenforceable clauses.* When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in [502.101](#)), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (*including all contracts, task orders, and delivery orders under FAR Part 12*).

(ii) *End user.* This agreement shall bind the Government as end user but shall not operate to bind an Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.



(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) Continued performance. The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the Government to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

(v) Arbitration; equitable or injunctive relief. In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vi) Updating terms.

(A) After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as:

- (1) Terms that change Government rights or obligations;
- (2) Terms that increase Government prices;
- (3) Terms that decrease overall level of service; or
- (4) Terms that limit any other Government right addressed elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) No automatic renewals. If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(viii) Indemnification. Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with [28 U.S.C. 516](#).

(ix) Audits. Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the Government. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the Government, will be resolved in accordance with subparagraph (d) (Disputes); no payment obligation shall arise on the part of the Government until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) Taxes or surcharges. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) Non-assignment. This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under subparagraph (b) of this clause.

(xii) Confidential information. If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevail to the extent of such inconsistency.

Note: Regulation 552.212-4

This clause applies to Time-and-Materials or Labor Hour orders.

**52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB COVERED ENTITIES (DEC 2023)**

(a) *Definitions.* As used in this clause —

Kaspersky Lab covered article means any hardware, software, or service that —

- (1) Is developed or provided by a Kaspersky Lab covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a Kaspersky Lab covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a Kaspersky Lab covered entity.

Kaspersky Lab covered entity means —

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab, including any change in name, *e.g.*, "Kaspersky"

- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition.* Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91) prohibits Government use of any Kaspersky Lab covered article. The Contractor is prohibited from —

- (1) Providing any Kaspersky Lab covered article that the Government will use on or after October 1, 2018; and
- (2) Using any Kaspersky Lab covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement.*

(1) In the event the Contractor identifies a Kaspersky Lab covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 3 business days from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a Kaspersky Lab covered article, any reasons that led to the use or submission of the Kaspersky Lab covered article, and any additional efforts that will be incorporated to prevent future use or submission of Kaspersky Lab covered articles.

(d) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services.

**52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (NOV 2023)**

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies established at [41 U.S.C. 4712](#) and Federal Acquisition Regulation (FAR) 3.900 through 3.905.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under [41 U.S.C. 4712](#), as described in FAR 3.900 through 3.905.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts.

(End of clause)

**52.222-19 CHILD LABOR-COOPERATION WITH  
AUTHORITIES AND REMEDIES (NOV 2023)**

(a) *Applicability.* This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in-

(1) Israel, and the anticipated value of the acquisition is \$50,000 or more;

(2) Mexico, and the anticipated value of the acquisition is \$92,319 or more; or

(3) Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is \$183,000 or more.

(b) *Cooperation with Authorities.* To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or the equivalent at 52.212-3(i), the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) *Violations.* The Government may impose remedies set forth in paragraph (d) for the following violations:

(1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.

(2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.

(3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)

(d) *Remedies.*

(1) The Contracting Officer may terminate the contract.

(2) The suspending official may suspend the Contractor in accordance with procedures in FAR subpart 9.4.

(3) The debaring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR subpart 9.4.

End of clause

### **52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (SEP 2023)**

(a) Definitions. As used in this contract —

HUBZone small business concern means a small business concern that meets the requirements described in 13 CFR 126.200, certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) and SAM.

“Service-disabled veteran-owned small business concern” —

(1) Means a small business concern —

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C.101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria and size standards in 13 CFR part 121, including the size standard that corresponds to the NAICS code assigned to the contract or subcontract

Small disadvantaged business concern, consistent with 13 CFR 124.1001, means a small business concern under the size standard applicable to the acquisition, that-

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by-

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding the threshold at 13 CFR 124.104(c)(2) after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Veteran-owned small business concern” means a small business concern —

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51

percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern —

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) (1) A joint venture qualifies as a small business concern if—

(i) Each party to the joint venture qualifies as small under the size standard for the solicitation; or

(ii) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under a SBA mentor-protégé program.

(2) A joint venture qualifies as—

(i) A service-disabled veteran-owned small business concern if it complies with the requirements in 13 CFR part 125; or

(ii) A HUBZone small business concern if it complies with the requirements in 13 CFR 126.616(a) through (c).

(d) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(e) (1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the

subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 126.900, 127.700, and 128.600, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing DSBS at [https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm). If the subcontractor is a joint venture, the Contractor shall confirm that at least one party to the joint venture is certified by SBA as a HUBZone small business concern. The Contractor may confirm the representation by accessing SAM.

(End of clause)

### **52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEP 2023) (ALT II NOV 2016)**

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

*Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ( [43 U.S.C. 1601](#), et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).*

*Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial products and commercial services sold by either the entire company or a portion thereof (e.g., division, plant, or product line).*

*Commercial product means a product that satisfies the definition of "commercial product" in Federal Acquisition Regulation (FAR) [2.101](#).*

*Commercial service means a service that satisfies the definition of "commercial service" in FAR [2.101](#).*

*Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>*

*Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ( [43 U.S.C. 1601](#) et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#)*

*Individual subcontracting plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.*



*Master subcontracting plan means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.*

*Reduced payment means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.*

*Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.*

*Total contract dollars means the final anticipated dollar value, including the dollar value of all options.*

*Untimely payment means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.*

(c)

(1) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the Offeror ineligible for award of a contract.

(2)

(i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are

current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 126.900, 127.700, and 128.600, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(d) The Offeror's subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual

subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts, including all indirect costs except as described in paragraph (g) of this clause, to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to-

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with-

(i) Small business concerns (including ANC and Indian tribes);

- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;
- (iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;
- (iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;
- (v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
- (vi) Provide its prime contract number, its unique entity identifier, and the e-mail address of the Offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with

subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, as defined in FAR [2.101](#) on the date of subcontract award, indicating-

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact-

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through-

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if-

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see [52.242-5](#)).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing the Dynamic Small Business Search (DSBS) at [https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm)

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold, as defined in FAR [2.101](#) on the date of subcontract award, in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided-

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial products and commercial services. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial product or commercial service. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. A Contractor authorized to use a commercial subcontracting plan shall include in its subcontracting goals and in its SSR



all indirect costs, with the exception of those such as the following: Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in FAR 19.702(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services, or when the subcontractor provides a commercial product or commercial service subject to the clause at FAR 52.244-6, Subcontracts for Commercial Products and Commercial Services, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns;" or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.*

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

(ii)

(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704](#)(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to [19.702](#) a)(1)(iii) or [19.301-2](#)(e), the Contractor's achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over the applicable threshold specified in FAR [19.702](#)(a), and the contractand contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more

than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) *Reports submitted under a commercial plan-*

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of clause)

**52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REPRESENTATION (SEP 2023)**

(a) *Definitions.* As used in this clause-

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at [52.217-8](#), Option to Extend Services, or other appropriate authority.

*Small business concern-*

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in [13 CFR part 121](#) and the size standard in paragraph (d) of this clause.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at [13 CFR 121.103](#).

(b) If the Contractor represented that it was any of the small business concerns identified in [19.000\(a\)\(3\)](#) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts-

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

(d) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code(s) assigned to this contract. The small business size standard corresponding to this NAICS code(s) can be found at <https://www.sba.gov/document/support-table-size-standards>.

(e) The small business size standard for a Contractor providing an end item that it does not manufacture, process, or produce itself, for a contract other than a construction or service contract, is 500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519, if the acquisition—

(1) Was set aside for small business and has a value above the simplified acquisition threshold;

(2) Used the HUBZone price evaluation preference regardless of dollar value, unless the Contractor waived the price evaluation preference; or

(3) Was an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(f) Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and (c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see paragraph (c) of this clause), that the data have been validated or updated, and provide the date of the validation or update.

(g) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (f) or (h) of this clause

(h) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

(1) The Contractor represents that it # is, # is not a small business concern under NAICS Code \_\_\_\_\_ assigned to contract number \_\_\_\_\_.

(2) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it # is, # is not, a small disadvantaged

business concern as defined in [13 CFR 124.1001](#).

(3) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it # is, # is not a women-owned small business concern.

(4) Women-owned small business (WOSB) joint venture eligible under the WOSB Program. The Contractor represents that it # is, # is not a joint venture that complies with the requirements of [13 CFR 127.506\(a\)](#) through (c). [ *The Contractor shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_ .* ]

(5) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The Contractor represents that it # is, # is not a joint venture that complies with the requirements of [13 CFR 127.506\(a\)](#) through (c). [ *The Contractor shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_ .* ]

(6) [Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.] The Contractor represents that it # is, # is not a veteran-owned small business concern.

(7) [Complete only if the Contractor represented itself as a veteran-owned small business concern in paragraph (h)(6) of this clause.] The Contractor represents that it # is, # is not a service-disabled veteran-owned small business concern.

(8) [ *Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.* ] The Contractor represents that—

(i) It # is, # is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It # is, # is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (h)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

[Contractor to sign and date and insert authorized signer's name and title.]

End of clause

**52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2023)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

(1) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities (DEC 2023) (Section 1634 of Pub. L. 115-91).

(3) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).

(5) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) ([31 U.S.C. 3903](#) and [10 U.S.C. 3801](#)).

(6) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(7) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 ( [19 U.S.C. 3805 note](#))).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

*\*[Contracting Officer check as appropriate.]\**

X (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (JUN 2020), with Alternate I (NOV 2021) ([41 U.S.C. 4704](#) and [10 U.S.C. 4655](#)).

X (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (NOV 2021) ([41 U.S.C. 3509](#))).

X (3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

X (4) [52.203-17](#), Contractor Employee Whistleblower Rights (NOV 2023) ( [41 U.S.C. 4712](#)); this clause does not apply to contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community—see FAR [3.900\(a\)](#).

X (5) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) ( [31 U.S.C. 6101 note](#)).

N/A (6) [Reserved].

X (7) [52.204-14](#), Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

X (8) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

X (9) [52.204-28](#), Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts. ( **DEC 2023** ) ([Pub. L. 115-390](#), title II).

X (10) (i) [52.204-30](#), Federal Acquisition Supply Chain Security Act Orders—Prohibition. ( DEC 2023 ) ([Pub. L. 115-390](#), title II).

(ii) Alternate I (DEC 2023) of [52.204-30](#).

X (11) [52.204-27](#), Prohibition on a ByteDance Covered Application (June 2023) (Section 102 of Division R of Pub. L. 117-328).

X (12) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) ([31 U.S.C. 6101 note](#)).

X (13) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) ([41 U.S.C. 2313](#)).

N/A (14) [Reserved]

X (15) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (OCT 2022) ([15 U.S.C. 657a](#)).

N/A (16) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

N/A (17) [Reserved]

X (18) (i) [52.219-6](#), Notice of Total Small Business Set-Aside (NOV 2020) ([15 U.S.C. 644](#)).

Required as Applicable (ii) Alternate I (MAR 2020) of [52.219-6](#).

N/A (19) (i) [52.219-7](#), Notice of Partial Small Business Set-Aside (NOV 2020) ([15 U.S.C. 644](#)).

N/A (ii) Alternate I (MAR 2020) of [52.219-7](#).

X (20) [52.219-8](#), Utilization of Small Business Concerns ((SEP 2023) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

N/A (21) (i) [52.219-9](#), Small Business Subcontracting Plan ((SEP 2023) ([15 U.S.C. 637\(d\)\(4\)](#)).

N/A (ii) Alternate I (NOV 2016) of [52.219-9](#).

X (iii) Alternate II (NOV 2016) of [52.219-9](#).

N/A (iv) Alternate III (JUN 2020) of [52.219-9](#).

N/A (v) Alternate IV ((SEP 2023) of [52.219-9](#).

X (22) (i) [52.219-13](#), Notice of Set-Aside of Orders (MAR 2020) ([15 U.S.C. 644\(r\)](#)).

N/A (ii) Alternate I (MAR 2020) of [52.219-13](#).

X (23) [52.219-14](#), Limitations on Subcontracting (OCT 2022) ([15 U.S.C. 637s](#)).

X (24) [52.219-16](#), Liquidated Damages—Subcontracting Plan (SEP 2021) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

X (25) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (OCT 2022) ([15 U.S.C. 657f](#)).

X (26) (i) [52.219-28](#), Post Award Small Business Program Rerepresentation ((SEP 2023) ([15 U.S.C. 632\(a\)\(2\)](#)).

N/A (ii) Alternate I (MAR 2020) of [52.219-28](#).

X (27) [52.219-29](#), Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (OCT 2022) ([15 U.S.C. 637\(m\)](#)).

X (28) [52.219-30](#), Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (OCT 2022) ([15 U.S.C. 637\(m\)](#)).



- N/A (29) [52.219-32](#), Orders Issued Directly Under Small Business Reserves (MAR 2020) ([15 U.S.C. 644\(r\)](#)).
- X (30) [52.219-33](#), Nonmanufacturer Rule (SEP 2021) ([15U.S.C. 637\(a\)\(17\)](#)).
- X (31) [52.222-3](#), Convict Labor (JUN 2003) (E.O.11755).
- X (32) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (NOV 2023) (E.O.13126).
- X (33) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).
- X (34) (i) [52.222-26](#), Equal Opportunity (SEP 2016) (E.O.11246).
- N/A (ii) Alternate I (FEB 1999) of [52.222-26](#).
- X (35) (i) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ([38 U.S.C. 4212](#)).
- N/A (ii) Alternate I (JUL 2014) of [52.222-35](#).
- X (36) (i) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ([29 U.S.C. 793](#)).
- N/A (ii) Alternate I (JUL 2014) of [52.222-36](#).
- X (37) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ([38 U.S.C. 4212](#)).
- X (38) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).
- X (39) (i) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ([22 U.S.C. chapter 78](#) and E.O. 13627).
- N/A (ii) Alternate I (MAR 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).
- X (40) [52.222-54](#), Employment Eligibility Verification (MAY 2022). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR [22.1803](#).)
- X (41) (i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- N/A (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- Required as Applicable (42) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).
- Required as Applicable (43) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).
- Required as Applicable (44) (i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).
- N/A (ii) Alternate I (OCT 2015) of [52.223-13](#).
- Required as Applicable (45) (i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).
- N/A (ii) Alternate I (Jun2014) of [52.223-14](#).

X (46) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (MAY 2020) ([42 U.S.C. 8259b](#)).

Required as Applicable (47) (i) [52.223-16](#), Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

N/A (ii) Alternate I (JUN 2014) of [52.223-16](#).

X (48) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

Required as Applicable (49) [52.223-20](#), Aerosols (JUN 2016) (E.O. 13693).

Required as Applicable (50) [52.223-21](#), Foams (Jun2016) (E.O. 13693).

X (51) (i) [52.224-3](#) Privacy Training (JAN 2017) (5 U.S.C. 552 a).

N/A (ii) Alternate I (JAN 2017) of [52.224-3](#).

Required as Applicable (52) (i) [52.225-1](#), Buy American-Supplies (OCT 2022) ([41 U.S.C. chapter 83](#)).

N/A (ii) Alternate I (OCT 2022) of [52.225-1](#).

N/A (53) (i) [52.225-3](#), 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act (NOV 2023) ([19 U.S.C. 3301 note](#), [19 U.S.C. 2112 note](#), [19 U.S.C. 3805 note](#), [19 U.S.C. 4001 note](#), 19 U.S.C. chapter 29 (sections 4501-4732), Public Law 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43

N/A (ii) Alternate I [RESERVED].

N/A (iii) Alternate II (DEC 2022) of [52.225-3](#).

N/A (iv) Alternate III (NOV 2023) of [52.225-3](#).

N/A (v) Alternate IV (OCT 2022) of [52.225-3](#).

X (54) [52.225-5](#), Trade Agreements (NOV 2023) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301 note](#)).

X (55) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

N/A (56) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

N/A (57) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov2007) ([42 U.S.C. 5150](#)).

N/A (58) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ([42 U.S.C. 5150](#)).

N/A (59) [52.229-12](#), Tax on Certain Foreign Procurements (FEB 2021) .

N/A (60) [52.232-29](#), Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, "[10 U.S.C. 3805](#)").

N/A (61) [52.232-30](#), Installment Payments for Commercial Products and Commercial Services (NOV 2021) ([41 U.S.C. 4505](#), [10 U.S.C. 3805](#)).

X (62) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (OCT2018) ([31 U.S.C. 3332](#)).

N/A (63) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ([31 U.S.C. 3332](#)).

X (64) [52.232-36](#), Payment by Third Party (MAY 2014) ([31 U.S.C. 3332](#)).

X (65) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

X (66) [52.242-5](#), Payments to Small Business Subcontractors (JAN 2017) ([15 U.S.C. 637\(d\)\(13\)](#)).

X (67) (i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ([46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)).

N/A (ii) Alternate I (APR 2003) of [52.247-64](#).

N/A (iii) Alternate II (NOV 2021) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial products and commercial services, that the Contracting Officer has indicated as being incorporated in this by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

X (1) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ([41 U.S.C. chapter 67](#)).

X (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

X (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

N/A (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

X (5) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ([41 U.S.C. chapter 67](#)).

X (6) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

X (7) [52.222-55](#), Minimum Wages Under Executive Order 13658 (JAN 2022).

Required as Applicable (8) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

Required as Applicable (9) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ([42 U.S.C. 1792](#)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR [2.101](#), on the date of award of this contract, and does not contain the clause at [52.215-2](#), Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial products or commercial services. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (NOV 2021) ([41 U.S.C. 3509](#)).

(ii) 52.203-17, Contractor Employee Whistleblower Rights (NOV 2023) ([41 U.S.C. 4712](#)).

(iii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iv) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities (DEC 2023) (Section 1634 of Pub. L. 115-91).

(v) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(vi) 52.204-27, Prohibition on a ByteDance Covered Application (June 2023) (Section 102 of Division R of Pub. L. 117-328).

(vii) (A) 52.204-30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. (DEC 2023) ([Pub. L. 115-390](#), title II).

(viii) [52.219-8](#), Utilization of Small Business Concerns ((SEP 2023) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702\(a\)](#) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting

opportunities.

- (ix) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).
- (x) [52.222-26](#), Equal Opportunity (SEP 2015) (E.O.11246).
- (xi) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ([38 U.S.C. 4212](#)).
- (xii) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ([29 U.S.C. 793](#)).
- (xiii) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ([38 U.S.C. 4212](#)).
- (xiv) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).
- (xv) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ([41 U.S.C. chapter 67](#)).
- (xvi)
- (A) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ([22 U.S.C. chapter 78](#) and E.O 13627).
- (B) Alternate I (MAR 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).
- (xvii) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May2014) ([41 U.S.C. chapter 67](#)).
- (xviii) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).
- (xix) [52.222-54](#), Employment Eligibility Verification (MAY 2022) (E.O. 12989).
- (xx) [52.222-55](#), Minimum Wages Under Executive Order 13658 (JAN 2022).
- (xxi) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).
- (xxii)
- (A) [52.224-3](#), Privacy Training (Jan 2017) ([5 U.S.C. 552a](#)).
- (B) Alternate I (JAN 2017) of [52.224-3](#).
- (xxiii) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).
- (xxiv) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (JUN

2020) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxv) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) ([31 U.S.C. 3903](#) and [10 U.S.C. 3801](#)). Flow down required in accordance with paragraph (c) of 52.232-40

(xxvi) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ([46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

### **52.204-30 FEDERAL ACQUISITION SUPPLY CHAIN SECURITY ACT ORDERS—PROHIBITION (DEC 2023) (ALT I DEC 2023)**

(a) *Definitions.* As used in this clause—

*Covered article*, as defined in [41 U.S.C. 4713\(k\)](#), means—

(1) Information technology, as defined in [40 U.S.C. 11101](#), including cloud computing services of all types;

(2) Telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 ([47 U.S.C. 153](#));

(3) The processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program (see [32 CFR part 2002](#)); or

(4) Hardware, systems, devices, software, or services that include embedded or incidental information technology.

*FASCSA order* means any of the following orders issued under the Federal Acquisition Supply Chain Security Act (FASCSA) requiring the removal of covered articles from executive agency information systems or the exclusion of one or more named sources or named covered articles from executive agency procurement actions, as described in [41 CFR 201-1.303\(d\)](#) and [\(e\)](#):

(1) The Secretary of Homeland Security may issue FASCSA orders applicable to civilian agencies, to the extent not covered by paragraph (2) or (3) of this definition. This type of FASCSA order may be referred to as a Department of Homeland Security (DHS) FASCSA order.

(2) The Secretary of Defense may issue FASCSA orders applicable to the Department of Defense (DoD) and national security systems other than sensitive compartmented information systems. This type of FASCSA order may be referred to as a DoD FASCSA order.

(3) The Director of National Intelligence (DNI) may issue FASCSA orders applicable to the intelligence community and sensitive compartmented information systems, to the extent not covered by paragraph (2) of this definition. This type of FASCSA order may

be referred to as a DNI FASCSA order.

*Intelligence community*, as defined by [50 U.S.C. 3003\(4\)](#), means the following—

- (1) The Office of the Director of National Intelligence;
- (2) The Central Intelligence Agency;
- (3) The National Security Agency;
- (4) The Defense Intelligence Agency;
- (5) The National Geospatial-Intelligence Agency;
- (6) The National Reconnaissance Office;
- (7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;
- (8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy;
- (9) The Bureau of Intelligence and Research of the Department of State;
- (10) The Office of Intelligence and Analysis of the Department of the Treasury;
- (11) The Office of Intelligence and Analysis of the Department of Homeland Security; or
- (12) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

*National security system*, as defined in [44 U.S.C. 3552](#), means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

- (1) The function, operation, or use of which involves intelligence activities; involves cryptologic activities related to national security; involves command and control of military forces; involves equipment that is an integral part of a weapon or weapons system; or is critical to the direct fulfillment of military or intelligence missions, but does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications); or
- (2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of any covered articles, or any products or services produced or provided by a source. This applies when the covered article or the source is subject to an applicable FASCSA order. A reasonable inquiry excludes the need to include an internal or third-party audit.

*Sensitive compartmented information* means classified information concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of National



Intelligence.

*Sensitive compartmented information system* means a national security system authorized to process or store sensitive compartmented information.

*Source* means a non-Federal supplier, or potential supplier, of products or services, at any tier.

(b) *Prohibition.* (1) Contractors are prohibited from providing or using as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by any applicable FASCSCA orders identified by the checkbox(es) in this paragraph (b)(1).

[ *Contracting Officer must select either "yes" or "no" for each of the following types of FASCSCA orders:*]

Yes     DHS FASCSCA Order

Yes     DoD FASCSCA Order

Yes     DNI FASCSCA Order

(2) The Contractor shall search for the phrase "FASCSCA order" in the System for Award Management (SAM) at <https://www.sam.gov> to locate applicable FASCSCA orders identified in paragraph (b)(1).

(3) The Government may identify in the solicitation additional FASCSCA orders that are not in SAM, which are effective and apply to the solicitation and resultant contract.

(4) A FASCSCA order issued after the date of solicitation applies to this contract only if added by an amendment to the solicitation or modification to the contract (see FAR 4.2304(c)). However, see paragraph (c) of this clause.

(5)(i) If the contractor wishes to ask for a waiver of the requirements of a new FASCSCA order being applied through modification, then the Contractor shall disclose the following:

(A) Name of the product or service provided to the Government;

(B) Name of the covered article or source subject to a FASCSCA order;

(C) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied or supplies the covered article or the product or service to the Offeror;

(D) Brand;

(E) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(F) Item description;

(G) Reason why the applicable covered article or the product or service is being provided or used;

(ii) *Executive agency review of disclosures.* The contracting officer will review disclosures provided in paragraph (b)(5)(i) to determine if any waiver is warranted. A contracting officer may choose not to pursue a waiver for covered articles or sources otherwise covered by a FASCSCA order and to instead pursue other appropriate action.

(c) *Notice and reporting requirement.* (1) During contract performance, the Contractor

shall review *SAM.gov* at least once every three months, or as advised by the Contracting Officer, to check for covered articles subject to FASCSA order(s), or for products or services produced by a source subject to FASCSA order(s) not currently identified under paragraph (b) of this clause.

(2) If the Contractor identifies a new FASCSA order(s) that could impact their supply chain, then the Contractor shall conduct a reasonable inquiry to identify whether a covered article or product or service produced or provided by a source subject to the FASCSA order(s) was provided to the Government or used during contract performance.

(3)(i) The Contractor shall submit a report to the contracting office as identified in paragraph (c)(3)(ii) of this clause, if the Contractor identifies, including through any notification by a subcontractor at any tier, that a covered article or product or service produced or provided by a source was provided to the Government or used during contract performance and is subject to a FASCSA order(s) identified in paragraph (b) of this clause, or a new FASCSA order identified in paragraph (c)(2) of this clause. For indefinite delivery contracts, the Contractor shall report to both the contracting office for the indefinite delivery contract and the contracting office for any affected order.

(ii) If a report is required to be submitted to a contracting office under (c)(3)(i) of this clause, the Contractor shall submit the report as follows:

(A) If a Department of Defense contracting office, the Contractor shall report to the website at <https://dibnet.dod.mil>.

(B) For all other contracting offices, the Contractor shall report to the Contracting Officer.

(4) The Contractor shall report the following information for each covered article or each product or service produced or provided by a source, where the covered article or source is subject to a FASCSA order, pursuant to paragraph (c)(3)(i) of this clause:

(i) Within 3 business days from the date of such identification or notification:

(A) Contract number;

(B) Order number(s), if applicable;

(C) Name of the product or service provided to the Government or used during performance of the contract;

(D) Name of the covered article or source subject to a FASCSA order;

(E) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Contractor;

(F) Brand;

(G) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(H) Item description; and

(I) Any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (c)(4)(i) of this clause:

(A) Any further available information about mitigation actions undertaken or recommended.

(B) In addition, the Contractor shall describe the efforts it undertook to prevent submission or use of the covered article or the product or service produced or provided by a source subject to an applicable FASCSA order, and any additional efforts that will be incorporated to prevent future submission or use of the covered article or the product or service produced or provided by a source that is subject to an applicable FASCSA order.

(d) *Removal.* For Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts or any other procurement instrument intended for use by multiple agencies, upon notification from the Contracting Officer, during the performance of the contract, the Contractor shall promptly make any necessary changes or modifications to remove any product or service produced or provided by a source that is subject to an applicable FASCSA order.

(e) *Subcontracts.* (1) The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (c)(1) of this clause, in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products and commercial services.

(2) The Government may identify in the solicitation additional FASCSA orders that are not in SAM, which are effective and apply to the contract and any subcontracts and other contractual instruments under the contract. The Contractor or higher-tier subcontractor shall notify their subcontractors, and suppliers under other contractual instruments, that the FASCSA orders in the solicitation that are not in SAM apply to the contract and all subcontracts.

# EC America, Inc.

a subsidiary of  immixGroup

# Exhibit "B" Sales Quotation Vendors Quote

Ray Albury  
NASSAU , COUNTY OF  
, PH: 904-530-6371  
ralbury@nassaucountyfl.com

**Quote Number:** QUO-1469508-L1Q7Y6  
**Quote Date:** 7/17/2024  
**Expiration Date:** 8/9/2024

**Manufacturer Quote #:**  
**Manufacturer Ref #:**

Start Date: 8/28/24  
Term: 12 months  
Project Cap: 150  
ACV: \$70M

OY1: \$70M ACV  
Price: \$152,931.50

OY2: \$70M ACV  
Price: \$152,931.50

SOW included below

**Contract No.:** GS-35F-0511T  
**CAGE Code:** 1QTH6  
**DUNS No.:** 01-757-3259  
**TAX ID#:** 52-2085893  
**Terms:** Prepaid  
**FOB:** Destination

Order Address:  
EC America  
8444 Westpark Drive, Suite 200  
McLean, VA 22102  
PH: 703-752-0610 FX: 703-752-0611

**EC America Contact:** Strane, Logan  
+1 770-615-2468 Logan.Strane@immixgroup.com

**Manufacturer Contact:** Al-Hayderi, Zaid  
+1 929-341-4519 zaid.alhayderi@procore.com

# Sales Quotation

**Continued**

Item	Part Number	Contract	Trans Type	Product Description	Qty	Price	Extended Price
1	PRO-1410-07	GS-35F-0511T	SUB	Project Management Pro: provides Project Overview, Documentation, and Communication Management tools, including Directory, Reports, Documents, Drawings, Photos, RFIs, Specifications, Submittals, and Punchlist. Pricing is maximum price for ACV from \$50M -** TRUSTED PRODUCT **	1	\$55,606.3812	\$55,606.38
2	PRO-1430-07	GS-35F-0511T	SUB	Project Financials: provides Financial Management tools, including Direct Costs, Change Events, Commitments, Change Orders, Prime Contract, and Budget. Pricing is maximum price for ACV from \$50M - \$75M.** TRUSTED PRODUCT **	1	\$26,881.0748	\$26,881.07
3	PRO-1480-07	GS-35F-0511T	SUB	Quality & Safety: provides Quality & Safety tools, including Incidents, Inspections, and Observations. Pricing is maximum price for ACV from \$50M - \$75M.** TRUSTED PRODUCT **	1	\$20,887.3216	\$20,887.32
4	PRO-1600-07	GS-35F-0511T	SUB	Invoice Management: provides invoice management tools, including Owner and Subcontractor invoices. Pricing is maximum price for ACV from \$50M - \$75M.** TRUSTED PRODUCT **	1	\$15,730.7809	\$15,730.78
5	PRO-1660-04	GS-35F-0511T	SUB	Procore Analytics Single Daily: export Procore product data into a hosted SQL database and apply Analytics tools on 100+ ready made reports and dashboard to derive insights. Pricing is maximum price for ACV from \$50M - \$75M.** TRUSTED PRODUCT **	1	\$11,559.7649	\$11,559.76
6	PRO-1440-04	GS-35F-0511T	SUB	Estimating: provides Estimating tools, including Estimating and Takeoff. Pricing is maximum price for Annual Construction Volume up to \$75,000,000.** TRUSTED PRODUCT **	1	\$16,443.3249	\$16,443.32
7	PRO-1670-07	GS-35F-0511T	TR	Training Center: Customizable knowledge-base on Procore s Support Center ( <a href="https://support.procore.com">https://support.procore.com</a> ). Streamline the process of documenting company-specific support content such as tutorials and procedures by leveraging existing product documentation. A** TRUSTED PRODUCT **	1	\$5,822.8715	\$5,822.87
8	PRO-2800	GS-35F-0511T	SVC	Custom Statements of Work** TRUSTED PRODUCT **	234	\$199.8992	\$46,776.41

<b>SUBSCRIPTION</b>	\$147,108.63
<b>SERVICES</b>	\$46,776.41
<b>TRAINING</b>	\$5,822.87
<b>Grand Total</b>	\$199,707.91

Meghan Cohen  
Sales Manager  
17 July 2024

List of Services Included: Unlimited customer support, unlimited user licensing, unlimited storage in the cloud, implementation manager

Construction Volume: Construction Volume means the aggregate dollar value of the construction work performed or put in place for all distinct projects for which Customer utilizes the Subscription Services identified with Customer's Procore account(s) during the Subscription Term identified on this Order.

Subject to the Terms and Conditions of GSA MAS Contract Number GS-35F-0511T; See: <http://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/>

Taxes: Sales tax shall be added at the time of an invoice, unless a copy of a valid tax exemption or resale certificate is provided.

All Purchase Orders must include: End User Name, Phone Number, Email Address, Purchase Order Number, Government Contract Number, Our Quote Number, Part Numbers, Bill-To and Ship-To Address (Cannot ship to a PO Box), Period of Performance (if applicable), and a Signature of a duly Authorized Representative.

The identified line items are Trusted Products under the immixGroup Trusted Supplier Program. immixGroup Trusted Supplier Program Policies, Commitments and Guarantees/Warranties can be obtained at: [http://www.immixgroup.com/uploadedFiles/Trusted-Supplier-Program\\_Guarantee-and-Warranty.pdf](http://www.immixgroup.com/uploadedFiles/Trusted-Supplier-Program_Guarantee-and-Warranty.pdf)

**PROCORE**

# STATEMENT OF WORK





# OVERVIEW

**Date:** Jan 12, 2024

**Procore Technologies, Inc., (Procore)** a Delaware corporation, having its principal place of business at 6309 Carpinteria Avenue Carpinteria, CA 93013, is pleased to present this Statement of Work (“SOW”) for Procore Customer:

**Board of County Commissioners Nassau, Florida (Customer)** having its address at 96135 Nassau Pl Yulee, FL 32097.

Customer has chosen to implement Procore’s Project Management Pro, Quality and Safety, Project Financials, Invoice Management, Estimating, and Analytics products. To streamline the implementation and rollout of Procore for Customer projects in North America, Customer and Procore agree to the following scope of services by Procore:

This SOW includes access to Project Management Services, Virtual Consulting Services, Virtual Training Services, Onsite Training Services, and Analytics Consulting Services.

These services benefit the Customer in the following ways:

- Project Management Services ensure a consistent point of contact throughout the implementation to manage the successful execution of service project scope.
- Virtual Consulting Services provide guidance and best practices, for product as well as business processes, in order to successfully execute project scope.
- Virtual Training Services to drive successful adoption of customer Standard Operating Procedures (SOPs).
- Onsite Training reduces time to first value and increases adoption rate.
- Analytics Consulting Services assist Customer in the design and development of custom reports and dashboards.

# SCOPE OF WORK

## PROJECT MANAGEMENT SERVICES

Procore will provide one (1) Project Manager (PM) to provide up to one hundred (100) hours of Project Management efforts. The Customer will identify lead Procore administrators within the Customer organization who will have direct access to the designated PM.

Project Management Services may include:

- Coordination, planning, and managing the execution of all services contained within this statement of work
- Monitoring SOW services usage and managing changes to scope related to available hours and jointly (customer/Procore) defined schedule milestones
- Providing recurring project status updates, monitoring the health of the project, identifying and communicating project risk, and managing implementation success criteria
- Developing an implementation plan based on customer objectives
- Providing strategy and consultation expertise on rollout and training best practices, when in scope

Once the Implementation phase is complete, the Customer will transition to one (1) Customer Success Manager (CSM) who will be the main point of contact for Customer post-implementation.

## CONSULTING SERVICES

Procore will provide up to seventy (70) additional hours of Virtual Consulting Services to be used for assistance with rolling out Procore. For purposes of clarity, Consulting Services are separate from Project Management. Consulting Services are typically led by Strategic Product Consultants. Procore Consulting Services may be leveraged for any of the following:

- Scheduled virtual consulting sessions, which may include:
  - Procore led discovery intended to surface a customer's business outcomes, processes and strategy
  - Advisement on recommended processes per the customer's processes, goals and products
  - Consultative guidance on best practices, configuration settings, permissions based on desired business process and outcomes
  - General Q&A with Customer's Procore Committee or individual project teams.
  - Review and guidance on customer drafted SOPs in a Procore provided template.
- In addition the Consulting Services may provide the following services:
  - Coordination, planning, and research in support of process or project requirements.

## VIRTUAL TRAINING SERVICES

Procore will provide Customer up to twenty (20) hours of virtual training led by a Strategic Product Consultant. As part of the Virtual Training allotment of hours, up to five (5) hours may be used for planning and follow up. Virtual Training will be delivered in increments of 2 or more hours at a time.

Training Services may include:

- Scheduled virtual training sessions may include:

- Customized agendas based on Customer's desired training format, audience, process and tool priorities.
- Virtual train-the-trainer sessions on customer's Procore configuration, business process, and standard operating procedure.
- General Q&A with Customer's internal team.
- In addition Training Services may provide:
  - Coordination, planning, and setup in support of process or project requirements.

Training Services do not include:

- Training on business processes not included in consultation services.
- Data entry or other user-facing general setup functions.
- Staff augmentation.
- Configuration or changes to custom forms, tools, or workflows.

### ONSITE SERVICES

Procore will provide two (2) days of US-based Onsite Services to be led by Customer's Procore Project Manager or a Strategic Product Consultant. Each Onsite day will be used in full, and cannot be split over multiple days. Procore will use commercially reasonable efforts to meet onsite scheduling requirements; however, generally four (4) weeks advance notice is required for scheduling onsites.

**Two (2) days of Onsite Training with one resource is equivalent to 34 hours of service. Breakdown of hours with one resource: 8 hours per day with the client, 3 hours per day for planning/administrative tasks (including booking travel), and 12 hours to accommodate travel time, round trip.**

Onsite services may include:

- Train-the-trainer sessions on Procore's standard toolset.
- Customized agendas based on Customer's desired training format, audience, and tool priorities.
- Configuration of Procore's standard toolset and permissions.
- General Q&A with Customer's internal team.
- Usage monitoring and reviews with Customer's key stakeholders.
- Guidance developing Procore Standard Operating Procedures.

Onsite Training services do not include:

- Data entry or other user-facing general setup functions.
- Staff augmentation.
- Configuration or changes to custom forms, tools, or workflows.

Onsite Training services are limited to twelve (12) Customer participants.

### PROCORE ANALYTICS CONSULTING

Procore will provide up to ten (10) hours of virtual Procore Analytics Consulting Services to assist Customer with report writing, custom analytics reporting best practices and training deep dives. Procore Analytics Consulting Services may be leveraged for any of the following:

- Report discovery, writing, configuration, and customization, leveraging Procore data and Power BI.
- Reporting user-access best practices.
- Aid in the planning of future or additional custom reporting modules.
- Train-the-trainer sessions and deep dives into Procore Analytics.
- Loading of source database model to support the reporting and analytic needs of Customer.

Any and all intellectual property and/or technology (“IP”) that is created in connection with this SOW by Procore shall be deemed “Services” as defined in the Agreement and owned solely by Procore. Procore hereby grants Customer the non-exclusive right to use any custom forms, tools and workflows solely for its internal business purposes during the term of the Agreement.

## SUMMARY OF SERVICES

### ONE-TIME SERVICES

Service	Description	Hours	Part #
<b>Project Management Services</b>	Ongoing access to Project Manager. Includes Project Management efforts and Project Administration.	100	PRO-2800
<b>Consulting Services</b>	Virtual Consulting focused on Procore best practices.	70	PRO-2800
<b>Onsite Training</b>	US-based Onsite consultation (includes 1 Procore resources). Onsite Training fees include expenses.	2 <b>Day(s)</b> <b>(equal to 34 Hours)</b>	PRO-2800
<b>Training Services</b>	Virtual end-user Training. Includes up to 5 hours of planning, and follow up. Training will be delivered in increments of 2-hours or more.	20	PRO-2800
<b>Analytics Consulting</b>	Procore Analytics Consulting, focused on consultation regarding Procore Analytics and Power BI	10	PRO-2800
<b>Total</b>		234	

The above breakdown of cost allocation represents our best estimate of resource effort per service type. This breakdown may be revised by Customer and Procore’s mutual agreement should service needs change during the course of the implementation. For calls or meetings that require more than one (1) Procore resource, hours will draw against the relevant bank of hours per resource.

Services shall remain valid for twelve (12) months from the Service Start Date. However, Customer’s expected project timeline is nine (9) months from the project kickoff call and/or mutually agreed upon project start date (the “Project Start Date”). The Project Start Date shall be no more than thirty (30) days from the Service Start Date.

## ADD-ON SERVICES

Services in addition to those included in this Statement of Work are available upon request for a fee and are not included in this scope.

## GENERAL CUSTOMER REQUIREMENTS AND DEPENDENCIES, APPLICABLE TO ALL SERVICES

### Customer Resources

Customer will identify a Procore Committee who will be responsible for the success of Procore within the Customer's organization. The Procore Committee will consist of:

1. An Executive Sponsor who serves as the directly accountable individual for the success of Procore. Responsibilities of the Executive Sponsor include but are not limited to:
  - a. Reviewing Implementation Progress Reports Generated by the Procore Project Manager.
  - b. Attending Business Reviews conducted by the Procore Customer Success Manager.
  - c. Acting as final Decision Maker should the Procore Committee be unable to reach general consensus
  - d. Acting as escalation contact for risk
2. Procore Admin(s) who serves as the key stakeholder(s) for the rollout of Procore at Customer's organization. Responsibilities of the Procore Admin(s) included but are not limited to:
  - a. Actively participating in the implementation process by attending consultations and solidifying standard operating procedures
  - b. Act as the main point of contact for training questions from Customer employees and escalate issues to Procore Project Manager, if needed
  - c. Completing assigned tasks via the Project Plan
  - d. Complete Procore Certifications
3. Procore Advisors who provide input and feedback on Customer-specific processes.

### Customer Partnership

The Customer is an active participant in the implementation from the beginning of the process in order to facilitate the delivery of the Services in this scope of work. Customer personnel must be available as needed to complete the project Alignment meeting, discuss requirements, attend consultations and training, develop interfaces, perform system testing, and send communication to third parties and internal staff. Customer's Procore Admins will have overall responsibility finalizing design decisions within the Customer organization. If Customer resources are not available as needed, or there are organizational changes, it will negatively impact the delivery of services included in this Statement of Work. The Customer resource time commitment will vary based on the complexity of the requirements and desired timeline.

The Customer will be responsible for the following, if applicable to Services purchased:

- **System Configuration:** The customer will be responsible for configuring Procore based upon consultation call outcomes unless otherwise specified in this Statement of Work via Remote Administration Services
- **Standard Operating Procedures:** The Customer will be responsible for writing Standard Operating Procedures (SOPs) to support the internal users and their interactions with Procore application unless otherwise specified in this Statement of Work.
- **Data Import:** The Customer will be responsible for loading all data into the Procore system via the Procore user interface or Procore imports tool unless otherwise specified in this Statement of work via Remote Administration Services.
- **Standard Reports:** The Customer will be responsible for identifying the standard reports that are applicable to their business needs and run these reports during the testing phase of the project.
- **API Integrations:** The customer is responsible for building any API integrations into Procore. Middleware programs and API calls will be managed and written by the customer unless otherwise specified in this SOW.

### **LEGAL TERMS AND CONDITIONS**

This SOW is also governed by the Procore Subscription and Services Agreement (“Agreement”), as well as the Procore Data Protection Addendum (“DPA”), as executed by Customer. Customer acknowledges and agrees that Procore may transfer and process data to and in the United States and anywhere else in the world where Procore, its Affiliates, or its Subprocessors maintain data processing operations. Subject to the terms of the DPA, Procore may appoint additional Subprocessors as described in this SOW beyond those Subprocessors designated in the DPA if required to provide the services described herein.

**EXHIBIT "C"**

**INSURANCE REQUIREMENTS**

**GENERAL INFORMATION AND MINIMUM INSURANCE REQUIREMENTS**



**COMMERCIAL GENERAL LIABILITY INSURANCE**

The Vendor/Contractor shall purchase and maintain at the Vendor/Contractor's expense Commercial General Liability insurance coverage (ISO or comparable Occurrence Form) for the life of this Contract. Modified Occurrence or Claims Made forms are not acceptable.

The Limits of this insurance shall not be less than the following limits:

Each Occurrence Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
Products & Completed Operations Aggregate Limit	\$2,000,000
General Aggregate Limit (other than Products & Completed Operations) Applies Per Project	\$2,000,000

General liability coverage shall continue to apply to "bodily injury" and to "property damage" occurring after all work on the Site of the covered operations to be performed by or on behalf of the additional insureds has been completed and shall continue after that portion of "your work" out of which the injury or damage arises has been put to its intended use.

**WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE**

The Vendor/Contractor shall purchase and maintain at the Vendor/Contractor's expense Workers' Compensation and Employer's Liability insurance coverage for the life of this Contract.

The Limits of this insurance shall not be less than the following limits:

<u>Part One</u> – Workers' Compensation Insurance – Unlimited Statutory Benefits as provided in the Florida Statutes and	
<u>Part Two</u> – Employer's Liability Insurance	
Bodily Injury By Accident	\$500,000 Each Accident
Bodily Injury By Disease	\$500,000 Policy Limit
Bodily Injury By Disease	\$500,000 Each Employee

\*If leased employees are used, policy must include an Alternate Employer's Endorsement

**AUTOMOBILE LIABILITY INSURANCE**

The Vendor/Contractor shall purchase and maintain at the Vendor/Contractor's expense Automobile Liability insurance coverage for the life of this Contract.

The Limits of this insurance shall not be less than the following limits:

Combined Single Limit – Each Accident	\$1,000,000
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Covered Automobiles shall include any auto owned or operated by the insured Vendor/Contractor, including autos which are leased, hired, rented or borrowed, including autos owned by their employees which are used in connection with the business of the respective Vendor/Contractor.

**PROFESSIONAL LIABILITY (ERRORS & OMISSIONS)**

This additional coverage will be required for all projects involving consultants, engineering services, architectural or design/build projects, independent testing firms and similar exposures.

The Contractor/Vendor shall purchase and maintain at the Contractor/Vendor's expense Professional Liability insurance coverage for the life of this Contract.

If the contract includes a requirement for Professional Liability or Errors and Omissions insurance, the minimum amount of such insurance shall be as follows:

Each Occurrence/Annual Aggregate – <b>Project Specific Form</b>	\$1,000,000
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Design Professional Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement. If provided on a Claims Made Form, the coverages must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

**CYBER AND DATA SECURITY LIABILITY**

This additional coverage will be required for all projects involving information technology services, software providers, programmers and similar exposures.

The Contractor/Vendor shall purchase and maintain at the Contractor/Vendor's expense Cyber and Data Security Liability insurance coverage for the life of this Contract.

If the contract includes a requirement for Cyber and Data Security Liability insurance, the minimum amount of such insurance shall be as follows:

Technology Errors and Omissions Liability coverage	\$1,000,000
Media	\$1,000,000
Network and Data (Information) Security	\$1,000,000

**Policy coverage must include Third Party Liability coverage.**



Vendor/Contractor shall require each of his Sub-Vendor/Contractors to likewise purchase and maintain at their expense Commercial General Liability insurance, Workers' Compensation and Employer's Liability coverage and Automobile Liability insurance coverage meeting the same limit and requirements as the Vendor/Contractors insurance.

**Certificates of Insurance and the insurance policies required for this Agreement shall contain –**

- **Endorsement that coverage afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to Nassau County Board of County Commissioners.**
  - **Nassau County Board of County Commissioners must be named as an Additional Insured and endorsed onto the Commercial General Liability (CGL), Auto Liability policy (ies).**
  - **CGL policy for construction related contracts –**
    - **Additional Insured Endorsement must include Ongoing and Completed**
    - **CGL policy shall not be endorsed with Contractual Liability Limitation Endorsement or Amendment of Insured Contract Definition**
    - **CGL policy shall include broad form contractual liability coverage for the Contractors covenants to and indemnification of the Authority under this Contract**
- **Provision under General Liability, Auto Liability and Workers' Compensation to include a Waiver of Subrogation clause in favor of Nassau County Board of County Commissioners.**
- **Provision that policies, except Workers' Compensation, are primary and noncontributory.**

Certificates of Insurance and the insurance policies required for this Agreement shall contain a provision under General Liability, Auto Liability, Environmental Liability and Workers' Compensation to include a Waiver of Subrogation clause in favor of Nassau County Board of County Commissioners.

All Insurers must be authorized to transact insurance business in the State of Florida as provided by Florida Statute 624.09(1) and the most recent Rating Classification/Financial Category of the insurer as published in the latest edition of "Best's Key Rating Guide" (Property-Casualty) must be at least A- or above.

All of the above referenced Insurance coverage is required to remain in force for the duration of this Agreement and for the duration of the warranty period. Accordingly, at the time of submission of final application for payment, Vendor/Contractor shall submit an additional Certificate of Insurance evidencing continuation of such coverage.

If the Vendor/Contractor fails to procure, maintain or pay for the required insurance, Nassau County Board of County Commissioners shall have the right (but not the obligation) to secure same in the name of and for the account of Vendor/Contractor, in which event, Vendor/Contractor shall pay the cost thereof and shall furnish upon demand, all information that may be required to procure such insurance. Nassau County Board of County Commissioners shall have the right to back-charge Vendor/Contractor for the cost of procuring such insurance. The failure of Nassau County Board of County Commissioners to demand certificates of insurance and endorsements evidencing the required insurance or to identify any deficiency in Vendor/Contractors coverage based on the evidence of insurance provided by the Vendor/Contractor shall not be construed as a waiver by Nassau County Board of County Commissioners of Vendor/Contractor's obligation to procure, maintain and pay for required insurance.

The insurance requirements set forth herein shall in no way limit Vendor/Contractors liability arising out of the work performed under the Agreement or related activities. The inclusions, coverage and limits set forth herein are minimum inclusion, coverage and limits. The required minimum policy limits set forth shall not be construed as a limitation of Vendor/Contractor's right under any policy with higher limits, and no policy maintained by the Vendor/Contractor shall be construed as limiting the type, quality or quantity of insurance coverage that Vendor/Contractor should maintain. Vendor/Contractor shall be responsible for determining appropriate inclusions, coverage and limits, which may be in excess of the minimum requirements set forth herein.

If the insurance of any Vendor/Contractor or any Sub-Vendor/Contractor contains deductible(s), penalty(ies) or self-insured retention(s), the Vendor/Contractor or Sub-Vendor/Contractor whose insurance contains such provision(s) shall be solely responsible for payment of such deductible(s), penalty(ies) or self-insured retention(s).

The failure of Vendor/Contractor to fully and strictly comply at all times with the insurance requirements set forth herein shall be deemed a material breach of the Agreement.